

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Docket No. 02-2023-OSPI-01805

Kent School District

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2023-SE-0028X

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline H. Becker on October 17, 18, 19 and 25, 2023, via videoconference. The Parent of the Student whose education is at issue¹ appeared and was represented by Mary Griffin, attorney at law. The Student was present for a portion of the hearing. The Kent School District (District) was represented by Sam Chalfant and Rachelle Stefanski, attorneys at law. Also present for the District was Dr. Haley Brown, Assistant Director of Inclusive Education.

STATEMENT OF THE CASE

Procedural History

The due process hearing request (Complaint) in this matter was filed on February 16, 2023. The Parent initially appeared *pro se*. ALJ Jenna Schuenemann was assigned to the case and handled the prehearing proceedings. The matter was designated as an expedited (“X”) case at the time of filing, but Judge Schuenemann subsequently determined there were no issues requiring an expedited hearing, so the case proceeded on a non-expedited schedule. The order containing the statement of issues to be heard at the due process hearing was entered by Judge Schuenemann on June 14, 2023. Ms. Griffin began representing the Parent on July 27, 2023. The case was reassigned to ALJ Becker on September 18, 2023.

Due Date for Written Decision

The written decision in this matter is due on December 31, 2023.

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

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1, D4-8

Parent's Exhibits: P1-9, P11, P12, P13 (revised), P16-24.

Witnesses Heard:

The Student

The Parent

Kim Steedle – Youth and Family therapist at Kent Youth and Family Services

Deborah Drake - Assistant Principal, Kent-Meridian High School

Mia Mbugua - Former Assistant Principal, Kent-Meridian High School

David Radford - Principal, Kent-Meridian High School

Maya Smith – District school psychologist

Karmine Wood - District special education teacher

Tabitha Browning – District special education teacher

Suzanne Kanatsiz – District special education teacher

Andra Maughn – Former District Director of Inclusive Education

Kelsey Kaufman – District special education teacher and curricular leader

ISSUES

The issues heard at the due process hearing are:

- 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 January 2023 Individualized Education Program (IEP) by changing the Student's schedule without conducting a functional behavioral assessment (FBA) and without discussing the change with the IEP team;

- ii. Failing to provide weekly progress reports to the Parent as required by the Student's January 2023 IEP;
 - iii. Failing to draft an updated Behavior Intervention Plan (BIP) before changing the Student's schedule in February 2023.
 - iv. Failing to implement the Student's January 2023 IEP by:
 - a. failing to implement all the accommodations noted in the IEP; and
 - b. failing to offer all of the Student's specially designed instruction (SDI) minutes in math.
 - v. Failing to draft an IEP in January 2023 that was reasonably calculated to confer meaningful educational benefit to the Student by:
 - a. drafting a deficient adverse impact statement;
 - b. failing to include complete information in the medical physical section;
 - c. failing to include an accommodation for "safe adults" and "safe places" for the Student at school;
 - d. failing to include accommodations to help the Student with staying on task;
 - e. failure to address the Student's safety, including bullying that the Student was experiencing.
 - vi. Failing to convene an IEP team meeting in February 2023, at the Parent's request, to discuss the Student's grades.
- 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;
 - ii. An order directing the District to develop an IEP with accommodations for the Student that identify safe places and safe adults;

- iii. An order directing the District to develop an IEP that supports the Student in meeting his goals;
- iv. Compensatory special education and supplemental services to allow the Student to obtain the educational benefit he would have received but for the District's violations of the IDEA and denial of FAPE;
- v. An order directing the District to complete a new FBA and BIP that are student-centered, evidence-based, and trauma-informed;
- vi. Or other equitable remedies, as appropriate.

FINDINGS OF FACT

1. The Student is currently [REDACTED] and is a senior at Kent-Meridian High School (Kent-Meridian) in the District. Tr. 25.² He is projected to graduate from high school in June 2024. D4 p.3.

2. The Student initially qualified for special education services in kindergarten when he was determined to be eligible under the category of Developmental Delay. His eligibility category was changed to Specific Learning Disability (SLD) at the end of first grade.³ P8 p.5. A functional behavior assessment was conducted when the Student was in 4th grade in response to repeated incidents of him hitting, pushing, and kicking peers. In March 2018, the Student was diagnosed with Oppositional Defiant Disorder. *Id.* He has also been diagnosed with a stress-related disorder and "other specified trauma." Tr. 398.

3. As of January 2023, the Student qualified for SDI in math calculation, math problem-solving, reading comprehension, written expression, behavioral skills, communication, and social/emotional. D4 p.8.

² Exhibits are cited by party ("P" for Parent; "D" for District), exhibit number, and page number. For example, a citation to P1 p. 5 is to the Parent's Exhibit 1 at page 5. The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to Tr. at 80 refers to testimony at page 80 of the transcript.

³ Evidence was not presented as to the precise nature of the Student's SLD. His IEP of March 2022 provides the most information and states, "[Student] has Specific Learning Disability which impacts his progress in the high school math curriculum and GE curriculum that involves reading comprehension, written expression, math calculation, math problem solving, social emotional, and behavior." P9 p.10.

4. The Student's most recent reevaluation was conducted by school psychologist Maya Smith⁴ in February 2021. The reevaluation team met on March 2, 2021, to discuss the reevaluation results. P12. The reevaluation report notes that the Student demonstrated math, writing, and reading comprehension skills that were below what was expected for his age and grade level. The Student exhibited significant difficulties forming complete sentences with appropriate spelling and punctuation, as well as difficulty writing structured paragraphs. The Student also exhibited difficulty with grade level math concepts and computation, as well as behavioral difficulties related to coping skills, regulating emotions, and classroom engagement. *Id.* at 2

5. As part of the reevaluation, the Parent completed the Behavior Assessment System for Children, Third Edition (BASC-3) regarding the Student. P6. This assessment indicated that the Parent had a negative overall view of the Student's behavior. However, the "consistency index score" on the assessment indicated that the Parent provided inconsistent responses to items that are typically answered in a similar way, and this means that caution is warranted in interpreting the assessment. *Id.* at 5. The BASC-3 indicated that the Student has disruptive, impulsive, and uncontrolled behaviors, and that he is aggressive, argumentative and defiant. The assessment also indicated clinically significant depression. *Id.* at 7.

6. At the due process hearing, the Parent described the Student as having struggled to make friends throughout his schooling. He has a hard time understanding sarcasm, social cues and nonverbal communication. Tr. 94. At times, his joking behavior has been misconstrued by others and the Student has been physically assaulted as a result. *Id.* This causes the Parent to be concerned for his safety. *Id.* at 95.

