

WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

██████████ School District

Docket No. ██████████

**ORDER ON PARENTS' STAY PUT MOTION**

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. ██████████

The Parents of the Student's whose education is at issue<sup>1</sup> in the above matter are represented by Sydney Bay, Lara Hruska, and Anne Senter, attorneys at law. The ██████████ School District (District) is represented by Carlos Chavez, attorney at law.

Based upon the statements of the parties, the pleadings and documents on file, and rulings made by the Administrative Law Judge (ALJ), IT IS ORDERED:

PRIOR ORDERS

1. All prior orders in the above matter remain in effect unless expressly modified or rescinded in this order.

PARENTS' MOTION FOR STAY PUT

2. Pursuant to prior agreement, on January 6, 2023, the Parents filed their Motion for Stay Put (the Motion). The District filed its Opposition to Motion for Stay Put (the Opposition) on January 24, 2023. The Parents filed their Reply to Stay Put (the Reply) on January 24, 2023.

3. The following was considered in ruling on the Motion:

- a. The Motion and;
  - i. Declaration of ██████████ and Exhibits 1-13 thereto;
  - ii. Declaration of Sydney Bay and Exhibits 1-4 thereto;
- b. The Opposition and;

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

- i. Declaration of [REDACTED] and Exhibits A-B<sup>2</sup> thereto;
- c. The Reply and;
  - i. Second Declaration of [REDACTED] and Exhibits 1-5 thereto.

### FINDINGS OF FACT

1. The Student is a student that has been determined eligible to receive special education and related services through an Individualized Education Program (IEP) pursuant to the Individuals with Disabilities Education Act (IDEA).
2. As a result of her disabilities, the Student functions at an estimated cognitive or intellectual level of an early elementary school student. The Student is presently 17 years old. The Student's disabilities also impair her ability to regulate her behavior, and at times the Student may act out inappropriately.
3. It is undisputed that due to the impact of her disabilities, the Student is unable to travel independently, and always requires the support of an adult while travelling.
4. The District convened an IEP team meeting and developed an annual IEP for the Student in February 2021 (the February 2021 IEP). The February 2021 IEP provided for the Student to attend a year-round, residential placement [REDACTED]. At that time, the Student resided with the Parents [REDACTED].
5. The IEP states that,  
  
The (S)tudent will require travel to and from [REDACTED] as outlined in the service matrix. Due to the nature and severity of the [Student's] disability she will require an escort to and from the [REDACTED]. The District will either reimburse airfare and associated cost for one parent to escort her safely for her home visits.

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<sup>2</sup> Exhibits A-B to [REDACTED]'s Declaration consist of **approximately 130 total pages, none of which are individually marked with page numbers**. This greatly complicates a careful review and substantially increases the time necessary to consider the evidence in this matter. The District is placed on notice that going forward in this and any other matters assigned to this ALJ that any such unmarked exhibits shall be returned to the District for proper identification and refiling.

Exhibit 3p20. Although framed in the alternative, the IEP does not identify any option other than reimbursing airfare and associated costs for one Parent to escort the Student while travelling to and from home visits in Washington State.

6. The IEP goes on to provide the following as Related Services for the Student:

- A Student Travel Escort to and from [REDACTED] paid for by the District four times a year;
- Four Parent visits to [REDACTED] each year paid for by the District;
- Four Student visits to Washington each year, with transportation to and from [REDACTED] paid by the District.

Exhibit 3p29.

7. The Student was placed at and began residing at [REDACTED] in March 2021. The Student remains a resident student at [REDACTED] through the present time.

8. The Student's February 2021 IEP was amended in May 2021 (The May 2021 IEP). The May 2021 IEP again concludes that:

The (S)tudent will require travel to and from [REDACTED] as outlined in the service matrix. Due to the nature and severity of the [Student's] disability she will require an escort to and from the [REDACTED]. The District will either reimburse airfare and associated cost for one parent to escort her safely for her home visits.

Exhibit 9p24. Again, although framed in the alternative, the IEP does not identify any option other than reimbursing airfare and associated costs for one Parent to escort the Student while travelling to and from home visits in Washington State.

9. The May 2021 IEP again provides the following as Related Services for the Student:

- Four Parent visits to [REDACTED] each year paid for by the District;
- Four Student visits to Washington each year, with transportation to and from [REDACTED] paid by the District.

However, the May 2021 IEP omitted the Student's Student Travel Escort (STE) provided in the February 2021 IEP.

10. While omitting the Student's STE as a Related Service, the May 2021 IEP still notes that:

The (S)tudent will require travel to and from [REDACTED] as outlined in the service matrix. Due to the nature and severity of the [Student's] disability she will

require an escort to and from the [REDACTED]. The District will either reimburse airfare and associated cost for one parent to escort her safely for her home visits.

Exhibit 9p24.

11. The Parents assert the Student's STE was omitted from the May 2021 IEP without their knowledge or consent. This is potentially an issue the Parents' may raise in a properly pleaded complaint. However, it is not necessary to consider whether the STE was omitted from the May 2021 IEP with or without the Parents' knowledge or consent in order to rule on the Motion.

12. A new annual IEP was developed by the Student's IEP team in March 2022 (the March 2022 IEP).<sup>3</sup> The March 2022 IEP continued the Student's residential placement [REDACTED].

13. The March 2022 IEP again provided the following as Related Services for the Student:

- Four Parent visits to [REDACTED] each year paid for by the District;
- Four Student visits to Washington each year, with transportation to and from [REDACTED] paid by the District.

