

RECEIVED

MAY 02 2018

Superintendent of Public Instruction
Administrative Resource Services



STATE OF WASHINGTON

OFFICE OF ADMINISTRATIVE HEARINGS

One Union Square • 600 University Street • Suite 1500 • Seattle, Washington 98101
(206) 389-3400 • (800) 845-8830 • FAX (206) 587-5135 • www.oah.wa.gov

MAILED
MAY 01 2018
SEATTLE-OAH

May 1, 2018

Parent
[REDACTED]

Karen Finigan, Executive Director of Special Services
Sumner School District
1202 Wood Ave
Sumner, WA 98390

Curtis M. Leonard, Attorney at Law
Craig S. Peters, Attorney at Law
Patterson Buchanan Fobes & Leitch, Inc., P.S.
2112 Third Avenue, Suite 500
Seattle, WA 98121

In re: Sumner School District
OSPI Cause No. 2017-SE-0097
OAH Docket No. 10-2017-OSPI-00414

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,

A handwritten signature in black ink, appearing to read "Michelle C. Mentzer".

Michelle C. Mentzer
Administrative Law Judge

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

RECEIVED

MAY 02 2018

Superintendent of Public Instruction
Administrative Resource Services

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

MAILED
MAY 01 2018
SEATTLE-OAH

IN THE MATTER OF:

OSPI CAUSE NO. 2017-SE-0097

OAH DOCKET NO. 10-2017-OSPI-00414

SUMNER SCHOOL DISTRICT

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Michelle C. Mentzer in Sumner, Washington, on February 15, 20, 22 and March 1, 2018. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Sumner School District (District) was represented by Curtis Leonard and Craig Peters, attorneys at law. The following is hereby entered:

STATEMENT OF THE CASE

The Parent filed a due process hearing request (complaint) on October 10, 2017. Leave to amend the complaint was granted on December 19, 2017. Prehearing conferences were held on November 13 and December 19, 2017. Prehearing orders were issued on November 15 and December 20, 2017, and January 10, 2018.

The due date for the written decision was continued to thirty (30) days after the close of the hearing record, pursuant to a District request for continuance. See First Prehearing Order of November 15, 2017. The hearing record closed with the filing of post-hearing briefs on April 12, 2018. Thirty days thereafter is May 12, 2018. The due date for the written decision is therefore May 12, 2018.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: J-1 through J-5;
Parent Exhibits: P-1 through P-18; and
District Exhibits: D-1 and D-2; pages 3, 6 - 8, 10 - 11, 19 - 24, 26 - 31, 33 - 35, and 41 of D-3; D-4; pages 16 - 20 of D-5; D-6 through D-10; pages 2 - 9 of D-11; D-12 through D-18; pages 1, 3, and 4 of D-19; and D-20 through D-26.

¹ In the interest of preserving family privacy, the names of all family members are omitted from this decision. Instead, they are identified as, e.g., "Parent," "Mother," "Student," or "Sibling."

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

Allison Brooks, PhD, Brooks Powers Group
Danielle Losinski, District learning specialist;
(kindergarten teacher), District teacher;
Sarah Braunschweig, District speech-language pathologist (SLP);
Kendre Howland, SLP, Pediatric Occupational Therapy Services, LLC;
Summer Holmes, District school psychologist;
The Mother of the Student (Parent);
Martina Scheerer, District school principal;
Connie Haines, District SLP and assistive technology team member;
Karen Finigan, District executive director of special services; and
Melanie (Summer) Krook, District behavior specialist.

ISSUES

The Issues Statement below reflects the claims made and remedies requested in the due process hearing request, as amended. The inclusion of alleged violations of the Individuals with Disabilities Education Act (IDEA) in an Issues Statement does not guarantee that they constitute violations of the IDEA. The inclusion of requested remedies in an Issues Statement does not guarantee that this tribunal has the authority to award them. The issues for hearing are:

1. Whether the District violated the IDEA and denied the Student a free appropriate public education (FAPE) by:
 - a. Adopting individualized education programs (IEPs) for the Student in January 2016, January 2017, and September 2017, that were inappropriate because they failed to provide:
 - (1) Environmental supports in the form of a Structured Teaching approach (TEACCH);
 - (2) Consistent supports across all settings;
 - (3) Adult support for social interactions, transitions, and other communication needs;
 - (4) Adequate means to address the Student's global expressive and receptive language deficits;
 - (5) Specific teaching for social and communicative behavior;
 - (6) Appropriate assistive technology;
 - (7) Related Services and Supplementary Aids and Services as follows:
 - A. Access to a counselor trained in play and art therapy;
 - B. Speech-language services throughout the day for the Student and staff;
 - C. Augmentative communication systems, and training on them for the Student and staff;
 - D. Occupation therapy to address graphomotor, sensory, and emotional regulation issues;
 - b. Failing to implement the Accommodations and Modifications required by the Student's IEPs;

- c. Failing to have mandatory school team members attend IEP meetings, either because they did not attend for the full length of the meetings, or did not attend at all;
 - d. Failing to assess the Student in all areas of suspected disability, including the area of augmentative alternative communication (AAC) systems;
 - e. Failing to utilize an AAC system privately obtained by the Parents in summer 2017 and provided to the District in September 2017;
2. Whether the Parent is entitled to the following requested remedies, or other equitable relief as appropriate: An order that the District --
- a. Immediately contract with Shanna Alvarez, PhD, of the Brooks Powers Group to:
 - (1) Develop and implement Structured Teaching support for the Student;
 - (2) Provide training to all current and future District staff who develop or implement academic or extracurricular programs for the Student;
 - b. Immediately provide a full-time designated paraeducator for the Student. The paraeducator will be trained by the Student's school and community-based providers, as well as the Parent. The paraeducator will remain in place until a plan for transitioning to independence is agreed upon by all members of the IEP team;
 - c. Immediately implement an evidence-based supplementary reading intervention program designated for students with central auditory processing disorder, the program to be selected by the Student's community-based audiologist and/or speech language pathologists. The program will be implemented in the Student's home and continue until the Student achieves current grade level in reading fluency and comprehension;
 - d. Amend the Student's IEP to provide for:
 - (1) Daily access/use of both portable personal and Soundfield FM System technology in all locations of instruction;
 - (2) Training for District staff on Central Auditory Processing Disorder (CAPD) by a qualified consultant, to be agreed upon by the District and the Parent;
 - (3) Extended school year (ESY) services;
 - (4) Anti-bullying strategies;
 - (5) Training for District staff by Dr. Shanna Alvarez, as set forth above;
 - e. Place the Student initially in a small-class environment within the resource classroom, while scaffolds are being established;

- f. Immediately transfer the Student from [current elementary school] to Donald Eismann Elementary School (DEE) for the remainder of the 2017-2018 school year; or if a second-grade opening is not currently available at DEE, provide an in-home tutor during school hours for two hours per day, three days a week, for the remainder of the 2017-2018 school year;
- g. Convene an IEP meeting of at least four hours in length, to be facilitated by Sound Options, and pay for the Student's independent educational evaluation (IEE) providers to attend that IEP meeting;
- h. Include on the agenda of the IEP meeting facilitated by Sound Options: special transportation; psychological therapy; and anti-bullying strategies.

See Third Prehearing Order of January 10, 2018.

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.

Background

1. The Student is in second grade in the 2017-2018 school year and recently turned eight years old. She has attended school in the Sumner School District (District) since preschool. She lives with her Mother (referred to as Parent herein) and two younger siblings. In early elementary school documents, she has been described as friendly, agreeable, creative, getting along well with peers, and always respectful. J-2:5, 29; J-5:4.² The name of the Student's elementary school is omitted to provide greater confidentiality for the family.
2. The Student was referred for an initial evaluation for special education in October 2013, when she was three years old. The initial evaluation was completed in December 2013 and an initial IEP was adopted in January 2014. The evaluation found the Student eligible for special education and related services under the category Developmental Delays. The Student's cognitive abilities were found to be in the very low range. (Later cognitive testing focused on non-verbal abilities found the Student's non-verbal score to be 115 (84th percentile) and her overall cognitive score to be 97 (42nd percentile). J-4:55.) The Student was found to have delays in all areas of language skills: receptive, expressive, and social. P-5; J-5.

² Citations to the exhibits are in the following format. "J-2:5, 29" refers to Joint Exhibit J-2, at pages 5 and 29. "P" refers to Parent Exhibits. "D" refers to District Exhibits.

3. Because the Student was in a developmental preschool, her placement was 95% in the general education setting, and most of her specially designed instruction (SDI) was delivered there. The Student received SDI in early literacy, early math skills, social skills, and communication. She was pulled out of general education for only 30 minutes per week, for speech-language therapy. The preschool program was part-time, approximately 10 hours per week. P-5.

4. At age four, the Student received a private speech-language evaluation from Stepping Stones in Puyallup. The evaluation found very significant language impairment, with emotional consequences:

[The Student] demonstrates significantly disordered receptive and expressive language skills, significantly reduced functional communication skills and frustration. [The Student] currently uses language primarily to label objects, but is unable to communicate what she wants when a caregiver asks her. [The Student] frequently shows frustration with her inability to communicate her needs, which leads to tantrum behavior.

P-3:3.

Kindergarten 2015-2016

5. The Student's second IEP was adopted in January 2015. P-4. It was developed in preschool, but was utilized during the first half of her kindergarten year. A paraeducator was placed in her kindergarten classroom for the first six weeks of the year, due to the higher needs of the Student and one other classmate. D-16:2. Normally, a paraeducator is assigned to kindergarten classes only for the first two weeks of the school year. Testimony of Losinski; Testimony of **K teacher**. The IEP in place for the first half of kindergarten contained no accommodations or modifications. P-4:12. The Student thus came into the kindergarten environment with no accommodations in place for her. Testimony of Braunschweig.

6. In kindergarten, the Student made friends as soon as she became comfortable in class. She did very well socially. She had one friend in the class from preschool, and she made other friends easily. She was very involved in lessons, participated, and had a love of learning. Testimony of **K teacher**.

7. The first few months of kindergarten is spent largely reviewing skills learned in preschool. In December, the pace ramps up, and at that point the Student had difficulty keeping up. Testimony of **K teacher**; P-15:21-22. In the first half of kindergarten, the Student visited the nurse's office only twice. In the second half of kindergarten she visited the nurse's office 14 times, largely for somatic complaints. P-10: 1, 5-8; Testimony of Parent.

8. Also in the second half of kindergarten, the Student began to have disturbing behavioral incidents that required additional staffing for her during recess. The kindergarten teacher reported to the Parent in March 2016 that the Student had been repeatedly "very physically aggressive" toward peers at recess, not heeding "many reminders" to keep her hands to herself. As a result, one of the recess teachers would henceforth focus mainly on the Student. P-15:23-24. In June

2016, the Student was catching boys on the playground and kissing them on the mouth. P-15:26. Later the same month, she had further problems at recess: after a lunch recess she ran “again”. During the next recess she tackled or laid down on a boy and tried to kiss him. An adult escort for the Student during recess was implemented as a result of these incidents. P-15:28.

9. Even before the December ramp-up in curriculum, the kindergarten teacher saw the Student as needing more time in the special education setting: receiving her SDI in the general education classroom was very distracting for her. P-5:8. The January 2015 IEP was therefore amended in November 2015 to increase the Student’s SDI from 75 minutes to 135 minutes per week, and to move the location of delivery of all SDI out of the general education classroom. The increase in SDI was due to a tripling of speech-language therapy from 30 minutes (one session) to 90 minutes (three sessions) per week. There was no change to the IEP’s annual goals in the November 2015 IEP amendment. P-4; P-5.

10. The Student’s kindergarten teacher, (kindergarten teacher) believed the Student was autistic as well as developmentally delayed. P-15:21-22; P-11. During kindergarten, the class went on a field trip. One of the chaperones on the field trip was the parent of [student]. That parent wrote a declaration stating Ms. K teacher explained some behavior of the Student’s on the field trip by stating the Student was autistic and developmentally delayed. P-11.³ An email from Ms. K teacher corroborates that she believed the Student was autistic. In December 2015, Ms. K teacher wrote to the Parent: “Another student in my class who *also* is impacted by Autism” has benefited from certain new programs. Ms. K teacher went on to state that she believed the Student would benefit from these programs as well. P-15:21-22 (italics added). The Parent replied that the Student has not been diagnosed with autism, and asked:

How do I go about haven’t [sic – having] her officially evaluated for Autism?

P-15:21. Ms. K teacher apologized, stating she thought she had been told the Student was autistic before the year started. In response to the Parent’s question about getting the Student evaluated for autism, Ms. K teacher stated:

Autism is not something we diagnose at school, but it’s something that you would talk with your pediatrician about.

Id.

³ The parent who wrote the declaration identified the date of the field trip as April 8, 2015. That date cannot be correct, because the Student was in preschool, not kindergarten, on that date. The declaration clearly states it was a kindergarten field trip and one of the teachers was (kindergarten teacher) the kindergarten teacher of the Student and the declarant’s [student]. It is therefore found that the field trip occurred during the Student’s kindergarten year, not while she was in preschool. The declarant did not testify at the hearing. However, it did not unduly abridge the District’s opportunity to cross-examine witnesses and rebut evidence to base a Finding of Fact on the declaration because the District could have asked Ms. K teacher about its assertions during her testimony. The District did not do so. See RCW 34.05.461(4) (Administrative Procedure Act). Also, the statement attributed to Ms. K teacher is corroborated by an email from Ms. K teacher herself, as discussed in text.

11. The Student was rated as making progress on most of the goals of her January 2015 IEP, but by the end of its term (when she was almost five years old), her speech was found to be unintelligible and have no structure:

In conversational speech and unstructured activities, she speaks of her self [sic] in third person, speaks in unintelligible phrases and uses no structure.