7. The Student's IEP of March 2, 2021, indicates that he did not engage well with remote learning and was failing all his classes. P7 p.6. At the time that IEP was developed, the Student had missed 22 days of school, and he would often log in to remote learning and then go back to sleep or do something else. P12 p.7. The Student's homelife was stressful and chaotic during this time in that

Tr. 41-42. The Student

Id. at 43.

⁴ Ms. Smith has a bachelor's degree in psychology and an education specialist degree. She is a nationally certified school psychologist. Tr. 153, 164.

8. The Student testified at the due process hearing that he was frequently bullied and pushed into fights during the 2021-22 school year. Tr. 27. This made him feel that he did not want to attend school and did not want to be alive. *Id.* The Student would tell his mother about such incidents and sometimes stayed home from school because he did not feel safe there. *Id.* at 31.

9. The Student's IEP of March 1, 2022, provided that the Student would receive 510.75 minutes per week of SDI and related services. It placed the Student in a special education math class for math calculation, and a "co-taught" English class for reading comprehension and written expression. The IEP also placed the Student in an Individual Skills class where he would receive behavior and social emotional services. P9 p.22.

10. The March 1, 2022 IEP did not include any accommodation related to "safe adults" or "safe spaces" and did not identify bullying as a concern about the Student. P9. This IEP was not alleged to be inappropriate by the Parent.

11. On November 10, 2022, the Student's March 1, 2022 IEP was updated to note that he had not made sufficient progress on two of his math goals and he "may not achieve the annual goal[s] within duration of the IEP." D4 p.8.

12. The Student's most recent IEP was developed on January 9, 2023 (January 2023 IEP). It notes that the Student had made "great improvements in his reading ability" and had a 60% in his English Language Arts general education class. D4 p.9.

13. The January 2023 IEP contains a brief "medical-physical" section that reviews the Student's diagnoses, allergies, and vaccination status. D4 p.6.

14. The January 2023 IEP also notes that the Student exhibits disruptive behavior in class that impacts his learning. This includes using his cell phone, arguing with teachers, and refusing to comply with directives. A consistent schedule, frequent breaks, and small classes were noted to help mitigate this behavior. D4 p.5. According to this IEP, "A schedule that helps is 20 minutes of work and then a 5-minute break." *Id.*

15. The January 2023 IEP contains a behavior goal which reads, "By 01/10/2024, when given a situation when [Student] is off-task in class due to work avoidance, [Student] will identify the need he is having such as being part of a social group or needing help on the assignment, and redirect himself to stay on task, improving behavior skills from 2 out of 5 opportunities to stay on task to 4 out of 5 opportunities to stay on task as measured by teacher collected data." D4 p.11.

16. The January 2023 IEP contains a very lengthy list of accommodations and modifications, including 32 accommodations and three modifications. D4 pp. 16-18. Accommodations include adult proximity, check for rushing/reminders to take time, “cue to stay on task during tests,” verbal reminders of tasks and assignments, sitting near the teacher to improve focus, and visual aids. *Id.*

17. One of the IEP accommodations relates to communication between home and school. It provides, “School/home communication system.” This accommodation is to occur weekly in the classroom, commencing on January 11, 2023. D4 p.17. How this accommodation is to be implemented, and what communication is expected to occur and from whom, is not specified.

18. One of the modifications provided by the IEP calls for, “Assignment: Copy of his weekly schedule at semester start or when there is a schedule change.” D4 p.18.

19. The January 2023 IEP provides 246 minutes per week of math SDI, with calculation and problem solving to be delivered by a special education teacher in a special education setting. D4 p.21; Tr. 309. Specifically, the IEP states that math calculation SDI is *not* concurrent, and math problem solving SDI is concurrent. The minutes for each type of SDI are both listed as 246 per week. D4 p.21. The Student’s math teacher for the 2022-23 school year, Tabitha Browning,⁵ testified that this means “those [services] are concurrent.” Tr. 314. “Those are the same. So math and math problems are together – that’s what concurrent means – for 246 minutes one time. ... When it says concurrent, that means they’re together.” *Id.* at 314-15.

20. Although the wording is somewhat unclear, it is found that the January 2023 IEP provides that the Student will receive 246 minutes per week of instruction in math – to include both calculation and problem solving – delivered together. This amounts to 49 minutes per day, five days per week. This is a reasonable reading of the service matrix in that 100 minutes per day of math instruction (were the services not concurrent) would be excessive. Moreover, as described by Ms. Browning, it would be difficult to separate “calculation” from “problem solving” in high school math and it is reasonable that the two areas are intended to be addressed together.

21. The complete matrix of services provided by the January 2023 IEP is as follows:

⁵ Ms. Browning has a bachelor’s degree in special education. She is certificated in special education and has been a special education teacher for 25 years. Tr. 289, 304-05.

Services 01/11/2023 - 01/10/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Math Calculation - SDI	Special Education Teacher	Special Education Teacher	246 Minutes / 1 Times Weekly	Special Education	01/11/2023	01/10/2024
No	Social/Emotional - SDI	Special Education Teacher	Special Education Teacher	20 Minutes / 2 Times Weekly	Special Education	01/11/2023	01/10/2024
No	Reading Comprehension - SDI	General Education Teacher	Special Education Teacher	20 Minutes / 5 Times Weekly	General Education	01/11/2023	01/10/2024
Yes	Written Expression - SDI	General Education Teacher	Special Education Teacher	20 Minutes / 5 Times Weekly	General Education	01/11/2023	01/10/2024
Yes	Math Problem Solving - SDI	Special Education Teacher	Special Education Teacher	246 Minutes / 1 Times Weekly	Special Education	01/11/2023	01/10/2024
Yes	Behavioral Instruction - SDI	Special Education Teacher	Special Education Teacher	20 Minutes / 2 Times Weekly	Special Education	01/11/2023	01/10/2024
Related							
No	Speech Language - Language - Related	Speech Language Pathologist &/or SLPA	Speech Language Pathologist	25 Minutes / 3 Times Monthly	Special Education	01/11/2023	01/10/2024

Total minutes per week of building instructional time available for this student (excluding lunch): 1880 minutes per week

Total minutes per week student is served in a special education setting: 304.75 minutes per week

Percent of time in general education setting: 83.79% in General Education Setting

Description of Services:
 [REDACTED] will be in a special education math class and a co-taught English class. He will be in an Individual Skills Class for behavior and social-emotional services.

D4 p.21.

The Parent contends that she specifically requested that this IEP include an accommodation for a “safe space” or “safe adult” for the Student to go to if needed, but the IEP team did not put that into the IEP. Tr. 109. Suzanne Kanatsiz,⁶ the Student’s case manager, does not recall the Parent expressing concern about the Student’s safety. *Id.* at 175. No exhibits or testimony from other witnesses support the Parent’s assertion that she asked for a safe space/adult accommodation. Given the lengthy list of accommodations in the IEP, it is reasonable to find that a “safe space and/or safe adult” accommodation would have been added to the IEP had one been requested. It is therefore found that the IEP team was not made aware of the Student needing a safe space and/or safe adult accommodation in the January 2023 IEP.