However, the March 2022 IEP does not provide the Student with an STE to accompany her travelling from [REDACTED] to the Parents' residence [REDACTED] and then back to [REDACTED].

14. The Student's IEP team convened in December 2022 to consider amendment to the Student's March 2022 IEP. The IEP team proposed eliminating the Student's four yearly home visits. In place of the Student's four yearly home visits, the December 2022 IEP proposed increasing District funding for eight Parent visits [REDACTED] per year. The December 2022 IEP has never been implemented.

### CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and

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<sup>3</sup> This IEP is identified by the Parents as the April 2022 IEP, while the District identifies it as the March IEP. The IEP meeting that developed this IEP was held in March 2022. The effective date of implementation is in April 2022. In order to maintain consistency and clarity, this IEP will be identified as the March 2022, reflecting the month in which the IEP was developed, even though the IEP was not set to be implemented until April 2022.

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Therefore, the Parents bear the burden with respect to the issue of what constitutes the Student's stay-put placement.

3. The parties' briefings generally set out the applicable law governing determination of a student's stay-put placement, and will not be repeated here.

4. It is axiomatic that a school district is legally responsible to implement a student's IEP, or in the case of a non-school district placement ensure the non-school district provider faithfully implements the student's IEP. School districts may not require or compel parents to assume responsibility for the implementation of an IEP or the provision of FAPE to an eligible student. It is concluded that the District is legally responsible to ensure the Student's IEPs are faithfully implemented.

5. The parties have not disputed that the last IEP implemented for the Student is the March 2022 IEP. This ALJ agrees and concludes the Student's March 2022 IEP is the Student's Stay-Put IEP.

6. The Stay-Put IEP provides District funding for the Student to have four trips home from [REDACTED] each year. However, the Stay-Put IEP does not provide funding for an STE to accompany the Student during her travel. This is despite the fact that the District is well aware the Student cannot access her related service of four trips home each year without an adult escort due to the impact of her disabilities. It is concluded that unless the Student can access her related service of four home visits a year, the Student's Stay-Put IEP cannot be faithfully implemented by the District.

7. The District appears to want to address this by increasing the number of District-funded Parent trips to [REDACTED] from four to eight trips per year, as reflected in the December 2022 amendment to the Student's IEP. This places a Parent in the position of having to act as an STE for the Student in order for the Student to access a related service in her Stay-Put IEP: four home visits a year. It is concluded that compelling a

Parent to act as an STE for the Student violates the IDEA. This conclusion is true whether or not the District offers to fund or reimburse a Parent for acting as an STE.

8. The Stay-Put IEP provides the Student with four home visits each year but does not provide funding for an STE, which is a required component without which the Student cannot access her related service and visit her home. This is simply an illogical and unsupportable outcome. Developing an IEP which provides a related service that cannot be implemented is an absurd result.

9. Given the impact of the Student's disabilities on her ability to travel known to the IEP team when it drafted the Student's Stay-Put IEP, it is concluded that the Student's Stay-Put IEP implicitly acknowledges, requires, and provides for an STE for the Student. Without providing an STE to accompany the Student home and then back to [REDACTED], it is concluded that the District is failing to implement a material component of the Student's Stay-Put IEP.

10. It is concluded that the District is legally responsible to fund an STE for the Student such that she can travel to and from the Parent's residence [REDACTED] [REDACTED] as part of the Student's Stay-Put IEP during the pendency of this matter. The District will be ordered to fund an STE to travel with the Student for four home visits per year during the pendency of this matter.

11. It is reasonable that the District will require sufficient time to identify and secure the services of a suitable STE for the Student. Accordingly, the Parents shall provide the District with six weeks' prior written notice of the travel dates for the Student's four home visits each year.

12. The District shall convene the Student's IEP team and the team shall determine the necessary training and experience for an appropriate STE to travel with the Student for her home visits [REDACTED].

### ORDER

As part of the Student's Stay-Put Individualized Education Program during the pendency of this matter, the [REDACTED] School District shall arrange for, fund, and provide the Student with an appropriate Student Travel Escort to accompany the Student during her round-trip travel for four home visits a year [REDACTED] [REDACTED].

**OBJECTION TO ORDER**

The parties shall have **ten (10) calendar days from the mailing date** of this Order to file any written objection to the Order. If no written objection is filed within that period, this Order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. WAC 10-08-130(3).

SERVED on the date of mailing.



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Matthew D Wacker  
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 order may appeal by filing a civil action in a state superior court or federal district court of the United States. See *A.D. v. Hawaii Dep't of Educ.*, 727 F.3d 911, 913 (9<sup>th</sup> Cir. 2013) (stay-put order subject to interlocutory judicial appeal). The civil action must be brought within ninety (90) days after the ALJ has mailed the 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.

DECLARATION OF SERVICE

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

Parents

[REDACTED]

via E-mail

[REDACTED]

Lara Hruska  
Sydney Arizona Bay  
Anne Senter  
Cedar Law PLLC  
113 Cherry Street  
PMB 96563  
Seattle, WA 98104

via E-mail  
sydney@cedarlawpllc.com  
lara@cedarlawpllc.com  
anne@cedarlawpllc.com  
nicole@cedarlawpllc.com  
amy@cedarlawpllc.com

[REDACTED]

[REDACTED]

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

via E-mail  
carlos.chavez@pacificalawgroup.com  
grace.mcdonough@pacificalawgroup.com

Dated February 14, 2023, at Seattle, Washington.

*Jazmyn Johnson*

Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101-3126