J-2:55. This impaired speech was found to "heavily impact" learning to read. When asked "Wh" questions about fictional reading passages, the Student "currently mumbles responses or answers in incomplete sentences." J-2:54. Toward the end of kindergarten, her scores in standardized testing on letter-sound fluency declined instead of increasing. Expected improvement for the second half of kindergarten from the Student's starting level was to read 33 letter sounds correctly, with zero errors. The average of the Student's last three test results for the year was 13 letters correctly read, with nine errors. P-7:11-12.

12. Significant regression also occurred in the Student's goal of following verbal directions. When the January 2015 IEP was adopted in preschool, the Student was able to follow non-routine two-step directions without prompts. The IEP's goal was to improve to following three-step directions. However, one year later in January 2016, during kindergarten, the Student had regressed to following only one-step directions. J-2:54. The new goal in her January 2016 IEP was that by the middle of first grade (January 2017), she would reach the level she had achieved two years earlier in preschool (January 2015): following two-step directions. J-2:57.

13. On a scale of 1 to 4, the Student averaged the following grades in the following subjects on her end-of-kindergarten report card: Cognitive Development - 1.67; Language Development - 1.5; Literacy - 1.86; Writing - 1.5; Mathematics - 2.0; Social Emotional Development - 2.33; and Fine Motor - 3. P-7:1-2.⁴

January 2016 IEP

14. The annual goals of the Student's January 2016 IEP, adopted during kindergarten, were as follows.

15. *Communication goals.* (1) When given a picture or verbal prompt, say two grammatically correct sentences containing 3 – 5 words, improving from producing one sentence 80-90% of the time to producing two sentences 80% of the time; and (2) When given a group of words or pictures, state which does not belong and why, improving from an emerging skill to doing this 80% of the time. J-2:56, 62.

⁴ The grading scale of 1 to 4 means as follows: One means the student attempts the work with significant teacher support. Two means the student approaches competence with teacher support. Three means the student meets expectations for this point in the year. Four means the student exceeds expectations for this point in the year. P-7:1. Each of the subjects in the report card has several sub-skills that are graded. The grades provided here are averages of the sub-skill areas for each subject in the final trimester of kindergarten.

16. The second communication goal was criticized by the Student's private SLP, Kendre Howland. Ms. Howland treats the Student and also conducted a comprehensive communications evaluation of her in September 2017. J-4:1-28. Ms. Howland sees no direct educational benefit in the what-does-not-belong-and-why goal. She pointed out that it is vague: either pictures or words may be used in providing instruction on the goal. But pictures and words target very different skills. It is easy for the Student to pick out a picture that does not belong, and this is not an appropriate annual goal for her. It is much more difficult for her to pick out a word that does not belong from an auditory list. Ms. Howland was concerned that half of the Student's therapy time for a full year was spent on a goal that did not provide direct educational benefit. She would have substituted a goal of identifying and defining grade-level vocabulary words. Testimony of Howland. Ms. Howland's testimony about the appropriateness of the goal in question is found more persuasive than the testimony of the District SLP, Sarah Braunschweig, especially in light of the information in progress reports on this goal, discussed below.

17. *Reading goals.* (1) Answer "wh" questions about fiction texts, improving from 0% correct to 66%. (2) Read aloud common consonant-vowel-consonant (CVC) words, improving from 0% correct to 75%. (3) Read Student-level sight words, improving from 12% correct to 60%. J-2:57.

18. *Math goals.* (1) Write numbers 1 – 50 with 90% accuracy, improving from writing 1 – 20 with 80% accuracy. (2) Rote-count numbers 1 – 100 with 100% accuracy, improving from counting 1 – 39 with 100% accuracy. (3) Count 30 objects. No baseline measure or target measure was included in this third goal. J-2:58.

19. *Written language goals.* (1) Spell CVC words, improving from 40% correct to 80%. (2) Write upper case letters legibly and in order, improving from 31% correct to 77%. (3) Write lower case letters legibly and in order, improving from 12% correct to 77%. J-2:59.

20. *Social skills goals.* (1) Ask questions to extend conversation, improving from doing this 0% of the time to 75%. (2) Follow non-routine two-step verbal directions without prompts, improving from following one-step directions without prompts to following two-step directions without prompts 75% of the time.⁵ J-2:56-57.

21. *Placement.* The January 2016 IEP placed the Student in general education almost 75% of the time. Her special education services were provided on a pull-out basis: 30 minutes, four times per week each for reading, writing, and math; 30 minutes, twice a week for communication (which was largely provided by an SLP Assistant (SLPA) with an associate's degree and 7 – 8 years of experience), supervised by an SLP; and 30 minutes, once a week for social skills. J-2:62.

⁵ The annual goal on direction-following in the January 2016 IEP appears to contain a typographical error. At one point it states the goal is to follow *three*-step directions, while at another point it states the goal is to follow *two*-step directions. The Student's current baseline is stated as following one-step directions. J-2:57. The Present Levels of Performance in this IEP make clear that the goal was to follow two-step, not three-step directions. See J-2:54.

22. *Accommodations and modifications.* The accommodations and modifications in the January 2016 IEP were as follows: break material into manageable parts; give short, concise directions; post carrier phrases used as sentence starters; check work frequently to ensure understanding; and test in a small group. They were designated for use in both the general education and the special education settings. J-2:60. The IEP stated the Student “does not need assistive technology devices or service needs [sic] at this time.” J-2:53.

Private Occupational Therapy Evaluation – July 2016

23. The Parent obtained a private occupational therapy (OT) evaluation of the Student in July 2016 from OT Ashley Spooner of Pediatric Occupational Therapy Services, LLC. P-9:22-31. In the area of fine manual control, the Student was at the 16th percentile, in the below average range. More significantly, the Student was found to have very significant sensory difficulties. She fell more than two standard deviations below the mean in 17 of the 23 sensory areas tested. She had significant difficulty in four more areas. That means she was in the typical range in only two of the 23 areas tested.

24. This degree of sensory abnormality brings with it significant educational disadvantages, according to the OT, Ms. Spooner:

[I]t means that the sensory input is confusing, upsetting, or not meaningful to the child. . . In some cases, [the Student’s] nervous system is not interpreting the input in a meaningful way, leading to a sense of disruption with what is going on around her and negatively affecting her ability to perform tasks age appropriately, including fine and gross motor skills.

Difficulty processing sensory input from more than one sensory modality significantly increases the effort required to modulate sensory input and regulate appropriate responses over time. Behavioral outburst, poor frustration tolerance and variability in emotional responses may occur more frequently due to confusing and inaccurate interpretation of sensory information that the nervous system receives. [The Student’s] nervous system is not always interpreting sensory input accurately and in a meaningful way, this negatively affects his [sic] ability to respond to:

- increasing task demands
- changes in routine
- environments that are highly stimulating
- at times other children or people in the environment.

P-9:26-27.

[The Student] displays excessive emotional outburst when she is unsuccessful at a task. She frequently expresses feeling like a failure, is stubborn and uncooperative, has temper tantrums, cries easily, and has poor frustration tolerance. She has difficulty tolerating changes in routines.

P-9:27.

25. The OT recommended weekly therapy to work on: self-coping strategies and appropriate behaviors when overwhelmed; auditory processing and attention to be able to follow three-step directions independently; and improved safety awareness and coordination by navigating a multistep obstacle course. P-9:31.

26. The private OT evaluation was sent to the District on October 18, 2016. D-7.

Private SLP Evaluation – August 2016

27. The Parent obtained a private communication evaluation of the Student in August 2016 from SLP Jennifer Guth of Pediatric Occupational Therapy Services, LLC. J-2:32-33; D-7:13-22. In this evaluation, the Student's overall language score on the Clinical Evaluation of Language Fundamentals-5 (CELF-5) was at the 0.1 percentile. In receptive language, she scored at the 1st percentile; in expressive language she scored below the 0.1 percentile. On the Preschool Language Scale 5 (PLS-5) and the Peabody Picture Vocabulary Test 3 (PPVT-3), she scored at the 1st percentile in all areas. Only on a picture vocabulary test did the Student score higher: on the Expressive One Word Picture Vocabulary Test (EOWPVT), she scored at the 34th percentile. *Id.*

28. Ms. Guth commented that the Student had appropriate interactions and behavior during testing, that she was outgoing, desired to communicate, had good joint attention, eye gaze and turn-taking. However, her speech had many errors of grammar, word order and word finding, and the Student became frustrated when she was not understood. D-7:13-14, 21. Three of the five goals Ms. Guth chose for therapy concerned receptive language (all but the second goal): (1) Identify grammatically correct and incorrect sentences; (2) create grammatically correct sentences when given a word and a carrier phrase; (3) identify at least two important details from a short paragraph presented verbally; (4) Identify correct plurals, regular and irregular, from a short sentence presented verbally; and (5) Identify correct use of copulas (linking verbs, like "is", "am") from a short sentence presented verbally. D-7:21⁶

29. The private SLP evaluation was sent to the District on October 18, 2016. D-7.

First Grade 2016-2017

30. The Parent testified without contradiction that during the 2016-2017 school year, the SLP on the Student's IEP team was pregnant and rarely attended meetings in their entirety. Testimony of Parent. Since this testimony was uncontradicted, it is accepted as fact. There were two team meetings in the 2016-2017 school year: an evaluation review meeting in December 2016 and an IEP meeting in January 2017. The District did not obtain the Parent's written consent to excuse the SLP from part of either meeting. The Parent did not present evidence regarding what topics

⁶ The Ms. Guth's recommended goals contained baseline and target measurements. They are not included here.

were discussed in the SLP's absence, or whether she believes that absence affected the team's deliberations or decisions.

31. In the fall of first grade, the Student scored at the 1st percentile on standardized Measures of Academic Progress (MAP) testing in math, and the 2nd percentile in reading. D-4:15.

32. The Student's annual IEP review occurred in January 2017. She was found to have made the following progress on her January 2016 annual goals. On a communication goal of saying two 3 – 5 word grammatically correct sentences given a prompt, the Student was consistently rated as making sufficient progress to reach the goal of 80%. However, no percentage measurements were given in any of her IEP progress reports. On a communication goal of stating which picture or word in a group does not belong and why, the Student was consistently rated as making sufficient progress to meet the goal, and measurements were given. J-3:18-19.

33. On the reading goal of answering "Wh" questions about fictional text, the Student made good progress. She started at 40% correct answers and finished at 100%, which was above the goal of 66%. On the goal of reading aloud common CVC words, the Student made good progress, beginning at 30% and averaging 60% (the target) in her last month. *Id.* On the goal of reading sight words she also made good progress, beginning at 18% and averaging 50.6% in her last month (the target was 60%). J-3:20-21.

34. On the math goal of writing numbers 1 – 50, the Student made insufficient progress to reach the goal of 90% accuracy. Her scores ranged inconsistently between 37% and 73%, without a consistent trend. On the math goal of rote-counting from 1 – 100 with 100% accuracy, the Student regressed from her baseline and there was no trend of progress over many assessments, except that the very last assessment was above the goal. On the math goal of counting 30 objects, the Student made good and consistent progress from 12 to 49 objects during the year. However, no baseline was included in the goal so it is not possible to say where the Student was prior to the start of the IEP. J-3:21-22.

35. On the writing goal of improving from 40% to 80% on spelling CVC words, the Student regressed in the second half of kindergarten, and made a very small amount of progress in the first half of first grade to average 53% in the final month, only a little above baseline. On the two writing goals of writing upper and lower case letters, the Student made good progress. She ended the year at an average of 87% for upper case and 83% for lower case letters, without using a model. (Her baseline had been 31% and 12%, respectively.) J-3:22-23.

36. On the social skills goal of asking questions to extend conversation, the Student was consistently rated as not making sufficient progress to reach the goal. No measurement was given for the first reporting period. In the second, she was measured as succeeding 25% of the time (the goal was 75%). In the last reporting period no percentage measurement was given, and the comment states the Student's questions were mostly "what." On the social skills goal of following 2-step directions without prompts, the Student never moved above her baseline level of following 1-step directions without prompts. J-3:19-20. This was the second full year that the Student had either regressed (see discussion above) or made no progress at all on this skill. The ability to comprehend and follow directions is crucial in all academic areas as well as non-academic activities. Yet nothing in the comments on any of the IEP progress reports, or anywhere

else in the record, shows the IEP team (or any individual member of the team) questioning whether a change was needed in this goal or how it was being taught. The goal was abandoned in the future IEPs.

37. The Present Levels of Educational Performance (PLEP) in the January 2017 IEP provided the following information in addition to the progress measurements outlined above. The first grade teacher, Kellie Fremont, did not see the somatization at school that the Parent discussed. J2:31. (Somatization had not yet occurred in the first half of first grade. Just as in kindergarten, it increased in the second half of the year with seven visits to the nurse's office from February to June 2017. P-10:4-5.) In the social/emotional area, the Student could identify her feelings when happy, mad or sad, but would get frustrated and express that she could not do things right. She also had difficulty perceiving and narrating the actions of others, and needed instruction on connecting actions and reactions between herself and others. In reading, oral fluency was tested for all District students (it was not part of the Student's IEP goals). The Student was reading 8 correct words per minute, with an average of 10 errors. By contrast, the standard for first graders in winter 2016-2017 was 36 correct words per minute. J-2:31-32.

38. The PLEP included the results of the private SLP evaluation from August 2016, described above. The PLEP did not, however, include any information from the private OT evaluation of July 2016, also described above.

January 2017 IEP

39. At the January 2017 IEP meeting, the Parent raised a number of concerns. She had asked to receive a draft of the new IEP before the meeting, so she could fully participate in the meeting, but did not receive it. She also complained that she did not receive the data collected on the Student's measurable annual goals. Next, the Parent asserted that the team lacked appropriate evaluations to write an effective IEP, and that the Student's functionality in all areas had been under-assessed and unaddressed. The Parent also stated the Student had been continually bullied at school as was now refusing to attend. She raised a concern that the Student did not make sufficient progress on her Social Skills goals. J-2:29. Finally, the Parent requested an evaluation for assistive technology. P-14:1-6. The team decided that the Student did not need any AT. J-2:29.