22. The Prior Written Notice (PWN) issued after the January 9, 2023 IEP meeting states that the Student “has struggled with attendance and staying on task in class.” D4 p.24. General education teachers reported that he was often absent or tardy, and when he did attend, he was not engaged in coursework. Teachers felt the Student was

⁶ Ms. Kanatsiz is a certificated special education teacher. Tr. 171. She did not have the Student in any of her classes and only met with him on one occasion. *Id.*

capable of doing the required work but was off track due to distractions, such as his cell phone, and due to poor attendance. *Id.*

23. The PWN also documents that the Parent suggested a one-to-one paraeducator for the Student, but his reevaluation did not qualify him for that level of support. D4 p.24.

24. The Student was often late to school in the morning during the 2022-23 school year because he helped his younger sibling get to the bus. Tr. 39, 147. The Student does not recall whether his attendance was better at morning or afternoon classes during the 2022-23 school year. *Id.* at 37-38.

25. Ms. Browning was the Student's math special education teacher for part of ninth grade, as well as for the 2022-23 school year. Tr. 289, 306-07. Ms. Browning was concerned about the Student's attendance in the 2022-23 school year and expressed those concerns to the Parent, the Student, his counselor, his case manager, and other teachers. *Id.* at 298-99. In November 2022, the Student told Ms. Browning that he did not come to school at times because his brother was being bullied and he needed to be his "bodyguard." *Id.* at 299. Ms. Browning asked the Parent if she was aware of this situation and the Parent said she was. Ms. Browning then recommended that the Student's math class, which was during first period at the time, be moved to later in the day because he was missing too much class. The Student's math class was subsequently moved to a later period.⁷ His attendance improved for a time, but as of February 2023 it declined. *Id.* at 299-300.

26. Ms. Browning communicated with the Parent weekly via email starting in February 2023. *Id.* at 302, 313-14. Prior to that, she had communicated by calling the Parent one time when she had concerns about attendance. *Id.* Ms. Browning had no concerns about the Student other than his attendance. *Id.* at 303. She described the Student as polite and helpful. She observed him to be a class leader who got along "great" with other students. *Id.* at 304.

27. Ms. Browning was familiar with the Student's IEP accommodations and implemented them as appropriate. If she had felt an accommodation was not effective or the Student needed other accommodations, she would have recommended changes to his IEP. Tr. 311-12.

⁷ Ms. Browning testified that the Student's math class was moved to third period. This testimony is inconsistent with other evidence showing that the Student took a cooking class during third period. The record was not clarified by either party.

28. On January 11, 2023, the Parent emailed several District staff members, including Kent-Meridian principal David Radford, and made a harassment, intimidation, and bullying (HIB) complaint. P22. The Parent described in her email an altercation that occurred on January 10, 2023, between the Student's school basketball team manager (who was a student) and the Student. The Parent alleged that the manager insulted the Student and said she would have her brother beat him up. *Id.* A third student encouraged the manager to get her brother so there could be a fight. The Parent further alleged that the third student approached the Student aggressively after practice on January 11th and threatened him, and continued to encourage a fight. *Id.*

29. Kent-Meridian's athletic director, Lisa Kelly, responded to the Parent the following day and said she had been at the basketball game in question and did not see the alleged altercation. Ms. Kelly had cleaned up after the game and the Student helped her put away chairs. The Parent responded that the incident happened after Ms. Kelly left the gym. P22.

30. Mia Mbugua,⁸ Kent-Meridian assistant principal at the time, investigated the incident. She determined that no HIB had occurred. Tr. 325.

31. According to the Parent, the basketball incident made the Student feel afraid and sad. He expressed some suicidal ideation because he thought the other students involved were his friends. Tr. 67. According to the Parent, the Student did not want to go to school after the incident because he felt other students were free to threaten him without any consequences. *Id.* at 68.

32. On February 14, 2023, the Parent was notified by a letter from Deborah Drake, another assistant principal at Kent-Meridian,⁹ that the Student was being placed on in-school suspension for two days. D5. The letter alleges that the Student threatened another student and "made gun hand motions toward the student." *Id.* The Student received his class work and accommodations during the suspension. *Id.*

⁸ Ms. Mbugua has a bachelor's degree in criminal justice and sociology, and a master's degree in education. She was the Dean of Students at Kent-Meridian prior to becoming an assistant principal. Tr. 321.

⁹ Ms. Drake has been an assistant principal at Kent-Meridian since 2022. Prior to that she was an assistant principal at Federal Way High School, and prior to that she was an English teacher at Kent-Meridian. Tr. 224. Ms. Drake has bachelor's and master's degrees in reading and literacy, as well as an administrative certificate. *Id.*

33. On February 15, 2023, a meeting was held, and the Student and the Parent both signed a “No Contact Agreement” pertaining to the Student and the student he was determined to have threatened. This agreement provides that the involved students agree not to talk to each other, not to contact each other electronically, not to look at each other disrespectfully in hallways, not to interact with each other verbally, not to have any physical contact, and not to instigate continued issues by conversing with other people about each other. P24. Ms. Drake’s understanding of no contact agreements is that the students involved cannot be in any of the same classes. Tr. 232.

34. The Parent did not understand the no contact agreement to mean that the students involved could no longer be in the same classes. She did not know that signing the agreement would mean the Student’s classes would be changed to avoid having classes with the other student. Tr. 377. The Parent felt that the Student and the other student involved in the incident should have been given the opportunity to mediate the conflict and attempt to work out a solution that was better than having no contact. *Id.* at 80. However, the other student involved wanted no contact with the Student, so mediation was not pursued by the District. *Id.* at 255.

35. On February 16, 2023, the Parent emailed Ms. Mbugua and Ms. Drake. P23. The Parent stated that she had felt unsafe in the meeting that had occurred on February 15th because two security guards “stood watch” over the meeting and a third guard had come in and out. The Parent stated she has never attended a school meeting with security guards present. She stated that she “felt violated” and “othered” at the meeting. *Id.* The meeting was held in the school’s “focus center” which also serves as the security guards’ office according to District staff members. Tr. 246, 328. The guards participated in the meeting by showing the video footage of the “threatening” incident that had been captured by security cameras, although other guards who were not showing the video were also present. *Id.* at 246-47. The Parent disputes that the focus center is the security guards’ office. She maintains that the security guards did not give valuable input to the meeting, and they “agitated and interfered” with it. *Id.* at 375-76.

36. Ms. Mbugua was confused by the February 16th email from the Parent because Ms. Mbugua thought the meeting on February 15th had gone well. The Parent had informed Ms. Mbugua and Ms. Drake at the end of the meeting that she had “felt heard” and she was appreciative. Tr. 327-28. The parties thanked each other at the end of the meeting and Ms. Mbugua does not think the District staff members did anything inappropriate. *Id.* at 328.

37. After considering the conflicting testimony, it is found that the District staff members are persuasive as to why security guards were present at the February 15th meeting. It is also found that the guards' presence made the Parent uncomfortable. These findings are relevant only marginally, if at all, to the issues to be determined.

38. The Parent also stated in her email that she had watched video footage of the incident in which the Student allegedly threatened the student who was the subject of the no contact agreement. The Parent noted that the other student approached the Student first and he backed away from her. *Id.*

39. In the February 16th email, the Parent also discussed the Student's schedule change and reiterated that she wanted an IEP meeting regarding the change. P23. The Parent went on to state that the Student has been repeatedly bullied and fears retaliation from district administrators. The Parent concluded by saying she was disheartened at the "ignorance repeatedly displayed toward [Student]" by District staff at the meeting the day before. *Id.*

40. Later in the day on February 16, 2023, the Parent was notified by an email from Ms. Kanatsiz that the Student's class schedule had officially been changed and he would now have his Individual Skills class during period 6 and would take Culinary Arts during period 3. D6. Ms. Drake also emailed the Parent that same day and informed her that District staff had determined that the Student's schedule change did not require an IEP meeting. P13. Ms. Drake told the Parent that the Student had been given a copy of his new schedule and it would be in effect the next day. *Id.*

41. Individual Skills is a small class for special education students. There were only seven students in the third period class out of which the Student was transferred. Tr. 255, 259-60, 270. According to the class teacher, Karmine Wood, the Student was often tardy to the third period Individual Skills class. *Id.* at 279. Ms. Wood does not recall ever communicating with the Parent about the Student. *Id.* at 281.

42. The Parent responded to Ms. Kanatsiz by email a few minutes after receiving her February 16th email and stated, "This is a violation and he will be pulled from school as a safety measure until this is corrected." P13.

43. Also on February 16, 2023, the Parent filed the Complaint in this action.

44. Late in the day on February 16, 2023, the Parent emailed Ms. Drake and other District staff members and stated:

I am still requesting an IEP, like I have been since Monday, 2/13/23.
The concerns around bullying have not been addressed by his IEP team.

The schedule change does impact his access to education as the schedule was an IEP team decision. We need to discuss changing back his schedule while we are navigating the due process.

P13. Ms. Drake responded by email the following day, stating:

Ms. [REDACTED]

I am replying with a request to determine the reason prompting your request for the IEP meeting.

- If it's to address bullying, we do this through our focus center and our dean of students, not through an IEP meeting.
- Additionally, if the reason is to discuss his schedule change, then this resolution will be determined in the violation hearing that you have requested.

P 13, p.1

The purpose of an IEP meeting is to determine "the type and amount of special education and any necessary related services or support that will be made available to the student (Inclusive education practice guide, Kent School District)."

[REDACTED]'s schedule change did not change the type or amount of these services. The schedule change was made:

1. To adhere to the no-contact agreement between [REDACTED] and the other student
2. To allow [REDACTED] the opportunity to have his IEP minutes fulfilled by his case manager so she can better collect data toward his fulfillment of his IEP goals.
3. To give [REDACTED] the opportunity to complete a CTE pathway toward graduation by taking Culinary Arts 2
4. To comply with [REDACTED]'s request to change his sixth period PE class because of personal reasons and because he has already completed the PE credit through a PE waiver.

If your request for the IEP is related to a **perceived need for change in services or type/amount of specially designed instruction based on his evaluation**, then we would be happy to schedule this IEP meeting.

Thank you,
Deborah Drake

P13.

It is unclear what is meant by point number two because the Student's case manager, Ms. Kanatsiz, did not become his teacher for any class.

45. The Parent responded to Ms. Drake's email 34 minutes later and stated, "Are you refusing to call an IEP meeting that I requested in writing?" P13.

46. Andra Maughan,¹⁰ District Assistant Director of Inclusive Education at the time, responded to the Parent by email the next business day and stated that the District was not refusing to schedule an IEP meeting. She stated that the District was "inquiring further about the purpose" of the Parent's request for a meeting, and that discussion of the Student's change in schedule would be on the agenda for the meeting when it occurred. P13. There is no evidence in the record that the Parent responded further by email to this inquiry from Ms. Maughan.

47. The Parent was concerned about the Student's schedule change because teachers had noticed during the previous school year that the Student had more energy and engaged better in class earlier in the day. She felt he needed his easiest classes to be in the afternoon. Tr. 77. According to the Parent, the change in schedule had not been discussed at the meeting on February 15th and her understanding after the meeting was that the Student would be permitted to go back to his third period Individual Skills class as usual. *Id.* at 78.

48. During the 2022-23 school year, the school day at Kent-Meridian began at 7:30 in the morning. Tr. 220. Third period ran from approximately 9:30 to 10:30 a.m. Fifth period ran from approximately 12:15 to 1:10 p.m., and sixth period ran from 1:16 to 2:10 p.m. *Id.*

49. On February 24, 2023, the District and the Parent met for a resolution session as required when a due process complaint is filed. P17. Notes from that session indicate that Ms. Maughan informed the Parent that the Student's schedule was changed due to the no contact order, and the Student was viewed as the aggressor so his schedule was changed, not that of the "victim." Ms. Maughan further informed the Parent that changing the student's schedule was not an IDEA issue and did not require approval of the IEP team. *Id.*

50. Notes from the resolution session show that one of the "next steps" discussed was "calling an IEP meeting and discussing the supports that would be helpful." P17 p.4. One purpose of the proposed meeting was to consider doing an early reevaluation of the Student. The notes show that "Andra" (Ms. Maughan) would facilitate the IEP meeting. *Id.* at 5. The Parent denies that she agreed to hold an IEP meeting. She

¹⁰ Ms. Maughan has a bachelor's degree in education and finance, and a master's degree in special education. She has a principal certificate and an education finance certificate. Tr. 237.

testified, “The District proposed to hold an IEP team with Andra... I did not agree to hold an IEP meeting at that resolution session.” Tr. 129

51. Mr. Radford has been principal at Kent-Meridian for six years and was an assistant principal for six years prior to that. Tr. 207. He recalls having conversations with the Parent about the Student not feeling safe at school in years prior to the 2022-23 school year. The Student used to go to Mike Simmons, Dean of Students, if he felt unsafe. *Id.* at 210. Mr. Simmons no longer works at Kent-Meridian. *Id.* at 210-11.