40. *Communication goals.* The communication goals of the January 2017 IEP included none of Ms. Guth's recommended goals, which focused on receptive language. This was despite the Parent echoing Ms. Guth's concerns, in a written complaint in November 2016, that the current IEP was focused too heavily on expressive language when the Student's deficits in receptive language were far more concerning. P-15:44. All of the Student's new IEP communication goals targeted expressive language. Only the third goal focused in part on receptive language, but that goal was problematic for a number of reasons, as discussed elsewhere. The communications goals of the January 2017 IEP were as follows: (1) Use regular and irregular plural words to describe something in a picture, improving from this being an emerging skill to doing it correctly

80% of the time.⁷ (2) When shown a picture, say a sentence matching the picture using a verb in the present tense, improving from this being an emerging skill to doing it correctly 80% of the time. (3) When shown 2 – 3 words or pictures, state what does not belong in the group and why. The Student was already able to state what did not belong 90 – 100% of the time, though it is unknown whether she was selecting from pictures or from words, which would make a great difference for her. There was no measurement provided on the “why” part of the goal, only a statement that the Student needed prompting on that part of the goal. The goal contained no baseline measurement on the “why” part of the goal. (4) Speak complete, intelligible sentences containing at least 4 words in 80% of opportunities, improving from speaking in 2 – 3 word phrases. No baseline measurement was given on how often the Student's 2 – 3 word phrases were complete, intelligible sentences.⁸ J-2:34.

41. *Reading goals.* (1) Read a fiction passage and organize 3 – 4 picture cards in sequence to re-tell the story, improving from an unstated level to 75% accuracy. (2) Increase sight word reading from 66% to 75% accuracy. The goal does not state what grade level words would be used, or whether the level of the words would advance over the course of the year. J-2:35-36.

42. *Written language goals.* (1) Given a string of written words, the Student will place them in correct order to form a sentence, and then copy it, improving from an unstated baseline to 100% accuracy. (2) Given a picture, write three related words to describe it, using phonetic spelling, improving from an unstated baseline to 67% accuracy. J-2:36.

43. *Math goals.* (1) Given a number from 0 – 100, state the number, improving from an unstated baseline to 80% accuracy. (2) Given numbers between 0 – 100, compare them using symbols (>, <, and =), improving from an unstated baseline to 75% accuracy. (3) Add numbers up to a sum of 10 using strategies and/or manipulatives, improving from an unstated baseline to 80% accuracy. J-2:36-37.

44. *Social skills goals.* (1) Given a problem, determine if it is a big or little problem and determine an appropriate emotional response, improving from 0% to 75% accuracy. (2) Ask questions on selected topics to sustain conversational turn-taking, improving from doing this in 50% of opportunities to 75%. (3) In a small group, predict how people feel from their behaviors, and communicate those feelings visually or verbally, improving from doing this 0% of the time to 75%. (4) When in a group working together, state the group's plan either visually or verbally, improving from doing this 0% of the time to 75%. J-2:34-35.

⁷ This goal and Ms. Guth's fourth goal both concern plural words. However, Ms. Guth's goal targets receptive language, with the Student identifying plurals in a sentence she hears. The IEP's goal targets expressive language, with the Student speaking plural words to describe something in a picture.

⁸ This goal and Ms. Guth's first goal both concern grammatically correct sentences. However, Ms. Guth's goal targets receptive language, with the Student identifying grammatically correct and incorrect sentences that she hears. The IEP goal targets expressive language, with the Student being asked to speak complete, intelligible sentences.

45. *Placement.* The January 2017 IEP placed the Student in general education 71% of the time, down from nearly 75% in the prior IEP. Her social skills instruction increased to two 30-minute sessions per week (instead of one), and communication instruction increased to three 30-minute sessions per week (instead of two). J-2:43.

46. *Accommodations and modifications.* The accommodations and modifications in the January 2017 IEP were extensive, and were designated for use in both the general education and the special education settings. The following were added to those adopted in the previous IEP: allow errors made with phonetic spelling, flipped numbers, and sloppy handwriting; allow for listening or movement breaks; repeat newly taught skills; allow time to respond; allow use of word bank, student dictionary or word wall; allow for speech errors; use classroom communication log in place of classroom behavioral system/chart; couple visual aids with verbal communication; allow many of these accommodations during testing; gain visual attention before giving instructions; preferential seating; provide basic written/visual instruction; encourage Student to slow down when talking and working; repeat instructions and/or have Student repeat them; use graph paper; use manipulatives for math; use number and letter charts for formation; use pacer board to support pacing; use sensory tools; use visual schedules; and provide several testing accommodations. J-2:38-40.

Other events during first grade

47. In first grade, the Student experienced social and emotional difficulties at school and began refusing to attend. In early January 2017, the Parent notified school staff that the Student felt bullied, had an overwhelming fear of returning to school, and had packed belongings to run away from home. P-14:1-8. The Parent requested transfer to another elementary school and the provision of a full-time one-on-one (1:1) paraeducator for the remainder of the school year. At the January 2017 IEP meeting, the Parent shared that the Student believed she did not have any friends at school. The team agreed to add minutes to her social skills instruction and have staff keep an eye on the student at recess. The Parent agreed to wait on asking for a transfer to another school.

48. After the IEP meeting, the Parent renewed her request for transfer to a new school or a new classroom. She stated the Student felt rejected at school, with people hearing the way she talks and dismissing her as if she had not spoken. The Student was refusing to attend school and any mention of her elementary school met with very strong emotions. The Parent renewed her request for a 1:1 paraeducator, and in the meantime asked that the Student be kept in for recess because she did not feel safe on the playground. The Parent shared that she had tried the psychological tactics she knew, but nothing was working to get the Student to go to school, and she was at a loss. The School suggested a reward system for returning to school. D-15; D-20; P-15:9. On January 30, 2017, the Parent wrote to school staff:

Should we be looking at the functions of her behavior to discover more about why she is refusing to come to school?

P-15:9. Two days later, the Parent asked again about conducting a behavior study:

[The Student] struggles with anxiety prior to and during arrival. What strategies can address this? At what point should we consider behavioral study to figure out why?

P-14:10 (omitting outline format). Although the Student refused to attend for nearly the entire month of January 2017, no functional behavioral assessment (FBA) was done. P-9:13; P-10:13. This is despite the Executive Director of Special Services testifying that when there is a concern that truancy may be behaviorally related, the District at first tries lower-level interventions, and if that does not work, the District will certainly offer an FBA. Testimony of Finigan.

49. The Student returned to school in early February 2017, with a 1:1 paraeducator and a check-in, check-out system with the school counselor. D-3:22; P-16:17. School staff recorded the reason for the Student's absences as "Parent choice." P-10:12. After returning to school, the Student visited the nursing station seven times through the end of the school year. P-10:4.

50. By early May 2017, the IEP team agreed to fade the 1:1 paraeducator to recess periods only. Paraeducator data indicated the Student needed less prompting than she had earlier, but still required it at transition times. P-16:3-6. The Parent believed the paraeducator was highly successful for the Student and wanted this service to continue in the next school year. Testimony of Parent.

51. At the end of first grade, the Student again scored at the 1st percentile on standardized MAP testing in math. She had thus made no improvement in math toward closing the gap with her peers during first grade. In reading on the MAP, she scored at the 4th percentile at the end of the school year, increasing from the 2nd percentile in the fall. D-4:15. On her IEP goals, progress reports provide the information set forth below.

52. In communication, she made good progress on goal (1): she was able to state regular plural words to match a picture 100% of the time, and irregular plurals 50 – 80% of the time. On goal (2), she also made good progress: she was able to say a sentence using a present tense verb 100% of the time, exceeding the goal of 80%. The rating on progress was not that she had met the goal (even though she had), but that she made sufficient progress to meet the goal by the following January. On goal (3), it cannot be determined whether she made progress. Her baseline for stating what-did-not-belong was 90 - 100%. She finished the school year at 100%, with it being unknown whether she was tested using pictures or groups of words. She finished the school year being able to say why something did not belong 80% of the time, but no baseline percentage was in the goal so it cannot be determined if she made progress. On goal (4), the Student made good progress: she was able to comment using complete sentences of at least four words 100% of the time, and reached sentences of seven words. She needed fewer prompts toward the end of the school year. J-3:9-11.

53. In reading, it cannot be determined exactly how much progress the Student made on goal (1) because it did not include a baseline measurement. However, she reached 100% on the goal, which was to read fiction passages and organize picture cards in sequence to retell the story. Despite reaching 100% (which was above the goal of 75%), the progress rating was not that she met the goal, but that she made sufficient progress to meet it six months later, by January 2018. On goal (2), the Student made good progress, exceeding the goal by attaining 75% accuracy in

reading 100 sight words (the goal was to attain 75% accuracy in reading 75 sight words). Nevertheless, the progress rating was not that she met the goal (even though she had), but that she was making sufficient progress to meet it six months later. J-3:13.

54. In writing, it cannot be determined whether the Student made progress on goal (1), which involved creating and copying sentences when given a string of written words. The goal included no baseline measurement; progress was mixed and was measured using one sentence instead of two, as stated in the goal. On goal (2), although no baseline measurement was given, the Student made good progress in measurements taken over time, exceeding the target of 67% in writing three related words to describe a picture. Again, the progress rating was not that she met the goal (even though she had), but that she was making sufficient progress to meet it six months later. J-3:13-14.

55. In math, goal (1) included no baseline and the target of 80% was inappropriately low: the Student was immediately at 94% in stating a number when presented with a number from 0 to 100. In June 2017, only five months into the IEP's term, she reached 100%. Again, the progress rating was not that the Student met the goal (even though she had), but that she was making sufficient progress to meet it six months later. A comment stated they would expand the goal by working up to the number 200. (Of all the goals in this IEP that were met five months into the IEP's one-year term, this is the only comment indicating the goal was expanded as a result.) On goal (2), which involved comparing numbers using symbols (>, <, and =) accurately 75% of the time, it cannot be determined how much progress the Student made. The goal lacked a baseline measurement, and her scores fluctuated inconsistently between 50% and 75%, ending at 50%. On goal (3), it cannot be determined exactly how much progress the Student made because the goal lacked a baseline measurement. However, the target was 80% on adding numbers up to a sum of 10 using strategies and/or manipulatives, and the Student reached 90%. Again, the progress rating was not that she met the goal (even though she had), but that she was making sufficient progress to meet it six months later. J-3:14-16.

56. In social skills, the Student made good progress on goal (1), determining if a problem was big or little, and determining the appropriate emotional response to it. Her baseline was 0% and she reached the target of 75% in small groups, and more than 50% in general education class. On goal (2), asking questions to sustain a conversation, the student at first made progress then slid back to her baseline. On goal (3), predicting people's feelings from their behavior and communicating those feelings, the Student made good progress. She was able to do it 100% of the time in small group, and 75% of the time (the target) in general education class. Again, the progress rating was not that she met the goal (even though she had), but that she was making sufficient progress to meet it six months later. On goal (4), stating the plan of her work group either visually or verbally, the Student made some progress from her baseline of 0%. She reached 50% in small group. In general education class, it was stated she could do the skill but no percentage measure was given. The goal's target was 75%. J-3:11-12.⁹

⁹ The progress comments for social skills goals (3) and (4) appear to have been reversed on the Student's IEP progress report. See J-3:12. They are reported correctly here.

57. The District agreed to the Parent's request for a broad independent educational evaluation (IEE). It was performed by the Brooks Powers Group in March and April 2017. The evaluation report was issued in May 2017. J-4:49-77. The evaluation was conducted by Allison Brooks, PhD¹⁰ and Heather Davis, PhD.¹¹

58. The evaluation included an interview of the Student's general education teacher and observations in her classroom, as well as observations in a small special education group. The teacher shared that the paraeducator had been very helpful, primarily in providing scaffolding for the Student's communication with peers. The teacher noted improvement in academics and communication during first grade, and that the Student gets along well with others. J-4:53-55.

59. The Student's behavior during testing was appropriate, positive, and engaged. However, she was moderately inattentive, especially during difficult tasks. With support and praise she was easily reengaged. Regarding oral communication, the report stated:

Her expressive and receptive language skills were notably delayed and disordered and she often mixed up nouns, verbs, and adjectives when answering questions which made it challenging to distinguish what she was expressing.

J-4:55.

60. *Cognitive assessment.* The Differential Abilities Scales-II (DAS-II) was used for this assessment. The Student scored very low on the verbal cluster of tests. On nonverbal reasoning and spatial reasoning, she scored in the above-average and average ranges, respectively. Using a Special Nonverbal Composite score, the Student scored 115, at the 84th percentile. Her General Conceptual Ability score was 97, which put her at the 42nd percentile. J-4:55. When asked questions where the Student had to use language to respond, her cognitive score dropped to the 2nd percentile. D-3:27.

61. *School readiness and academics.* This area was also assessed using the DAS-II. Overall, the Student scored in the below-average range. Phonological processing and early numbers concepts were her lowest scores, and matching letter-like forms was a high score. J-4:56-57.

¹⁰ Allison Brooks received her PhD in psychology from the University of Washington in 2002. She is Co-Director of the Brooks Powers Group in Seattle. Dr. Brooks has served on the faculty at the University of Washington, with areas of focus on autism and fetal alcohol syndrome. She has been co-investigator on a number of research grants, has authored many publications in refereed journals, and has presented at many professional conferences. P-17:1-9; Testimony of Brooks.

¹¹ Heather Davis, PhD, is listed in the evaluation report as a post-doctoral fellow in pediatric neuropsychology with the Brooks Powers Group. J-4:70. She did not testify at the hearing, and no further information was offered concerning her education or experience.