52. Mr. Radford attended the February 24th resolution session. Tr. at 212. He recalls discussion pertaining to the Student’s schedule change, lack of academic progress, turnover of staff on his IEP team, and whether the Student had a safe space or person at school. *Id.* at 211. The Parent also mentioned lack of consistent communication from teachers at the resolution meeting. *Id.* at 213.

53. During the 2022-23 school year, the Parent received less communication from teachers than she had received in previous years. Tr. 53. On February 27, 2023, Mr. Radford emailed eight staff members at Kent-Meridian and stated:

[Student] is a student in your class with IEP accommodations and one of those accommodations is weekly parent communication. In this case, updating grades on Skyward would not be considered parent communication. I want you to connect with [Student’s] parent, Ms. [Parent], via email, to assist you with this communication.

P11. Mr. Radford did not know how frequently teachers were communicating with the Parent, but he wanted to be helpful and remind them about doing so. Tr. 217.

54. The Parent was aware of the Student’s poor grades and poor attendance in the spring of 2023. She knew he “was not doing well grade wise” and he “had attendance issues.” Tr. 135-39.

55. A meeting regarding the Student was held on or about April 4, 2023. Tr. 349. Ms. Maughan facilitated the meeting. In her view, the meeting was an IEP meeting. *Id.* Other attendees included Ms. Kanatsiz, Kelsey Kaufman,¹¹ Ms. Mbugua, and one or two general education teachers. *Id.* at 353. No PWN was issued following this

¹¹ Ms. Kaufman has a bachelor’s degree in English and a master’s degree in special education. She is a nationally board-certified teacher and a curricular leader at Kent-Meridian. Ms. Kaufman has been a special education teacher for nine years. Tr. 358-59.

meeting and no documentation of this meeting was entered into the record at the due process hearing. *Id.* at 352.

56. At the April meeting, there was significant discussion about the Student's behavior, specifically lack of attendance, skipping class, struggling with classwork, and inappropriate interaction with other students. Tr. 184-85. Ms. Kanatsiz does not recall that the Student experiencing anxiety and fear, or feeling unsafe at school, were raised as issues at the meeting. *Id.* A plan was made to conduct an FBA of the Student. Behaviors of concern that were to be addressed by the FBA included the Student using his cell phone in class, not attending class, and using inappropriate language. *Id.* at 355. According to Ms. Maughan, the Parent agreed to the FBA at the meeting, but she later refused to sign the consent form. *Id.* at 352-54. The Parent refused to consent to the FBA for several reasons: she thought the District agreed to conduct it because of the due process complaint and she did not want the District to be able to diminish her due process arguments by offering an FBA; she felt that it was too close to the end of the school year and the FBA would be rushed; she wanted an outside provider, not the District, to conduct the FBA; and she "wanted the judge to direct the District to conduct an FBA" as a due process remedy. *Id.* at 127-28.

57. Ms. Kaufman was one of the Student's English teachers during the 2022-23 school year. Tr. 359. The English class was "co-taught," meaning there was a general education teacher and a special education teacher in the classroom. Ms. Kaufman was the special education teacher and was responsible for delivering the Student's SDI in reading and writing. *Id.* at 359. Kayla Koontz was the general education teacher. *Id.* at 360. Ms. Kaufman described the Student as a friendly person who joked around with other students. She never witnessed him being bullied or seeming afraid to be in school. *Id.* at 360. Ms. Kaufman and Ms. Koontz implemented the Student's accommodations. They also communicated with the Parent by email approximately once a week. *Id.* at 361-62. Ms. Kaufman recalls the Student mentioning on one occasion that he was having a hard time at home. *Id.* at 364.

58. The Student's English class was held during fifth or sixth period during the 2022-23 school year. Tr. 364. The Student's attendance to class was "decent" for most of the year according to Ms. Kaufman, but toward the end of the year he "was hardly there." *Id.* at 365.

59. No records documenting the Student's attendance at school or at individual classes for any timeframe was offered into the record by either party.

60. During the 2022-23 school year, the Student went to his school counselor's office about once a week to get candy and Gatorade. Tr. 35. The Student felt that he

had a good relationship with his math teacher, Ms. Browning, and described her as “very helpful.” He recalls that she worked with him individually. *Id.* The Student also felt that Ms. Koontz helped him with English class. *Id.* at 36.

61. On April 17, 2023, Ms. Kanatsiz emailed the Parent and stated that she was arranging an FBA for the Student. Ms. Kanatsiz sent the Parent a consent form and asked to meet with her to go over the process. D7.

62. The Parent replied to Ms. Kanatsiz the following afternoon and stated:

The meeting was called to review behavior, and it was not an IEP/placement/resolution meeting. Key members of his IEP team were not in attendance (more than a few teachers were missing and the conversation wasn't completed) as I thought it was a broad discussion about behaviors in the classroom. It was a struggle to get through as I'm not sure the constant language around “defiance” was helpful. I just recalled Andra using the term IEP team in the meeting and wanted to clear that up. Any additional steps/discussion should happen in a formal environment.

I'm not comfortable with how this is moving. Please communicate through Mr. Chalfant moving forward.

D7. According to the Parent, when the April meeting was being scheduled, Ms. Maughan told her that it was not an IEP meeting, and that the purpose was to address and mediate some of the Parent’s concerns. Tr. 123. Ms. Maughan denies ever having told the Parent that the meeting was not an IEP meeting. *Id.* at 349.

63. The IEP team members the Parent identified as missing from the April meeting were the Student’s private counselor (Kim Steedle), and Sophie Glogovac-Smith from Valley Cities Behavioral Health who was a support person for the Parent. Tr. 143. However, Ms. Steedle had never attended an IEP meeting for the Student. *Id.* at 403-04. There is no evidence that Ms. Glogovac-Smith was a required IEP team member.

64. Based on the circumstances surrounding the meeting held on or about April 4, 2023, the testimony regarding the substance of the meeting, the attendees, and the outcome of the meeting, it is found that the meeting was an IEP meeting regarding the Student.

65. As of May 2023, the Parent was not receiving weekly communication from all the Student’s teachers and she informed Mr. Radford of this. Tr. 214. However, Mr.

Radford did not interpret the IEP as requiring weekly communication from every teacher. *Id.* at 218.

66. On June 15, 2023, the Parent was notified by a letter from Ms. Mbugua that the Student was being suspended for three days for threatening violence toward school staff. The Student allegedly threatened a school safety officer, stating he “was going to f*** him up.” D8. The Student was not allowed on District property during the suspension, but was permitted to get all of his classwork and homework via email and class websites. *Id.*

67. Ms. Drake observed the Student when she supervised lunch during the 2022-23 school year. She described him as well-liked and funny. She observed that he had a lot of friends and would go from table to table during lunch. She never observed him being bullied or looking fearful or uncomfortable. Tr. 253.