62. *Fine motor and visual-motor integration.* The Beery-Buktenica Developmental Test of Visual-Motor Integration – 6 (VMI) was used. The Process Assessment of the Learner – II (PAL-II) was also used to assess handwriting. On the latter test, the Student's letter formation and legibility was in the impaired range. She also had a steep decline in handwriting ability after 90 seconds, starting in the average range and gradually declining to reach the impaired range. On the VMI her scores were good except when asked to trace, a skill at which she was impaired. The test results suggested a difficulty with fine motor skills, especially if speed is required. J-4:57-58.

63. *Working memory and processing speed.* The Student's working memory score on the DAS-II was in the very low range. Low scores in this area often predict difficulty in following directions, comprehending instructions, encoding information, and recalling important information. The Student's scores in processing speed were in the low range, which may indicate difficulty in task persistence, attention to detail, sustained attention, speed of workflow, and proficiency and scanning via automated processes. J-4:58-59.

64. *Social communication.* The Social Communication Questionnaire (SCQ) was administered to the Parent. The Student's scores were very close to the cut-off for autism spectrum disorder. J-4:60.

65. *Sensory characteristics.* Using the Short Sensory Profile (SSP), the evaluators determined the Student had definite differences compared to peers in the following sensory behaviors: under-responsiveness / sensation-seeking; auditory filtering; and visual/auditory sensitivity. J-4:60.

66. *Adaptive functioning.* The Adaptive Behavior Assessment System – 3 (ABAS-3) was administered to the Parent, the Student's general education teacher, and her special education case manager. The results were mixed between the average and low average ranges, but indicated the Student often needed prompting or support across several adaptive functioning areas at home and at school. J-4:60-61.

67. *Social/emotional/behavioral functioning.* The Behavior Assessment System for Children-2 (BASC-2) was administered to the Student's Parent and two teachers. The general education teacher's ratings were in the "at risk" range in eight areas: depression, withdrawal, attention problems, learning problems, adaptability, leadership, study skills, and functional communication. In stark contrast, the special education case manager rated the Student at risk in only one category: adaptability. In all other categories she rated the Student in the average range. At a later meeting to review these results, school staff explained a reason for the differences between the teachers' ratings: the Student may have different behavioral responses to the general education classroom vs. the special education small-group. D-3:7.

68. On the same BASC-2 assessment, the Parent rated the Student in the "clinically significant" range (the most serious level) in three areas: anxiety, activities of daily living, and functional communication. The Parent rated her in the at risk range in five areas: hyperactivity, somatization, atypicality, attention problems, and adaptability. A self-report questionnaire was attempted, but the Student struggled to understand the questions even with significant explanation of each question. The self-report questionnaire was therefore discontinued. J-4:61.

69. The Achenbach Child Behavior Checklist (CBCL) was administered to the same two teachers and the Parent. The general education teacher rated the Student in the "borderline clinical" range in anxiety/depression, social problems, attention problems, and ADHD problems. The special education case manager rated the Student in the borderline clinical range in social problems, attention problems, and ADHD problems. The Parent rated the Student in the "clinical" range (the most serious level) in somatic complaints and anxiety. She rated the Student in the borderline clinical range in attention problems. J-4:61-62

70. The Student was also administered a Sentence Completion activity to gain insight into her view of herself and the world around her. The Student's responses were a mix of positive and negative, often jumbled or not quite making sense. Some of her responses were concerning, but often unclear because her sentence formation was so disordered. J-4:62.

71. The evaluators were impressed with how sunny and optimistic the Student presented, given the degree to which her language abilities are impacted. D-3:27.

72. *Neurological.* The Quick Neurological Screening Test – 3 (QNST-3) was used to assess how the Student monitors and integrates sensory information from a variety of sources, and how she is able to organize voluntary motion in time and space. The Student had atypical neurological signs in the following areas: co-occurring movement of body parts not needed for motor tasks; abnormality in an otherwise normal pattern of movements; impairment in the smooth production of rapid alternating movements; and impairment of fine motor coordination. Her overall score indicated a moderate discrepancy. Some of the areas in which she exhibited impaired performance are often linked to difficulty with reading and auditory perception, auditory processing, and phonological skills. The results suggested that it takes more effort for the Student than for typical peers to make her way through academics. She lacks some of the underlying neurological skills for efficient and automatic higher-level skills. She utilizes significantly more effort to complete certain tasks that would be automatic for typical peers. This means she has to work much harder to complete even simple academic tasks. J-4:62-63.

73. *Diagnoses.* The evaluators indicated a diagnosis of mixed receptive and expressive language disorder, but deferred to an upcoming SLP evaluation for definitive diagnosis. The evaluators noted the suspicion of developmental aphasia, but there is no known childhood stroke or brain trauma, and such a diagnosis cannot be made without such evidence. The report also diagnosed specific learning disability in written language, subtype dysgraphia. Concerning attention and anxiety problems, the evaluators found them to be subclinical at the time, but needing monitoring. They may be emerging stand-alone disorders, or may be emerging secondary to the Student's language disorder. J-4:64-65.¹²

74. *Recommendations.* The evaluators noted that children with language deficits may cope fairly well in early grades, where there is greater emphasis on visual-perceptual components of

¹² The evaluators noted a prior diagnosis of Childhood Apraxia of Speech. J-4:65. However, that has been ruled out by two subsequent SLPs. See P-14:35.

learning. However, they often become confused and lag markedly when curriculum demands become heavily dependent on language processing. The evaluators made recommendations on general and environmental supports, as well as specific subject area recommendations. The general and environmental supports recommended were:

- Provision of a structured auditory environment, designated as “critical”;
- Preferential seating;
- Short, highly structured tasks interspersed with quiet periods, to avoid fatigue from listening;
- Repetition of oral instructions with the following “critical” visual supports across all settings:
 - Written instructions when a teacher is talking;
 - Visual schedules;
 - Visual cues for transitions;
- Consistent daily routines, due to the confusion the Student experiences in the daily language environment;
- Flexibility around oral reading and speak-alone activities, which expose the Student’s language challenges to others, and opportunities to demonstrate strengths in other areas;
- Visual organizing aids, such as calendars and notebooks to structure daily activities;
- Positive behavioral supports – extra attention for the Student’s achievements and efforts;

See J-4:65-66, 69.

75. In reading, the evaluators made the following recommendations:

- A whole-word approach to reading (which is more visual) rather than a phonetic approach (which is more auditory), and the use of “language experience” techniques, which emphasize the relationship between reading tasks and a child’s daily experiences;
- Adapt reading comprehension curriculum to emphasize reading for meaning, understanding context, and defining critical vocabulary;
- Emphasize and enrich word meaning, e.g. teach “fruit” in different ways to experience and interact with it;
- Provide integrated learning experiences that include action, experiences, printed words and written assignments;
- Provide auditory discrimination training, e.g., bat/pat, sad/sap, bet/bat, bell/ball; and
- Use games where the students listen to questions and execute the instructions;

See J-4:66-67.

76. In spelling and written output, the evaluators made the following recommendations:

- Emphasize multiple-choice and the use of pictures as clues;
- Provide constant repetition of spelling, using lists with similar spelling patterns;

- Emphasize writing from dictation; and
- Provide multi-sensory continual exposure to correctly spelled words, so that the Student hears, says, sees, and then writes the words in a sentence.

See J-4:67.

77. In math, the evaluators recommended that when instructions are given orally, the Student be shown, as well as told, what to do. J-4:67.

78. In social behavior and functional communication, the evaluators made the following recommendations:

- Systematically teach clear, functional phrases the Student can use to make requests for help, attention, access to materials, or a break;
- Provide clear expectations around social interactions and rehearse them;
- Support the Student when working with peers in the areas of on-topic responses, asking questions and making comments, and sharing materials; and
- Provide social skills groups designed to build friendships, share and expand ideas, and resolve conflicts.

See J-4:67-68.

79. In the area of occupational therapy, the evaluators recommended weekly, individual occupational therapy to work on graphomotor automaticity, sensory regulation, and the impact of the Student's sensorimotor challenges on activities of daily living. J-4:68.

80. In the area of speech-language therapy, the evaluators recommended:

- Intensive individual therapy;
- Use of an augmentative communications system, depending on her progress with individual therapy;
- Consistency across all settings, with the Student's paraeducator attending SLP sessions to gain information on how to support the Student's language goals throughout the day;

See J-4:68-69.

81. The evaluators recommended as a future consideration counseling to address possible emerging symptoms of anxiety. They stated that play or art therapy would be preferable to talk therapy for the Student. J-4:69.

82. Concerning environmental supports, the evaluators concluded as follows:

Given [the Student's] significant communication challenges, we are in favor of the use of environmental supports, including paraeducator support when needed, to provide support for social interaction, transitions, and a wide range of communication needs. We also **very strongly** recommend that [the Student's]

team put in place a range of environmental supports (e.g., visual supports, **augmentative communication**, etc.) so that [the Student] can increase her independence by relying on these environmental and structural supports, and person-dependent support can be reduced.

J-4:69 (bold in original).

83. The Brooks Powers report was issued in the third week of May 2017, and the parties were not available to meet to discuss it before the end of the school year. The Parent wanted to meet over the summer, but school staff were not available then. D-25:13, 17; D-25:26. The meeting was held on August 28, 2017, with Dr. Brooks and someone else from Brooks Powers participating. D-3:26-31.

84. Over the summer, the Student's primary care provider, on advice from the private SLP, prescribed an augmentative communication device. The family obtained the device, called a Quick Talker. It is an iPad loaded with the "CoughDrop" application that allows the creation of language boards with words and pictures. The case that holds the iPad has a large handle. P-9:17-31; D-3:28.

85. At the August 28, 2017 meeting, in addition to the recommendations in the IEE report, Dr. Brooks discussed the need to support the Student with external white boards and sticky notes, due to her poor working memory. They discussed the use of a Picture Exchange Communication System (PECS) that would allow her to manipulate words into statements and questions, adding words to see how meaning changes. D-3:28. They also discussed the augmentative communication device the family had obtained over the summer and the "CoughDrop" application. Dr. Brooks emphasized her preference for technical support, such as is available on an iPad, over personal support, which can lead to person-dependence. Dr. Brooks shared her opinion that the device had the potential to really help the Student. She suggested the teacher institute rules around its use, and that the Student practice using the device in front of peers during social skills group. Dr. Brooks also emphasized the importance of visual aids, not only to assist comprehension, but because they give the Student psychological confidence that boosts her performance. D-3:28-29. After the meeting was over, the Parent emailed school staff more information about the CoughDrop application. D-23:5; D-24:2. The Parent later informed staff that the Student had switched to using a PECS application on her AAC instead of CoughDrop. D-3:2.

SLP Independent Educational Evaluation – Fall 2017

86. On September 6, 2017, the Student's private SLP, Kendre Howland,¹³ issued a report on an IEE she conducted. J-4:1-28. Ms. Howland has treated the Student since July 2017.

¹³ Kendre Howland received her bachelor's degree in speech and hearing sciences from the University of Washington in 2008. She worked as a speech-language pathology assistant and then as a speech-language pathologist for a total of seven years, most of them in the Orting School District. In 2015, Ms. Howland received a master's degree in speech-language pathology from Idaho State University. Thereafter

Testimony of Howland. Ms. Howland made the following observations about the Student's behavior during assessments:

Her attention and participation appeared to be impacted by her perceived difficulty of each task. She was observed to engage more willingly and for longer periods of time during test items targeting concepts she was familiar or comfortable with. Conversely, [the Student] was observed to exhibit more avoidance behaviors and required more frequent redirection to complete tasks targeting linguistic concepts that were more difficult for her.

...
When presented with a difficult task, [the Student] would often respond with a comment or complaint of not feeling well, followed by several off topic responses, and physical avoidance behaviors on occasion (e.g. walking away, using the bathroom, playing with clothing, etc.). It was difficult to regain her attention at times; however, when visual aids were introduced [the Student] was much more willing to participate and engage, and often achieved a much higher level of success on tasks where she had previously struggled.

J-4:1, 8. Ms. Howland noted she had seen the same behaviors during weekly therapy sessions.
Id.

87. Ms. Howland administered the Comprehensive Assessment of Spoken Language – 2 (CASL-2). The Student's overall language score was in the 1st percentile. Her receptive language index was at the 1st percentile, and her expressive language index at the 0.1 percentile. Scores on other indices were as follows: lexical/semantic index - 3rd percentile; syntactic index - 1st percentile; supralinguistic index – 2nd percentile. Ms. Howland found on the non-literal language subtest that the Student was unable to answer even the simplest questions. She does not recognize the need to interpret language beyond literal words. As she gets older, children use more non-literal terms, which is increasing her receptive language and social problems.
Testimony of Howland.

88. The evaluation included a diagnosis of mixed receptive-expressive language disorder. Concerning technology, the evaluation report stated:

The use of assistive technology is also recommended in order to facilitate communication development, vocabulary growth, and reading comprehension across all settings.

J-4:9. In addition to endorsing many of the environmental recommendations from the Brooks Powers report, Ms. Howland added the following:

- Reduce noise;

she was employed as an SLP at A Step Ahead in Pierce County, and more recently at Pediatric Occupational Therapy Services, LLC. P-17:10-11; Testimony of Howland.

- Provide quiet space for breaks when anxious, but not for work avoidance;
- Provide visual supports that are consistent across all settings:
- Written instructions;
- Visual schedules;
- Visual cues for transitions;
- Picture cards;
- Token systems;
- First-then boards;
- Verbal warnings and visual prompts to prepare the Student for transitions;
- Pre-teaching skills and concepts;
- Establish eye contact and joint attention before attempting to communicate;
- Speak slowly and clearly;
- Use short, concise sentences, especially when giving instructions;
- Put verbal emphasis on key words in a phrase, to increase comprehension;
- Check frequently for understanding by having the Student repeat verbal instructions and information.

J-4:10-12.

89. Ms. Howland's recommendations in the areas of reading and functional communication/social behavior endorsed those provided in the Brooks Powers evaluation. J-4:12-13.