68. The Student has seen his counselor, Kim Steedle, for depression and anxiety since has was in sixth grade. Tr. 31, 96-97. The Student has not mentioned being afraid or feeling unsafe at school to Ms. Steedle, although they did discuss the Student being assaulted by another student and the resulting no contact order. *Id.* at 400-01. Ms. Steedle has never observed the Student at school and has never attended his IEP meetings. *Id.* at 403-04.

69. The Parent believes the Student is developing self-advocacy skills, and he recently appropriately handled a situation in which another student threatened to slap him. Tr. 98-99.

70. The Parent testified at the due process hearing that the Student’s IEP accommodations were not put in place by his teachers during the 2022-23 school year. The sense the Parent got from teachers was, “Well, if he needs this level of help, he shouldn’t be in this classroom.” Tr. 54. The Parent alleges the Student was not given the opportunity to take breaks, did not get frequent check-ins regarding understanding test questions, and did not have adequate adult proximity. *Id.* The Parent testified that during one IEP meeting an unidentified teacher said he should not have to “babysit” the Student. *Id.* at 54-56. The Parent never observed the Student in the classroom during the 2022-23 school year. *Id.* at 101.

71. The Parent’s testimony regarding accommodations conflicts with the testimony of other witnesses who were present at the school. It is found that the accommodations in the Student’s IEP were implemented as necessary and appropriate by District staff members.

72. The Parent also testified that the Student did not have “safe places” at school to go to during the 2022-23 school year as he had in past years. Tr. 60. On the first day of school in the fall of 2022, the Student was put in a class with another student against whom he had a no contact order. The other student was immediately moved out of the class. *Id.* at 62. Subsequently, after a meeting about his safety, the Student was permitted to leave school ten minutes early at the end of the day to avoid encountering an aggressive student on the way home. *Id.* at 61.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The Parent is seeking relief and bears the burden of proof in this case. The U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 102 (1981); *Thompson v. Dep’t of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep’t of Social & Health Services*, 172 Wn.2d 1, 4 (2011). Therefore, the Parent’s burden of proof in this matter is preponderance of the evidence.

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity” that provides “some educational benefit” to the student. *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits.

“If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” *Rowley*, 458 U.S. at 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent’s right to be involved in the development of their child’s educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

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

6. “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.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs. 137 S.Ct at 999. The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 1000. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances” *Id.*

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* at 999 (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

Whether the District violated the IDEA and denied the Student FAPE by failing to implement the Student’s January 2023 IEP by changing the Student’s schedule without conducting an FBA and without discussing the change with the IEP team

8. An allegation that a school district failed to implement an IEP requires an inquiry into whether the services provided to the student were in conformity with the most recent IEP. *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 821-22 (9th Cir. 2007). Only “material failures” to implement an IEP violate the IDEA. “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Id.*

9. In the present case, the Parent argues that the District failed to implement the Student’s IEP when it changed the Student’s schedule in February 2023 without first consulting the IEP team and conducting an FBA. This argument is not persuasive for several reasons.

10. The Student’s IEP of January 2023 contemplates that the Student’s schedule might change part way through a semester. It provides that the Student be given a copy of his weekly schedule at the start of a semester *or when there is a schedule change*. Although the IEP states that a consistent schedule benefits the Student, that schedule is described as a five-minute break after 20 minutes of work. There is no evidence whatsoever that the IEP controlled or dictated the Student’s daily class schedule, or that his class schedule could not be changed without an IEP team meeting. There is no requirement that an IEP meeting be held at the start of a semester or prior to a schedule change. Moreover, there is no evidence that the schedule change implemented in February 2023 altered the type or amount of SDI the Student received, altered the amount of time he was educated with non-disabled peers, or otherwise changed his IEP in any way. See *Adams County Sch. Dist. 50*, 109 LRP 23970 (CO SEA 2008)(change in the student’s class schedule, by which he was moved to a different math class with a different teacher during a different class period, did not constitute a change to the student’s IEP).

11. Similarly, there was no requirement in the Student’s IEP that an FBA be conducted prior to the start of a semester or prior to a schedule change. The Parent has not demonstrated that the February 2023 schedule change triggered a need for an FBA.

12. It is concluded that the Student’s schedule change in February 2023 did not constitute a failure to implement his IEP.

13. Additionally, the Parent has not shown by a preponderance of the evidence that the schedule change negatively impacted the Student or otherwise denied him FAPE. The evidence is clear that the Student was often late to school during the 2022-23 school year and was frequently tardy to third period. It is reasonable to conclude that moving an important class from the morning to later in the day would increase the

Student's attendance to the class. There is little to no evidence to support the Parent's contention that the Student needed to have easier classes in the afternoon and that this was required by the IEP. Moreover, the Parent's contention that the schedule change raised a "safety" concern that justified removing the Student from school is perplexing and entirely unsupported. The Student's attendance to his classes may have decreased after the schedule change (again, there is no documentation of the Student's daily attendance), but that would have been due to the Parent "pulling" him from school, not due to the schedule change.

14. For these reasons, it is concluded that the Parent has failed to meet her burden of proof as to this issue.

Whether the District violated the IDEA and denied the Student FAPE by failing to draft an updated BIP before changing the Student's schedule in February 2023¹²

15. There is no evidence in the record that a BIP was in place for the Student in February 2023, or that a BIP was ever in place for him. Similarly, there is no evidence that the January 2023 IEP required a BIP. A BIP need only be incorporated into a student's IEP if determined necessary by the IEP team in order for the student to receive FAPE. WAC 392-172A-01031. There is no evidence that such a determination was made as to this Student. Hence, a BIP was not required before the February 2023 schedule change. And, as set forth above, the schedule change did not result in the Student being denied FAPE.

16. For these reasons, it is concluded that the Parent has failed to meet her burden of proof as to this issue.

Whether the District violated the IDEA by failing to provide weekly progress reports to the Parent

17. The Student's January 2023 IEP contains an accommodation of "school/home communication system." This accommodation is to occur weekly in the classroom, commencing on January 11, 2023. D4 p.17. As found above, how this communication system was to be implemented and what communication was expected to occur is not specified. A common sense reading of this accommodation is that weekly communication of some sort would be provided to the Parent by a teacher or teachers. The Parent contends that this accommodation required each of the Student's teachers to communicate a "progress report" to the Parent by email

¹² For clarity of analysis, the issues are not address in the order they are presented in the issue statement.

every week. This is not a reasonable reading of the IEP. A “weekly school communication system” means that communication is provided by the school each week. It does not mean every teacher must provide communication in a specific way about a specific topic every week. If that were the intent, the accommodation could easily have been written to provide for “a progress report from each teacher by email,” rather than simply saying “communication” from the “school.”

18. The evidence shows that the Student’s math teacher communicated by email with the Parent weekly starting in February 2023. His English teachers also communicated with the Parent by email weekly. Significantly, the Parent seemed to ask that email communication from at least some District personnel stop in April of 2023 when she requested that Ms. Kanatsiz only communicate through Mr. Chalfant, the District’s attorney, going forward. For these reasons, it is concluded that the January 2023 IEP did not require weekly provision of a progress report to the Parent by all of the Student’s teachers. It is therefore concluded that the District did not fail to implement the Student’s IEP by not providing such reports.

19. Moreover, even if the lack of communication had been a violation of the IEP, the Parent has not shown by a preponderance of the evidence that lack of communication denied the Student FAPE. There is little to no evidence that lack of communication from the District impeded the Student’s right to FAPE, impeded the Parent’s right to participate in the decision-making progress regarding the provision of FAPE, or caused a deprivation of educational benefits to the Student. The Parent was admittedly aware of the Student’s poor attendance and poor grades.

20. For these reasons, it is concluded that the Parent has failed to meet her burden of proof as to this issue.

Whether the District violated the IDEA and denied the Student FAPE by failing to implement the Student’s January 2023 IEP by failing to implement all the accommodations noted in the IEP and failing to offer all of the Students SDI minutes in math

21. It has been set forth above as a finding of fact that the District did not fail to implement all the accommodations contained in the January 2023 IEP, as the Parent alleges. It is therefore concluded that the Parent has not met her burden of proof as to this issue.

22. There is little to no evidence that the District failed to offer the Student all his required math SDI. It is found above that the January 2023 IEP requires 246 total minutes per week math SDI (not double that amount, which was inquired about at the

due process hearing). The Student's math teacher reported that the Student missed a lot of class and she discussed this with the Parent. The Parent was aware that the Student was missing first period math because he was acting as a "bodyguard" for his sibling. The teacher then arranged to have the math period moved to later in the day in an effort to increase the Student's attendance. The Student was subsequently "pulled " from school by the Parent, which caused his attendance to decline. None of this amounts to a failure on the part of the District to offer all of the Student's math SDI. To the extent attendance became a problem in February of 2023, the District attempted to address it by conducting an FBA, but the Parent would not consent. Again, this does not amount to a failure by the District to offer the required math SDI.

23. For these reasons, it is concluded that the Parent has failed to meet her burden of proof as to this issue.

Whether the District violated the IDEA and denied the Student FAPE by failing to draft an IEP in January 2023 that was reasonably calculated to confer meaningful educational benefit to the Student by:

a/b. Drafting a deficient adverse impact statement and/or failing to include complete information in the medical-physical section

24. The January 2023 IEP states that the Student exhibits disruptive behavior in class that impacts his learning, such as using his cell phone, arguing with teachers, and refusing to comply with directives. Little to no evidence was presented at the due process hearing as to why this impact statement was deficient. To the extent such evidence may have been presented, the evidence was not tied to this issue at the hearing or argued as to this issue in the Parent's post-hearing brief. It is incumbent upon the Parent to set forth her evidence in a coherent fashion. An ALJ is not required to hunt for buried "truffles" of evidence. See *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991).

25. Similarly, there was little to no evidence presented at the due process hearing as to why the medical-physical section of the IEP, which reviews the Student's diagnoses, allergies, and vaccination status, was incomplete.

26. It is therefore concluded that the Parent has failed to meet her burden of proof as to these issues.

c. Failing to include an accommodation for "safe adults" and "safe places" for the Student at school

27. Little to no evidence was presented at the due process hearing that an accommodation for “safe adults” or “safe places” at school was needed by the Student and should have been in the January 2023 IEP. The Student had teachers who he felt helped him, and he went to his school counselor’s office frequently to get snacks. His teachers observed him to get along well with other students and to enjoy joking around with peers. No teachers observed any indication that the Student was being bullied.

28. There is ample evidence that the *Parent* was concerned about the Student’s safety at school, as well as the safety of her other children. The Parent permitted the Student to miss school in order to see that his sibling got to the bus safely. The Parent pulled the Student out of school after the February 2023 schedule change because she felt it implicated safety concerns, though those concerns are not evident to the undersigned. The Parent made one HIB complaint to the District during the 2022-23 school year and it was determined to be unfounded.

29. The Parent’s safety concerns as to the Student are not persuasive and are not supported by other evidence. Moreover, it has been found above that the evidence does not support the Parent’s contention that she asked for a safe space/adult accommodation. There is insufficient evidence to conclude that an accommodation for “safe adults” and “safe places” was needed in order for the Student’s January 2023 IEP to confer a meaningful educational benefit to the Student. It is therefore concluded that the Parent has failed to meet her burden of proof as to this issue.

d. Failing to include accommodations to help the Student with staying on task

30. The January 2023 IEP included several accommodations to help the Student stay on task in class. These included: adult proximity, check for rushing/reminders to take time, “cue to stay on task during tests,” verbal reminders of tasks and assignments, sitting near the teacher to improve focus, and visual aids. There is little to no evidence that the Student needed additional accommodations designed to help him stay on task.

31. It is therefore concluded that the Parent has failed to meet her burden of proof as to this issue.

e. Failing to address the Student’s safety, including bullying that the Student was experiencing

32. As described above, there is little to no evidence that the Student was experience bullying during the 2022-23 school year. The basketball game incident was investigated by Ms. Mbugua, and she determined that no HIB had occurred. No

other alleged incidents of bullying or threats to the Student's safety during the 2022-23 school year were presented by the Parent at the due process hearing.

33. It is therefore concluded that the Parent has failed to meet her burden of proof as to this issue.

Whether the District violated the IDEA and denied the Student FAPE by failing to convene an IEP team meeting in February 2023, at the Parent's request, to discuss the Student's grades

34. The Parent requested an IEP meeting on February 13, 2023. She informed District staff members that she wanted to meet in order to address concerns around bullying and the change that had been made to the Student's schedule due to the no contact agreement. Although the Parent framed the issue for the due process hearing as having requested an IEP meeting "to discuss the Student's grades," there is no evidence that she requested the meeting to discuss the Student's grades. For this reason, the Parent has not met her burden to prove this issue as written.