90. Regarding speech-language recommendations, Ms. Howland advised that SLP therapy be delivered in the Student's classroom, rather than on a pull-out basis, to facilitate functional language acquisition and to support her during her most cognitively taxing academic activities. J-4:13. One of the salient aspects of Ms. Howland's recommendations focused on the importance of the Student's augmentative and alternative communication (AAC) device. Ms. Howland wrote:

Assistive technology will be playing a large role in [the Student's] communication throughout the upcoming year. [The Student] is currently using an Augmentative and Alternative Communication system to facilitate her understanding and use of various aspects of language (i.e. an iPad converted into a dedicated communication device – currently running the PECS and Cough Drop apps). Her device serves several purposes including facilitating communication with others, repairing communication breakdowns, and providing visual support to assist in learning various aspects of language development (e.g. comprehension and production of appropriate grammatical structures, proper word order, how sentence construction impacts meaning, etc.). [The Student's] device can also be used to facilitate reading comprehension [sic] and literacy skills, among many other things. It is recommended that [the Student's] communication device be actively incorporated into [the Student's] IEP and treated as an instrumental tool in furthering her education.

J-4:13. Ms. Howland explained that the Student does not use the PECS program on her AAC device as PECS is traditionally used. She uses it as a sentence-building program. She physically

drags a picture down to a sentence strip to build the sentences, and hits play. She then hears an appropriate sentence that she has created. This allows her to monitor her own words, as she is unable to do on her own. She simply does not recognize that her sentences are jumbled and grammatically incorrect. In addition to the AAC, Ms. Howland also recommends the use of visual support throughout the school for the Student, even in the lunchroom. Testimony of Howland.

91. The communication and social skills annual goals Ms. Howland recommended are summarized as follows:

- Receptive – From a field of 4 objects or pictures, select the one being spoken about.
- Expressive – When presented with objects, label them and describe 2 – 3 characteristics of them.
- Vocabulary – Compare and contrast visual stimuli – describe how they are similar or different.
- Vocabulary – Define words from the state common core curriculum, and use them in a sentence when given visual or verbal context clues.
- Comprehension & Expression – Respond to “wh” questions with and without visual or contextual clues, working toward responding in full sentences.
- Story Sequencing & Retell – Use story boarding or other strategies to identify 3 – 5 key elements of a story, then sequence and re-tell it.
- Direction Following – Follow 2 – 3 step complex directions.
- Inference & Meaning From Context – Given a verbal short story or scenario, make inferences, identify meaning, summarize main idea, make predictions, and draw logical conclusions.
- Social Skills & Pragmatic Communication – Gain attention, wait, take turns, share information, attend to others, maintain a topic, and make appropriate comments.
- Logic & Problem Solving – Identify the presence of a problem, whether big or little, determine an appropriate reaction, and implement it.
- Syntax & Grammar – Determine if a sentence is grammatically correct and how to fix it. Use iPad or other visual aid.
- Grammar & Sentence Expression – Formulate correct 3 – 5 word sentences using iPad or visual aids.
- Grammar & Sentence Expression – Use copula and auxiliary verbs in grammatically correct 3 – 5 words sentences.
- Grammar & Sentence Expression – Use regular and irregular past tense verbs in such sentences.
- Grammar & Sentence Expression – Use regular and irregular plurals in such sentences.
- Grammar & Sentence Expression – Use possessives and progressive verb forms in such sentences.

J-4:20-22. These goals each contain baseline and target measurements. They were omitted here for the sake of brevity.

92. Ms. Howland’s recommendations were reviewed at an IEP meeting on September 11, 2017.

Second Grade 2017-2018

93. The Parent was dismayed that the Student's IEP had not been revised based on the IEEs in time for the start of the school year. The Parent complained that the August 28, 2017 meeting to review the Brooks Powers report had been too short due to staff having insufficient time. The Parent wrote all of this to the District's Executive Director of Special Services, Karen Finigan. P-14:14. Ms. Finigan replied citing the Parent's scheduling issues as having delayed meetings. The Parent disputed this, but the parties agreed to an IEP meeting on September 11, 2017. The Parent stressed the importance of focusing on the Student's receptive communication needs, the greatest barrier to her education. D-25:25-29.

94. In the meantime, on the first day of school, the Parent sent the Student's teacher a detailed and useful email about the Student's AAC device:

Programming: Currently, it's loaded with terms she mostly knows. [The Student] requires all day visual support to thrive in a language-based academic environment. This device is her 'visual translator" [sic] for new concepts. It will be privital [sic] in supporting her significant auditory processing challenges with the repetition required to understand new terms/concepts. It also supports the word retrieval difficulties she faces. Without updated and relevant content, she will struggle. I need her daily/weekly calendar and lesson plans (general education as well as STEM/Science/Technology) preceeding [sic] each week. I will use that information to program her AAC for effective use.

Etiquette: This will be elaborated in the revised IEP. In the meantime, [the Student] may need reminding that:

- she is to repeat the words generated by the device. Otherwise, she may use it in lieu of articulating speech.
- appropriate times for usage (not during instruction time, etc).
- not take it to recess, P.E. or assemblies where it can be accidentally left behind[.]
- put it to "sleep" when not in use.
- device comes home at the end of each day.

These are just preliminary concepts to keep this important tool relevant [sic] from day one of school. Thanks so much. Please don't hesitate to contact me for clarification.

P-15:5.

95. In standardized MAP testing in the fall of second grade, the Student remained at the 1st percentile in math, just as she was throughout the previous year. In reading on the MAP, her score dropped slightly from the 4th percentile at the end of the prior year to the 3rd percentile in the fall of second grade. D-4:15. On the AIMS oral reading fluency test, the standard for the Student's grade was 63 words per minute; the Student read 16 words per minute. J-5:4. On the

AIMS test of math calculation, the Student scored in the 26th to 49th percentile range. J-5:4. (Math calculation is not language-based.)

96. Second grade was a very difficult year for the Student. She had a prolonged period of school refusal in the fall, and again in the spring. The Parent withdrew her from the District and began home-schooling her in March 2018.¹⁴

97. The Student started the school year excited to return and loving her new teacher. P-15:4-5. But early in the year, she reported distress about classwork, stating: "It's too fast," "I don't understand," and stating that she "hates" math. P-15:17; D-12:2. She also felt criticized and bullied by classmates. P-15:16; D-22:6-7; D-23:2.

98. In late September 2017, due to concerns about bullying on the playground, the Parent requested that the Student be given alternative activities instead of recess. D-6:26. Three days later, on October 4, 2017, the Parent emailed that the Student would not be attending school because she does not have access to FAPE. D-13:5. The Student did not attend school for more than two months, from October 4 until she returned to school on December 11, 2017. Testimony of Scheerer. The Parent continued sending daily emails similar to the one described above, but adding that the lack of access to FAPE "created significant barriers and negatively impacted [the Student's] mental health." D-13:6 -14. During this period (on October 10, 2017), the Parent filed the due process hearing request in the present case.

99. In response to the Parent's daily emails, the school did not propose an FBA to understand the Student's school refusal, nor did it propose a mental health assessment for the Student. Testimony of Finigan; Testimony of Losinski. The school followed truancy protocols, starting with a truancy letter and meeting with the Parent, and proceeding to a truancy petition filed in court in early December 2017. P-16:9; P-15:13. In response to the truancy petition, the Parent returned the Student to school on December 11, 2018. The Student continued to ask to stay home every day, and it created a lot of conflict in their relationship to get her to school. By the time of the due process hearing in spring 2018, the Parent felt they had passed that threshold and the Student now goes to school, but she feels as though the Parent betrayed her. Testimony of Parent. Evidence that the Student continued to suffer high levels of school anxiety even through the time of the due process hearing is seen in the testimony of Ms. Howland, the private SLP. She sees the Student twice a week – one session in the morning before school, and another session in the afternoon after school (on a different day of the week). The Student exhibits "significant anxiety" toward the end of the morning session, when she was about to be taken to school. By contrast, in the afternoon session she shows no such anxiety. "[S]he is a totally different kid." RP 216 (Howland).

100. There were a number of IEP meetings and amendments to documents during the Student's second grade year. They are discussed below.

¹⁴ The withdrawal from school occurred after the due process hearing had ended. It was reported by the Parent in her Closing Brief, as the reason for her revised list of requested remedies. See Parent's Closing Brief at p. 5.

September 11, 2017 IEP Meeting

101. At this meeting, the team agreed to Ms. Howland's recommendation that SLP services be delivered in the general education classroom, at least for most of those services. They agreed to some revision of the Student's communication goals based on Ms. Howland's recommendations. The District's SLP agreed that the Student's goal of saying comments and questions would align nicely with her AAC device. The District's AT lead, Connie Haines (who is also an SLP) discussed using the CoughDrop application on the Student's school-provided computer, a Chromebook, and obtaining a touch screen for that computer so she could use CoughDrop (this was obtained). A consent form for an AT evaluation was presented to and signed by the Parent at the meeting. This occurred more than eight months after the Parent had inquired about AT for the Student at the January 4, 2017 IEP meeting. D-3:20; Testimony of Holmes.

102. The team did not have time to discuss goals in reading, writing, and math, or to discuss accommodations. They therefore agreed to meet again on September 20th. D-3:34-35.

September 20, 2017 IEP Meeting and Amendment

103. The invitation to the September 20, 2017 IEP meeting stated the meeting had only one purpose: for the "IEP team to review the recommendations from the IEE." Not checked off among the list of possible purposes was "Review Current IEP." J-2:1. However, at the meeting, the District members of the team wanted to review and revise the Student's IEP. The Parent complained that the team was supposed to be reviewing the IEE. She was the only one focused on this at the meeting. She was dismayed at how little from the IEE was reflected in the IEP amendments. Testimony of Parent.

104. At this meeting, the Parent shared the same list of complaints that she had shared at the January 2017 IEP meeting. J-2:5, 29. That list is summarized above, in the discussion of that meeting. The Student's annual goals were revised as follows in the September 20, 2017 IEP.

105. *Communication goals.* Of the four goals from the January 2017 IEP, one was unchanged, two had changes in target percentages, and the what-does-not-belong-and-why goal was dropped. In its place, a goal on time concepts was added, because the Student did not understand the concepts of yesterday, today, and tomorrow. J-2:8. The new goal was to identify these three concepts and use them in sentences, improving this ability from 0% to 80%. J-2:10.

106. *Reading goals.* The Student kept the same two goals from the January 2017 IEP, but the percentages were changed. The goal of retelling a story using picture cards had no baseline measurement in the January 2017 IEP, and had a target of 75%. The Student had exceeded that goal by June 2017. However, the same goal in the September 2017 IEP now listed 75% as both her baseline and her target percentage. J-2:10. The sight word reading goal was significantly increased in difficulty from the January 2017 IEP to reflect the Student's good progress on this goal. Her new baseline was reading 75 out of 100 sight words, and her new target was to read 150 out of 200 sight words. J-2:11.

107. *Written language goals.* The Student kept the same two goals from the January 2017 IEP, but the target was made more difficult in one of them. There was no change in the goal of

organizing a string of written words into a sentence: previously the goal had no baseline measurement and had a target of 100% (2 out of 2). Now the goal had a baseline of 0% (0 out of 1) and the same target of 100% (2 out of 2). J-2:11. On the goal of writing three related words to describe a picture, the goal was made more difficult based on the good progress the Student had made on it. Her new baseline was 100% at writing three nouns; the new target was 66% at writing three adjectives to describe a picture. *Id.*

108. *Math goals.* The goal from the January 2017 IEP of identifying and stating numbers 0 - 100 was dropped because it had been met by June 2017. The other two goals from the January 2017 IEP were carried forward unchanged. The goal of comparing numbers 0 - 100 using symbols (>, <, and =) was carried forward unchanged. J-2:11-12. The goal of adding numbers up to a sum of 10 was also carried forward unchanged, despite the fact the Student had already met and exceeded that goal by June 2017. J-2:12.

109. *Social skills goals.* The goal from the January 2017 IEP of identifying big vs. little problems and responding to them appropriately was dropped because it had been met by June 2017. The goal of asking questions to sustain conversations remained unchanged. The goal of predicting peoples' feelings from their behavior and communicating those feelings was dropped because it had been met by June 2017. A new goal was added: in a social situation where the Student needs to advocate for herself, she will state what she needs or wants, improving from an unstated baseline to doing this in 50% of opportunities. J-2:10.

110. *Placement and paraeducator.* The IEP team adopted Ms. Howland's recommendation of providing SLP therapy in the general education class. Two of her three weekly SLP sessions would be in the general education class, and one would be a pull-out session. As a result of this change, the percentage of time the Student spent in the general education setting increased from 71% to 75%. J-2:18, 21-22. Whereas previously the SLPA had delivered the great majority of the Student's therapy,¹⁵ the SLP would now deliver two of the Student's three sessions: one in the classroom and one pull-out. *Id.*; D-6:4-16; Testimony of Braunschweig.

111. For emotional support, the Parent requested a 1:1 paraeducator be reinstated (this had been provided from February to May 2017). The IEP team disagreed. Instead, emotional support would be provided via a check-in, check-out system using a five-point scale to help identify emotions. Data would be checked to determine whether the Student needs a paraeducator in the future. J-2:21-22.

112. Other than the Parent, all of the Parent's witnesses and District's witnesses who testified about the matter were unanimous that a 1:1 paraeducator should be avoided in favor of environmental and other interventions. This was due to the risk of the Student becoming dependent on a paraeducator for communication and other needs. Testimony of Brooks; Testimony of Braunschweig; Testimony of Howland; Testimony of Scheerer.

¹⁵ Ms. Braunschweig did not know whether the SLPA continued to deliver most of the Student's therapy during the period Ms. Braunschweig was on maternity leave, February through early May, 2017. Testimony of Braunschweig.

113. *Accommodations and modifications.* These were basically the same as in the prior IEP. One modification was added: the Student would check in and check out at the beginning and end of each day in the special education setting. J-2:13-15.

District's Response to AAC Device

114. In late September, after the IEP meeting discussed above, Ms. Haines (the AT lead), met with the Student twice to assess her AT needs. Ms. Haines reported the Student did a great job of managing the device, launching the CoughDrop application, and navigating some icons to communicate. D-23:13. Ms. Haines echoed the Parent's statements that the Student is a very "techy" girl and interested in showing others the functions of her computer, more playfully than functionally at that point. Testimony of Haines; Testimony of Parent; P-14:15.

115. Shortly after her two meetings with Ms. Haines, the Student was absent from school for more than two months, returning on December 11, 2017. Yet it was not until sometime in March 2018 that a meeting was scheduled at which Ms. Haines would share her AT evaluation. (This meeting had not yet occurred by the time the due process hearing concluded on March 1, 2018.) Testimony of Haines. The March 2018 meeting would be held a year and two months after the Parent first requested assistive technology (on January 4, 2017), and more than 100 school days after the District requested and received written consent from the Parent for an AT evaluation (on September 11, 2017). See J-1:3. Subtracting the 42 school days the Student did not attend school during this period, the AT evaluation would not be completed until more than 58 school days after the District requested and received consent for it. *Id.*

116. At the due process hearing, Ms. Haines shared the conclusions she would be delivering to the team at their planned meeting later in March 2018. Ms. Haines will recommend only lower-tech visual supports. She testified as follows: An AAC device is not necessary for expressive communication, because the Student's oral communications are "successful." Successful means that although they may not be perfectly structured, the Student is able to get her meaning across. An AAC device is not necessary for receptive communication if a student is successful at following directions and understanding material, Ms. Haines testified. Ms. Haines did not note that on her IEP goal of following two-step directions, the Student had significantly regressed from January 2015 to January 2016, then made zero progress from that point of regression from January 2016 to January 2017. J-2:54, 57; J-3:19-20. Thereafter the direction-following goal was abandoned. Nothing targeting the same skill appeared in any of the Student's IEPs thereafter. See J-2:34-37; J-2:9-12; D-1:19-23. There is no comment in any IEP or evaluation document, or testimony from any witness, indicating the Student improved at following directions, which is a receptive language skill crucial for classroom success. Ms. Haines relied on her two-hour classroom observation of the Student, and on observations by Melanie Krook, District Behavior Specialist (discussed below), to conclude the Student was "successful" in expressive and receptive communication in class and therefore did not need an AAC device. Testimony of Haines. When asked if there was any downside to the Student using an AAC device, Ms. Haines did not cite any. She only stated the device would be more useful during therapy, to work with the Student on language sequencing and order, and the Student would be unlikely to use it as her first go-to in live conversation. Testimony of Haines.

117. Ms. Haines did recommend a speech-to-text software program that was very successful with the Student, called Snap and Read. It reads text aloud, highlighting words as they are read. It is appropriate for children as young as kindergarten. *Id.*

118. The District's SLP, Sarah Braunschweig, has worked with the Student, and/or supervised her assistant working with the Student, since the Student was in kindergarten (except for a maternity leave in February through early May 2017). Testimony of Braunschweig. Ms. Braunschweig testified the Student did not qualify to be referred for an assistive technology evaluation in kindergarten because she was able to access her education through oral communication and able to participate in structured activities. "We look at assistive technology when her communication skills are impacting her education." RP I-165 and II-24-25 (Braunschweig). Yet, at that time, Ms. Braunschweig wrote that despite making progress on communication goals, "[i]n conversational speech and unstructured activities, [the Student] speaks of her self [sic] in third person, *speaks in unintelligible phrases and uses no structure.*" J-2:55 (italics added). At that time, all of the Student's SDI in communication was being delivered by Ms. Braunschweig's assistant, who has an associate's degree and 7 or 8 years' experience. Testimony of Braunschweig.

119. Ms. Braunschweig disagrees with Ms. Howland (the private SLP who conducted an IEE) concerning whether the Student should utilize an AAC device. Ms. Braunschweig believes the visual supports and accommodations the District provides to the Student are sufficient, so she does not need an AAC. Testimony of Braunschweig.

October 31, 2017 Assessment Revision

120. No District witness or exhibit explained why IEP revisions were adopted on September 20th, ahead of the assessment revision of October 31st. This is especially odd in light of the fact that the invitation to the September 20th meeting stated its sole purpose was to review the IEE results. As mentioned above, the Parent complained about this reversal of procedure at the time.

121. In the assessment revision report, the Student's general education teacher stated the Student got along well with peers, was always respectful, and seemed excited to be at school. The teacher noted the Student struggled to keep up in class and to follow directions. J-5:4.

122. The assessment revision report summarized the IEEs done by the Brooks Powers Group and Ms. Howland, the SLP. J-5:5-10. It also summarized Ms. Haines's work thus far toward an AT evaluation. Ms. Haines discussed various software programs she was testing with the Student. She also discussed the possible use of the classroom soundfield amplification system to help with the Student's auditory focus and comprehension. J-5:10-11. Every classroom at the school is equipped with a soundfield system. Testimony of Haines. Concerning the Student's AAC device, Ms. Haines reported she is primarily using it at home and in private SLP sessions. She stated the Student was reluctant to use her AAC device at school in front of peers. Ms. Haines suggested a collaborative class lesson on differences, and specifically on acceptance of the Student's communication device. J-5:11.

123. During the meeting, the Parent brought up the TEACCH method and stated her belief it would be helpful for the Student. D-3:7. TEACCH is a program designed for students on the

autism spectrum and others who have communication challenges. It is taught to educators in special training sessions. TEACCH offers systematic ways to operate so that students know the routines and are more comfortable in the classroom. It utilizes such tools as checklists, visual directions, visual schedules, work baskets, and indicators of how to begin and end an activity. Physically, the classroom has work stations and organized desks or work spaces for the students. Testimony of Brooks; Testimony of Krook; Testimony of Finigan. Dr. Brooks believes TEACCH is appropriate for the Student, but there was no testimony (from her or any other witness) that it is the only methodology that is appropriate for the Student. Testimony of Brooks. Since TEACCH was developed in the 1960s, additional methodologies have become available that, in combination, can be more effective to meet a student's individual needs. Testimony of Krook.

124. TEACCH is a form of structured teaching, which is a broader umbrella term and not a specific program. Structured teaching provides predictability and routine. It is utilized in classrooms in general, not only with students with disabilities. Providing predictability and routines helps students concentrate on learning the curriculum instead of learning how to do school. Testimony of Brooks; Testimony of Krook; Testimony of Finigan.

125. A District OT evaluation was conducted for the October 2017 assessment revision. The OT reviewed the testing done by Brooks Powers and conducted a classroom observation. The Student was able to write only one sentence in a time period where her peers wrote multiple sentences. She was inconsistent in letter sizes and placement. The teacher reported to the OT that the Student does not keep up with peers in written work, is disorganized, and falls behind, but the teacher did not know if this was due to communication difficulties or fine motor problems. The Parent reported to the OT that the Student often complains about discomfort and fatigue in her hand when writing. The OT recommended occupational therapy as a related service to address fine motor and sensory regulation concerns. J-5:11-12

November and December 2017 – Central Auditory Processing Evaluation and SLP Recommendations based on that Evaluation

126. The Student's auditory processing ability was assessed by an audiologist in November 2017 at the Evergreen Speech and Hearing Clinic. The Student was found to have central auditory processing disorder (CAPD) in the form of an auditory integration deficit (right ear advantage, left ear deficit). P-9:6-10.

127. District witnesses testified that the audiologist's report gave no clear diagnosis because it stated testing was "consistent with" CAPD, and their attempts to reach the audiologist for clarification were unsuccessful. Testimony of Haines; Testimony of Finigan. However, there was clearly a diagnosis. The audiologist referred the Student for follow-up with an SLP at the same clinic, Evergreen Speech and Hearing, so the SLP could make recommendations on dealing with CAPD. The SLP's report of December 26, 2017 clearly states there has been a diagnosis: it says the Student has a "positive history" of CAPD, recommends certain interventions "[d]ue to the presence" of CAPD, and states the Student "was diagnosed with" CAPD. P-9:11, 13.

128. The SLP reviewed not only the CAPD evaluation, but other evaluations of the Student. She recommended twice weekly therapy for three to six months, depending on the Student's rate of progress. She recommended a computer program called Fast ForWord to target auditory

processing skills, language and literacy, or alternatively a computer program called Brain Pro. The SLP also recommended Basic Listening Training, to teach the Student to filter out background noise while attending to a language task. Other home and clinic-based strategies were recommended as well. P-9:11-12.

129. The SLP also made recommendations based on the Student's mixed receptive and expressive language disorder. She recommended Lindamood Bell's Visualizing and Verbalizing program, and intensive blocks of therapy such as those offered through Lindamood Bell. For reading curricula, the SLP recommended Wired for Reading or Orton-Gillingham approaches. P-9:12.

130. The SLP recommended certain environmental accommodations. Some were already in the Student's IEP. Others were not, including: reducing visual clutter in her visual schedules; seating with the Student's right ear toward the teacher, due to her auditory processing advantage in the right ear; use of an FM system, preferably a personal system (not just a soundfield system), due to the Student's significant challenges with ignoring competing noise that were identified by the audiologist; and paraeducator support in the learning environment. *Id.*¹⁶

December 2017 - Parent's Perspective

131. In December 2017, the Parent wrote to the District that the Student was being bullied and was not able to advocate for herself when this happened. The Parent again requested a paraeducator due to this situation. The Student told her that in STEM class she was unable to understand the math or what was expected in her. The Parent reported that at home she saw incomplete and unattempted assignments, uncharacteristic behaviors, and escalating complaints from the Student. P-14:16. The Parent also shared that they were now using PECS at home on the Student's AAC device more than CoughDrop. D-3:2; Testimony of Finigan.

December 2017 and January 2018 IEP Meetings

132. At an IEP meeting on December 11, 2017, the Student's general education teacher left to attend class approximately 1.5 hours into the meeting, which continued for another half-hour. Prior to her leaving, the team discussed topics on which this teacher would have input. The Parent verbally consented to the teacher leaving, but her written consent was not obtained. This teacher missed signing the attendance page because it was circulated at the end of the meeting. Her signature was later obtained on a separate attendance page. Testimony of Parent; Testimony of Finigan; P-16:2.

133. IEP meetings in December 2017 and January 2018 resulted in an IEP being adopted on January 8, 2018. See P-14:18-23, 35-38; P-16:12-15; D-1. Neither the appropriateness nor the implementation of the January 2018 IEP are at issue in this proceeding. During the hearing the

¹⁶ It does not unduly abridge the District's opportunity to confront witnesses and rebut evidence to base findings of fact on the two reports from Evergreen Speech and Hearing Clinic. RCW 34.05.461(4). The District received these reports long before the due process hearing and could have sought discovery from the evaluators and/or called them as witnesses at the hearing.

ALJ ruled that the January 2018 IEP would be admitted because, although it is not relevant to adjudicating violations of the IDEA, its provisions might be relevant to prospective remedies the Parent has requested.

134. One aspect of the January 2018 IEP is relevant to a prospective remedy. This IEP added OT services for the first time: 30 minutes per week in special education, and 10 minutes per week in general education. However, the OT goals addressed only handwriting, not sensory regulation. D-1:23, 29. This was despite the Student being much more heavily impacted in the sensory regulation area than in fine motor skills, as seen in the private OT evaluation of July 2016. It was also despite the fact that the District OT recommended the Student receive services in both fine motor skills and sensory regulation. J-5:12.

January 2018 - Behavior Specialist Report

135. District Behavior Specialist Melanie (Summer) Krook¹⁷ conducted classroom observations of the Student and issued a report on her observations. D-8. Those observations occurred after, and played no part in, the development of any District evaluation or IEP at issue in this case. However, Ms. Krook's observations are relevant to other issues in the case: whether the September 2017 IEP (which governed the Student's education at the time of Ms. Krook's observations) was appropriate (see Issue 1.a, above); and whether the District failed to implement the accommodations and modifications of the September 2017 IEP (see Issue 1.b, above). Ms. Krook's report and testimony may also be relevant to crafting a prospective remedy for the Parent.

136. Ms. Krook observed in the Student's general education classroom, Technology class, STEM class, and during unstructured activities. She saw the use of visual schedules, visual seating charts, and instruction supported by visuals on easels and overhead projectors. She saw the use of manipulatives and pictures. In each environment, the teacher repeated instructions for the Student one-on-one and checked for understanding. In each environment, the Student participated orally in class, raising her hand, giving oral answers, and receiving verbal and non-verbal praise for doing so. In Technology class, she was allowed extra time to respond when called on. The teacher also broke the assignment into steps and demonstrated visually how to complete each step. The STEM teacher stayed close to the Student after repeating the instructions one-on-one for her, in case she needed assistance. When the Student raised her hand with a question, the teacher modeled what was expected using hands-on instruction. The teacher then praised the Student when she duplicated the skill. D-8; Testimony of Krook.

137. Ms. Krook did not testify as to whether the teachers in these classes knew she was there to observe instruction of the Student. If they did know this, it may have influenced them to increase their interactions with the Student. Because this fact is unknown, the weight given Ms. Krook's observations and conclusions is somewhat diminished.

¹⁷ Melanie Krook received a bachelor's degree in applied psychology, and a master's degree in leadership. She is in her second year of a doctoral program in leadership with an emphasis in special education. All of her degrees have been earned at City University. Ms. Krook also holds a certificate in social services mental health. She has been employed as a behavior specialist in the Clover Park School District and more recently in the Sumner School District. Testimony of Krook.