35. However, it is reasonable to disregard the phrase "to discuss the Student's grades" and analyze whether the District violated the IDEA and denied the Student FAPE by failing to convene an IEP team meeting in February 2023 after the Parent requested a meeting. The Parent was *pro se* at the time the issue statement was developed, and a broader reading of the issue does not prejudice the District. Ample evidence was presented at the hearing as to the reasons the Parent requested the meeting and what transpired after her request.

36. The IDEA requires that a school district review and revise a student's IEP periodically and not less than annually to determine if goals are being achieved. WAC 392-172A-03110(3). The IDEA does not specify a time period by which an IEP meeting must be held after a parent requests one. However, the U.S. Department of Education (DOE) has opined that a school district must convene an IEP meeting in response to a parent's request if *the district* believes that a change in the IEP may be needed in order to ensure the student at issue receives FAPE. Specifically, in response to questions regarding IEPs, DOE states:

In general, if either a parent or a public agency believes that a required component of the student's IEP should be changed, the public agency must conduct an IEP meeting if *it* believes that a change in the IEP may be necessary to ensure the provision of FAPE.

64 Fed. Reg. 12,476, Appendix A to 34 CFR Part 300 – Notice of Interpretation (March 12, 1999) (emphasis added). The Washington Office of Superintendent of Public

Instruction (OSPI) has implemented this interpretation of the IDEA in its own decisions. See *Kent Sch. Dist.*, 122 LRP 21506 (WA SEA 2021) (a district must conduct an IEP meeting in response to a parent’s request if it believes that a change to the IEP may be necessary to ensure the provision of FAPE).

37. If a parent requests an IEP meeting because they believe a change is needed in the provision of FAPE to the child or the educational placement of the child, and the district refuses to convene a meeting to determine whether such a change is needed, the district must provide written notice of the refusal and the reasons for the refusal. 64 Fed. Reg. 12,476-77.

38. In the present case, the evidence does not show that the District refused to schedule an IEP meeting as the Parent alleges. Rather, the District disagreed that concerns regarding bullying and a schedule change necessitated an IEP meeting. Nonetheless, the District sought more information from the Parent as to the nature of her concerns. A resolution meeting was held on February 24, 2023, at which numerous concerns the Parent raised were discussed. When a resolution of the issues could not be reached, the District agreed to schedule an IEP meeting. It is unclear whether the Parent agreed to a meeting at that point and there is no evidence as to why the meeting was not held until April 4, 2023. However, the District’s attempt to get more information from the Parent about her concerns, including waiting for the resolution session to occur shortly after the meeting was requested, was not unreasonable.¹³ See *Doug C. v. Hawaii Dept. of Educ.*, 720 F.3d 1038, 1046 (9th Cir. 2013) (a District should favor parental participation over statutory timelines). The Parent’s contention that the April 4, 2023 meeting was not actually an IEP meeting is not persuasive, as set forth above in the findings of fact.

39. Moreover, an IEP meeting was not required to be held in response to the Parent’s request because the District correctly determined that the concerns articulated by the Parent did not call for a required component of the student’s IEP to be changed and/or require an IEP revision to ensure the provision of FAPE. As determined above, nothing in the February 2023 IEP touched on bullying or the Student’s daily class schedule. The Parent argues in her briefing that her concerns around bullying and the schedule change “impacted the Student’s ability to access his

¹³ The District’s failure to issue a PWN after this IEP meeting was likely a procedural violation of the IDEA. See 392-172A-05010. However, because this was not identified as an issue for the hearing, it is not addressed.

special education.” Parent’s Post Hearing Brief at 4. However, she has not demonstrated that to be the case by a preponderance of the evidence.

40. The Parent further argues in her briefing that the District had an obligation to convene an IEP meeting in February 2023 because the Student was often truant, and his attendance issues should have been addressed by the IEP team. Parent’s Post Hearing Brief at 6. While truancy and attendance can be important considerations for an IEP team, the Student’s attendance had been discussed at the January 9, 2023 IEP team meeting, and had been an issue for a significant period of time. The Parent did not raise new considerations as a basis for her IEP meeting request. Therefore, it cannot be concluded that a meeting to address attendance issues had to be held in February 2023. The same analysis applies to the Parent’s contention that an IEP meeting should have been held because the Student exhibited a “marked change” in academic performance. *Id.* at 8. This was not articulated by the Parent as a reason she wanted an IEP meeting. While the Parent may have been concerned about the Student’s grades, the evidence indicates she did not express this to the District until the resolution meeting held in late February.

41. Even if waiting until April 4, 2023, to hold the IEP meeting was a procedural error on the part of the District, such an error does not amount to a denial of FAPE unless the Student’s right to FAPE was impeded, the Parent’s opportunity to participate in the decision-making process was significantly impeded, or the Student was deprived of an educational benefit due to the procedural error. The Parent has not shown by a preponderance of the evidence that any of those circumstances exist here. The Parent’s concerns were discussed at the IEP meeting in April and the parties agreed to conduct an FBA. The Parent’s subsequent refusal to give consent prevented the FBA. There was adequate time left in the school year to complete the FBA had the Parent given consent when asked. No changes to the IEP or other actions resulted from the IEP meeting. There is no evidence that the Parent would have done anything differently if the IEP meeting had been held earlier, and no showing of a denial of FAPE due to the delay. See *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59 (3rd Cir. 2010) (parents not entitled to any recovery based on harmless delay in IEP formation because the procedural error did not amount to a denial of FAPE); *J.D. v. E. Side Union High Sch. Dist.*, 2021 U.S. Dist. LEXIS 15686 (N.D. Cal. 2021) (parent not entitled to any relief when the seven-month delay in holding the IEP meeting did not have any adverse effect on the student or parent, and parent failed to identify any specific harm from the delay); *Myles v. Montgomery County Board of Educ.*, 824 F. Supp. 1549 (M.D. Ala. 1993) (student was not denied FAPE when IEP team did not develop a full IEP over the summer and only an interim IEP was in place at the start of the school year, and parents did not demonstrate any harm from the two-week delay in IEP development).

42. Accordingly, it is concluded that the Parent has not proved by a preponderance of the evidence that the District violated the IDEA or that the Student was denied FAPE due to the District failing to convene an IEP team meeting in February 2023.

Conclusion

43. Based on the record, it is concluded that the Parent has failed to meet her burden to prove by a preponderance of the evidence that the District violated the IDEA and/or denied the Student FAPE. Accordingly, it is concluded that the Parent is not entitled to any remedies or relief.

44. 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 do not substantially affect a party's rights.

ORDER

The Parent has not proved by a preponderance of the evidence that the District violated the IDEA, that the Student was denied FAPE by the District, or that she is entitled to any remedies or relief. Accordingly, the Parent's requested remedies are denied.

SERVED on the date of mailing.



Jacqueline H. Becker
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

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

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Dated December 18, 2023, at Seattle, Washington.

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