138. Ms. Krook observed some situations that were not optimal and she suggested changes. First, the Student struggled with unexpected transitions, becoming confused, especially when she had not completed the activity she was working on. She did better when she knew a transition was approaching. Ms. Krook therefore recommended the Student be given warnings that a transition is approaching. Second, the Student asked for a break at one point and went to her learning specialist (case manager) and danced to a video for her break. Ms. Krook recommended that a timer be used during breaks, because the Student appeared unsure of the expected length of the break, and also that the Student be given a designated re-entry activity. Third, in one class there was no visual seating chart and the Student appeared confused about where to sit. Ms. Krook recommended such seating charts in all the Student's classes. Finally, some classes did not have visual schedules, and the Student would benefit from this in all environments. She would also benefit from a copy of her visual schedule traveling with her in her notebook. *Id.*

Additional Facts Related to Requested Remedies

Shanna Alvarez, PhD

139. The Parent requests an order that the District contract with Shanna Alvarez, PhD, of the Brooks Powers Group, to provide certain services for the Student and District staff who work with the Student. Dr. Alvarez did not testify. Her curriculum vitae was not offered in evidence. Dr. Brooks of the Brooks Powers Group provided no testimony concerning Dr. Alvarez's qualifications. There was no evidence that Dr. Alvarez is willing or available to provide the services requested by the Parent, nor what Dr. Alvarez or the Brooks Powers Group would charge for those services.

Donald Eismann Elementary School (DEE)

140. The Parent requests an order transferring the Student to DEE, a different District elementary school than the Student presently attends. The Student attended preschool at DEE. The Parent is familiar with DEE's principal. Most of the family's friends attend or work there. Testimony of Parent.

141. No witness from DEE testified. The Parent has not observed at DEE, nor at the Student's current elementary school. The Parent telephoned DEE and was told the school was full. She did not go through the application procedure to formally request a transfer to DEE. Testimony of Parent.

CONCLUSIONS OF LAW

The IDEA

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and

the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

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

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

Rowley, 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.

3. 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 . . .

Andrew F. v. Douglas County Sch. Dist. RE-1, ___ U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Andrew 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).

4. 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).

Were Student's IEPs in January 2016, January 2017, and September 2017 inappropriate as lacking the supports and services listed below?

Environmental Supports in the Form of a Structured Teaching Approach (TEACCH)

5. The primary responsibility for choosing the educational method most suitable to a student's needs remains with the district in cooperation with the parents. *See Rowley*, 458 U.S. at 207. IEPs are not required to list a specific methodology unless that methodology is necessary to enable the student to receive FAPE. *See J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 952 (9th Cir. 2010); *Dept. of Educ., Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46540, 46665 (2006).

6. The Parent has not carried her burden of proof that the TEACCH methodology was necessary for the Student to receive FAPE. Dr. Brooks testified that TEACCH would be recommended for the Student, but not that it was necessary for her. Ms. Krook (the District Behavior Specialist) testified that newer methodologies have been developed since TEACCH, which used in combination, can be more effective to meet a student's individual needs. The Parent has therefore failed to prove that the Student's IEPs were deficient for not requiring the use of TEACCH.

7. Structured teaching is not a specific methodology, but is good pedagogy in any classroom, according to witnesses who testified about it. All witnesses agreed that environmental supports, especially visual ones, are key to the Student being able to comprehend language-based instruction and key to avoiding dependence on a 1:1 individual to explain language and help her communicate.

8. Beginning with the January 2017 IEP, the accommodations and modifications in the Student's IEPs were appropriate and provided the environmental supports she needed (with the exception of assistive technology, as discussed below). However, the January 2016 IEP contained only four accommodations and modifications and did not sufficiently provide the visual and other supports needed to address the Student's severe communication disorder and deficits in academic skills. The Parent has carried her burden of proof that the January 2016 IEP was inappropriate in that its accommodations and modifications did not provide sufficient environmental supports for the Student to receive a FAPE.

Consistent Supports Across All Settings

9. The accommodations and modifications of all three of the IEPs at issue here were designated for use in both the general education and the special education environments. If by the term "supports" the Parent means something other than the accommodations and modifications, she has failed to explain this. The Parent has therefore not carried her burden of proof that the Student's IEPs were inappropriate for not providing consistent supports across all settings.

Adult Support for Social Interactions, Transitions, and Other Communication Needs

10. If the term “adult support” in this issue means something other than a 1:1 paraeducator, the Parent has not explained this. The Parent has consistently requested a 1:1 paraeducator for the Student, and now asks the ALJ to order that this be included in the Student’s program.

11. As discussed in the Findings of Fact, all educational professionals who testified at the hearing were unanimous that a 1:1 paraeducator would be inappropriate for the Student, and she would be better served by environmental supports. Environmental supports increase her independence in social communication as well as academics. A paraeducator, on the other hand, would increase her dependence on someone else to support her receptive and expressive communication needs. For these reasons, the Parent has not carried her burden of proof on this issue.

Adequate Means to Address Student’s Expressive and Receptive Language Deficits

January 2016 IEP

12. One of the two communications goals of this IEP was inappropriate. The ALJ credits Ms. Howland’s testimony that the “what-does-not-belong-and-why” goal was both vague and not worth occupying half of the Student’s therapy time for a full year.

13. Both of the communication goals of this IEP targeted expressive language. The Student’s private SLP Ms. Guth, by contrast, targeted receptive language in three of the four goals she chose for the Student. Given the fundamental importance to the Student’s education of comprehending what is said in class, and the severity of her deficits in receptive language, the goals of the January 2016 IEP were inappropriate in that neither goal focused on receptive language.

14. Furthermore, standardized testing shows the Student made no progress in her language skills through September 2017: In August 2016, her standardized scores were at or below the 1st percentile. In September 2017, those standardized testing scores remained the same. The Student had made no progress. While the appropriateness of an IEP may not be judged primarily based on a retrospective assessment of progress made, such progress may be a secondary factor in judging the appropriateness of the IEP. *See Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). Regarding IEP goal progress, it is hard to tell: On one of the two goals, the progress reports contain no measurement of how close the Student came to the 80 - 90% target. The other goal, for which progress measurements were given, was the problematic “what-does-not-belong-and-why” goal.

15. For the reasons set forth above, and also due to the lack of appropriate assistive technology (addressed below), the Parent has established that the January 2016 IEP lacked adequate means to address the Student’s language deficits.

January 2017 IEP

16. All four communication goals of the January 2017 IEP targeted expressive language. The only one that focused (in part) on receptive language was the problematic “what-does-not-belong-and-why” goal. No baseline measurement was given on two of the four goals, so they were additionally inappropriate for that reason.

17. Seven months after this IEP was adopted (August 2017), the Student still remained at or below the 1st percentile on standardized testing in communications, *despite having met or exceeded all four of her IEP communication goals* by June 2017. This indicates the goals were inappropriate. First, they were too easy because they were met or exceeded by June 2017, only five months into the IEP’s 12-month term. Second, meeting or exceeding them did nothing to move the needle on the more objective measure of standardized testing in communication.

18. A symptom of the January 2017 IEP’s lack of adequate means to address the Student’s language needs is seen in the behavioral evaluation done in the spring of 2017. In the special education setting where she worked at her own level with a small group, the Student was rated in the average range on a wide array of behavioral indices, and in the at risk range on only one. By contrast, in her general education class, where she could neither comprehend the language used nor adequately perform on assignments, she was rated at risk in eight behavioral areas. District staff acknowledged that these different results may be explained by different behavioral responses to the two environments.

19. For the reasons set forth above, and because the IEP did not provide for appropriate assistive technology (addressed below), the Parent has established that the January 2017 IEP lacked adequate means to address the Student’s language deficits.

September 2017 IEP

20. By the time of the September 20, 2017 IEP meeting, both IEEs had been completed but the team had not yet conducted an assessment revision (also called a reevaluation) to consider the results of those IEEs. The September 20, 2017 IEP meeting was supposed to do that. The invitation to the meeting listed only one purpose: “IEP team meeting to review the recommendations from the IEE”. J-2:1. Not checked off among the list of possible purposes of meetings was “Review Current IEP.” *Id.*

21. Nevertheless, at the September 20, 2017 IEP meeting, the team reviewed and revised the Student’s IEP. This was done prior to the October 31, 2017 assessment revision meeting. School districts are required to notify parents, in advance of an IEP meeting, of “the *purpose*, time, and location of the meeting”. WAC 392-172A-03100(3)(a) (*italics added*); *see* 34 CFR §300.322. The invitation here did not do so. The Parent did not raise this procedural violation in her complaint and so no remedy will be awarded for it. However, amending the IEP before conducting an assessment revision to consider the large amount of new information in the IEEs significantly interfered with the Parent’s opportunity to participate in decision-making about the IEP. The Parent complained about the reversal of the required order of procedure at the time, to no avail.

22. Three of the four communication goals of the September 2017 IEP were inappropriate. They merely tweaked the percentage targets from the January 2017 goals, even though the Student had already reached 100% on those goals. The fourth goal was new: using the concepts of yesterday, today, and tomorrow correctly, improving from 0% to 80%. There is no information in the record on whether she made any progress on this goal. No witness criticized the goal, so it is found to be the only appropriate communication goal of this IEP.

23. Another indication that the IEP lacked adequate means to address the Student's language deficits is the school anxiety and refusal that the Student experienced. She began second grade excited about school and loving her new teacher. But by early October 2017, she was so averse to school that she refused to attend for more than two months. After returning to school in December 2017 under threat from a truancy petition, the Student continues to be strongly averse to attending. Getting her to school was a relationship-corroding daily struggle. School anxiety also shows strongly in the Student's sessions with her private SLP. She is "a totally different kid" in sessions where she has to go to school at the end of the session. RP 216 (Howland).

24. One additional fact should be noted concerning the Student's overall progress. During first and second grade, the Student's MAP scores in reading and math remained virtually unchanged: at the 1st percentile in math, and around the 3rd percentile in reading. This is despite the Student having average cognitive abilities when tested non-verbally. This lack of progress is an indication that her language deficits significantly held the Student back in academics. The special education she received did not enable her to begin to close the gap with her peers.

25. For the reasons set forth above, and because the IEP did not provide for appropriate assistive technology (addressed below), the Parent has established that the September 2017 IEP lacked adequate means to address the Student's language deficits.

Specific Teaching for Social and Communicative Behavior

January 2016 IEP

26. The Student made almost no progress on either of the social skills goals of her January 2016 IEP. On asking questions to extend conversation, her goal was to improve from 0% to 75% of opportunities. By June 2016 she had only reached 25%. By November 2016 no percentage measurement was given. On the goal of following two-step directions, she made zero progress. She remained all year at her baseline of following one-step directions. There is no evidence in the record that the team considered changing these goals, or the method of teaching them, in response to the year-long lack of progress.

27. The IDEA requires that school districts review IEPs periodically, but not less frequently than annually, "to determine whether the annual goals for the child are being achieved; and to revise[] the IEP as appropriate to address . . . any lack of expected progress toward the annual goals". 20 USC §1414(d)(4)(A)(ii)(I); see WAC 392-172A-03110(3); 34 CFR §300.324. Districts are not given a "pass" for a full year if there is a lack of expected progress. One year is the longest that may pass between IEP reviews; they are required more frequently in the face of a lack of expected goal progress.

28. The Parent's claim that the District did not provide "specific teaching" for social and communicative behavior does not fit neatly into a category of IDEA violations. It is found that the District failed to timely review and revise the Student's goals in this area despite it being clear she made no virtually progress on them. Whether the failure to make progress was due to inappropriate goals, ineffective teaching, or both, this should have been determined by the IEP team.

January 2017 IEP

29. As found above, the Student made significant progress on three of the four social skills goals in her January 2017 IEP. On the fourth goal, asking questions to sustain conversation, she met the 75% goal by March 2017, then slid back to her baseline of 50% by June 2017. Due to her initial progress, there was less reason to review a lack of expected progress on this goal toward the end of the school year. The goal was reconsidered in September 2017, and re-adopted in that IEP.

30. For these reasons, the Parent has not carried her burden of proof that there was a lack of effective teaching for social and communicative behavior under the January 2017 IEP.

September 2017 IEP

31. The Student was only in school for four non-consecutive months under the September 2017 IEP: the months of September and December through February. There are no IEP progress reports in the record covering those months. The January 8, 2018 IEP contains Present Levels of Educational Performance in social skills, but at that point the Student had returned to school for less than a month.

32. In testimony, there was no evidence concerning the teaching of social skills under this IEP. The instructor, school counselor Vicki Johnson, was not called as a witness, and the Parent never observed the Student at school.

33. For these reasons, the Parent has not carried her burden of proof that there was a lack of effective teaching for social and communicative behavior under the September 2017 IEP.

Appropriate Assistive Technology

January 2016 IEP

34. The January 2016 IEP stated the Student needed no assistive technology devices or services. The accommodations/modifications section did not provide for any.

35. At this time, school staff wrote that in conversation the Student spoke in "unintelligible phrases and use[d] no structure." J-2:55. The Student was shortly thereafter found to be at the 1st percentile receptive language and the 0.1 percentile in expressive language, despite having received language interventions since age three. The Student's receptive skills actually regressed in the year leading up to adoption of the January 2016 IEP: she had been able to follow two-step directions in January 2015, but regressed to one-step directions by January 2016. This

was not a mere temporary downturn: she remained at the one-step level for the following year, through at least January 2017.

36. Given that the Student lacked intelligible speech when she was almost six years old, despite receiving language interventions since age three, the IEP team should have considered assistive technology to address her severe communication delay. There was no evidence assistive technology could not be used in first grade. The text-to-speech program to which the Student later responded so well, Snap and Read, could have been used the prior year, in kindergarten.

37. For these reasons, the Parent has carried her burden of proof that the January 2016 IEP was inappropriate for lacking appropriate assistive technology.

January 2017 IEP

38. The January 2017 IEP stated the Student needed no assistive technology other than what was provided for in the accommodations section. That section included the following accommodations: word bank or word wall; visual and/or written aids with verbal communication; graph paper; math manipulatives; number and letter charts; pacing board; and visual schedules. The IEP again stated the Student needed no speech-to-text software.

39. The Student's very severe communication problems that the District was aware of in January 2016 continued in January 2017. Her August 2016 scores at the 1st percentile in receptive language and the 0.1 percentile in expressive language remained at those same levels in September 2017. Given the persistent severity of the Student's communications deficits, and the Parent's explicit written request for assistive technology prior to this IEP meeting, high-tech (in addition to low-tech) assistive technology should have been provided in the January 2017 IEP.

40. For these reasons, the Parent has carried her burden of proof that the January 2017 IEP was inappropriate for lacking appropriate assistive technology.

September 2017 IEP

41. Before the September 2017 IEP was adopted, the Brooks Powers IEE "**very strongly** recommend[ed] . . . **augmentative communication**" along with a range of visual supports. J-4:69 (bold in original). This is the only text that Dr. Brooks put in bold in her six pages of recommendations.

42. Also before the September 2017 IEP was adopted, the IEE by SLP Ms. Howland recommended extensive use of the Student's AAC device at school (it was already being used at home over the summer). Ms. Howland explained that among the many uses for the AAC device were: facilitating communication; repairing communication breakdowns; providing visual support to help with language learning (e.g., comprehension and production of appropriate grammatical structures, proper word order, how sentence construction impacts meaning, etc.); and facilitating reading comprehension and literacy skills. Ms. Howland concluded the AAC device should be "actively incorporated in to [the Student's] IEP and treated as an instrumental tool in furthering her education." J-4:13.

43. Ms. Haines previewed at the due process hearing the recommendation against an AAC device that she planned to share with the IEP team at the upcoming meeting in March 2018. Both she and the Student's SLP, Ms. Braunschweig, were against its use. At the hearing, they recommended continued use of low-tech visual supports, as already provided for in the IEP. Ms. Haines believes that because the Student can "successfully" get her meaning across in speech, she is unlikely to use the device in live conversation. Ms. Haines stated the Student is successful at receptive communication if she is successful at following directions, ignoring the fact that the Student was *not* successful at following anything beyond one-step directions. Ms. Haines stated that high-tech assistive technology would be more helpful in language therapy than in the classroom, ignoring the fact that the Student received two thirds of her language therapy in the classroom. Ms. Haines and Ms. Braunschweig focused too narrowly on the potential live communication usage of the Student's AAC device. Ms. Howland, on the other hand, focused on the many other uses in concluding it should be incorporated widely in the Student's education as an instrumental tool. The opinions of Ms. Howland and Dr. Brooks are found more persuasive on this matter than the opinions of Ms. Haines and Ms. Braunschweig.

44. There were also unreasonable delays in commencing and completing an assistive technology evaluation. The Parent requested assistive technology in writing on January 4, 2017. The request was highly warranted, for the reasons discussed above. Yet the District waited eight months thereafter (until September 11, 2017) to give the Parent a consent form proposing such an evaluation. Evaluations must be completed within 35 school days after parental consent is provided, unless the parties agree otherwise. WAC 392-172A-03015(3). There was no agreement otherwise here. Even subtracting the 42 school days that the Student was absent due to school refusal, the District failed to complete the assistive technology evaluation until at least 58 school days¹⁸ after September 11, 2017, when the Parent provided consent. The evaluation was scheduled to be completed sometime in March 2018 – more than a year and two months after the Parent first requested assistive technology.

45. For these reasons, the Parent has carried her burden of proof that the September 2017 IEP was inappropriate for lacking appropriate assistive technology.

Related Service: Access to Counselor Trained in Play and Art Therapy

46. The Parent presented no evidence on play therapy or art therapy. The only mention of them is in Dr. Brooks' report, where she states they should be considered in the future if symptoms of anxiety continue.

47. For these reasons, the Parent has not carried her burden of proof that any of the three IEPs at issue were inappropriate for not providing play and art therapy. However, therapy will be addressed as an element of compensatory education rather than as an IEP requirement.

¹⁸ It may be longer than 58 school days. The assistive technology evaluation was not yet completed when the due process hearing ended on March 1, 2018. It was scheduled to be completed at a meeting later that month.

Related Service: Speech-Language Services Throughout the Day for Student and Staff

48. The Parent did not clarify what she means by the provision of this related service "throughout the day." No witness testified this was needed or explained what it would look like.

49. In any event, the adequacy of the IEPs' communications provisions has been fully addressed above, in connection with Issue 1.a.(4).

50. For these reasons, the Parent has not carried her burden of proof that any of the three IEPs in question were inappropriate for not providing speech-language services throughout the day.

Related service: Augmentative Communication Systems, and Training on them for Student and Staff

51. For the reasons stated above in connection with Issue 1.a.(6), the Parent has established that all three of the IEPs at issue were inappropriate for not providing augmentative communication systems. Because high-tech augmentative communication systems would not be useful without training on them for the Student and selected staff who work with her, the Parent has prevailed on this issue.

Occupational Therapy for Graphomotor, Sensory, and Emotional Regulation Issues

January 2016, January 2017, and September 2017 IEPs

52. None of these IEPs provided any services in the OT area. The private OT evaluation of July 2016 clearly demonstrated the need of such services. The District offered no evidence to the contrary.

53. While the District did not receive a copy of the private OT evaluation until October 2016, it should have recognized the need for an OT evaluation and services prior to that time. The Student's difficulties in this area were not subtle: she was more than two standard deviations below the mean in 17 of the 23 sensory regulation areas tested, and had significant difficulty in four additional areas.

54. The Parent has established that all three of the IEPs at issue were inappropriate for not providing OT services.

Did District fail to implement the accommodations and modifications required by the Student's IEPs of January 2016, January 2017, and September 2017?

55. Material failures to implement an IEP violate the IDEA. On the other hand, minor discrepancies between the services a school provides and the services required by the IEP do not violate the IDEA. See *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007).

56. The Parent presented no evidence of a failure to implement the accommodations and modifications required by any of the three IEPs at issue here. The Parent did not observe in the

classroom and no witness observed on her behalf. Dr. Brooks's collaborator, Dr. Davis, observed the Student at school, but did not testify and included nothing in the IEE report about a failure to implement accommodations or modifications.

57. For these reasons, the Parent has not carried her burden of proof that the District failed to implement the accommodations and modifications required by the Student's IEPs of January 2016, January 2017, and September 2017.

Did mandatory school team members fail to attend IEP meetings or portions of IEP meetings?

58. The Parent has established through her uncontradicted testimony that Ms. Braunschweig was not present for part of two meetings: the evaluation review meeting of December 2016 and the IEP meeting of January 2017. The Parent has also established that the general education teacher left the December 2017 IEP meeting early. The District did not obtain written consent from the Parent for these early departures. This was a procedural violation of the IDEA. For an IEP team member whose area of the curriculum will be discussed at an IEP meeting to be excused from all or part of that meeting, the IDEA requires written consent from parents:

(ii) Excusal - A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if -

(I) the parent and the local educational agency consent to the excusal; and
(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(iii) Written agreement and consent required - A parent's . . . consent under clause (ii) shall be in writing.

20 USC §1414(d)(1)(C); *see* WAC 392-172A-03095(5)(b); 34 CFR §300.321.

59. 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).

60. The Parent did not offer evidence on what topics were discussed after the departure of the team members in question, nor evidence of how her participation rights might have been significantly impeded by their early departure. For these reasons, the Parent has not carried her burden of proof that a denial of FAPE arose from the District's IDEA violation of excusing IEP team members from part of meetings without written consent from the Parent.

Did District fail to assess Student in all areas of suspected disability, including need for AAC systems?

Occupational Therapy Assessment

61. The District failed to assess the Student in the area of fine motor skills and sensory regulation prior to October 2017. An assessment in these areas was needed much sooner. The sensory regulation problems revealed in the private OT evaluation of July 2016 were so severe that they should have been evident to school staff and should have been evaluated prior to that time.

Neuropsychological Assessment

62. The Student's kindergarten teacher believed so strongly that the Student was autistic that she (impermissibly) told a field trip chaperone about the diagnosis to explain the Student's behavior. Yet the kindergarten teacher did not refer the Student for an autism evaluation. She should have known that no autism evaluation or diagnosis was reflected in the Student's IEP, since she was required to implement parts of that IEP. When the Parent explicitly asked about getting an evaluation for autism, the kindergarten teacher wrongly told her the school would not be involved, and the Parent should obtain one privately.

63. School districts "shall ensure that . . . the child is assessed in all areas of suspected disability." 20 USC §1414(b)(3)(B). The Ninth Circuit has made clear that the IDEA obligates school districts, *not parents*, to obtain evaluations in suspected areas of disability. *See Timothy O. v. Paso Robles Unif'd Sch. Dist.*, 822 F.3d 1105, 1123 (9th Cir. 2016) (district violated IDEA where it intended to rely on an outside autism assessment that it expected the parents to obtain, and took no steps to ensure that the outside assessment actually took place); *N.B. v. Hellgate Elem Sch. Dist.*, 541 F.3d 1202, 1209 (9th Cir. 2008) (district may not abdicate its responsibilities under the IDEA by merely referring parents to a third party for testing; this violates the IDEA's requirement that districts ensure that students are assessed); *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1523 (9th Cir.), *cert. denied*, 513 U.S. 965, 115 S. Ct. 428 (1994) (district is legally obligated to procure its own evaluation; any failure of the parents to turn over portions of a specialist's report cannot excuse the district's failure to procure the same information for itself).

64. Evaluations that are medical in nature must be obtained and funded by school districts if they are necessary to assess a student's suspected disabilities. *See Dept. of Educ., Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1197-1200 (D.C. Haw. 2001) (district was required to pay for psychiatric hospitalization that was for diagnosis and evaluation); *MJC v. Special Sch. Dist. No. 1*, 2012 U.S. Dist. LEXIS 63843, 58 IDELR 288 (D.C. Minn. 2012) (district violated the IDEA by failing to obtain a medical evaluation at no cost to the parent to evaluate a student's suspected disability); *Letter to Parker*, 18 IDELR 963 (OSEP 1992) and *Letter to Anonymous*, 34 IDELR 35 (OSEP 2000) (school districts must ensure that a medical evaluation by a licensed physician is conducted at no cost to parents, if necessary to determine whether a child has a disability).

65. A neuropsychological evaluation for autism in kindergarten, during the 2015-2016 school year, would have uncovered the important information that was not uncovered until the Brooks

Powers neuropsychological evaluation in the spring of 2017. The intervention shown to be necessary by that evaluation could have been put in place much sooner if Ms. Kendall (or other staff who suspected autism) had referred the Student for a neuropsychological evaluation more than a year earlier.

Functional Behavioral Assessment

66. A functional behavioral assessment (FBA) was needed in January 2017, due to the Student's school anxiety and refusal to attend. The Parent twice requested one at that time. The Student was truant for almost the entire month of January 2017. The Parent shared with the District that she had tried the psychological tactics she knew, but that nothing was working to get the Student to go to school. The Parent informed the District that she was at a loss. An FBA should have been conducted at this time. It might have avoided the much longer period of school refusal that occurred in October – December 2017. The testimony of the District's Executive Director of Special Services supports the conclusion that the District should have conducted an FBA during the Student's first period of truancy in January 2017.

Assistive Technology Assessment

67. The District ultimately conducted an assistive technology assessment, but it should have been conducted much sooner, as discussed in the section above, entitled Appropriate Assistive Technology.

68. Once the District belatedly undertook the assessment, it failed to timely complete it. As mentioned above, evaluations must be completed within 35 school days after parental consent is provided, unless the parties agree otherwise. WAC 392-172A-03015(3). Even subtracting all the school days on which the Student was absent, the assistive technology evaluation took at least 58 school days to complete – significantly beyond the 35 school days allowed by law. (The evaluation was not yet complete at the time of the hearing, so it may have taken longer than 58 days to complete.) The assistive technology assessment might also have been conducted during the Student's absence: it was technology-related and did not depend on a classroom environment.

69. For the reasons set forth above, the Parent has established that the District failed to evaluate the Student in all suspected areas of disability by failing to timely conduct assessments in occupational therapy, neuropsychology, an FBA, and assistive technology.

Did District unlawfully fail to use AAC system privately obtained by Parent in summer 2017, and provided to District in September 2017?

70. This claim appears to imply that a school district is required to use any AAC device at school that a parent chooses to provide. The claim is therefore rejected as worded.

71. However, for the reasons discussed with regard to Issues 1.a.(6), above, the particular AAC device this Parent obtained, under recommendation of the Student's medical primary care provider and her treating SLP, was appropriate for the Student and should have been utilized in her school program.

Remedies

72. Each of the remedies requested by the Parents is evaluated below. Other equitable relief as appropriate is also considered.

Contract with Dr. Shanna Alvarez

73. The Parent seeks an order that the District contract with Dr. Shanna Alvarez of the Brooks Powers Group to provide certain services for the Student and for District staff who work with the Student. As discussed in the Findings of Fact, above, Dr. Alvarez did not testify. Her curriculum vitae was not offered in evidence. Dr. Brooks of the Books Powers Group provided no testimony concerning Dr. Alvarez's qualifications. There was no evidence that Dr. Alvarez is willing or available to provide the services requested by the Parent, nor what Dr. Alvarez or the Brooks Powers Group would charge for such services. For these reasons, this element of requested relief is denied.

Full-Time 1:1 Paraeducator

74. As discussed in the Findings of Fact, the Parent's witnesses as well as the District's witnesses testified against the appropriateness of a 1:1 paraeducator for the Student. Instead, the Student has environmental supports that should be continued and will be supplemented based on the remedies awarded herein. For these reasons, this element of requested relief is denied.

Temporary Placement in Resource Room

75. The Parent requests that the Student be removed from general education and placed entirely in the special education setting (a Resource Room) "while scaffolds are being established." Issue 2.e. This remedy is overly restrictive for the Student and is also unnecessary in light of the remedies ordered herein. For these reasons, this element of requested relief is denied.

Transfer to DEE

76. No witness from DEE testified. The Parent has not observed at DEE. Nor has the Parent completed the application procedure to request a transfer to DEE. Her personal knowledge of the school comes from the Student attending preschool there and from being acquainted with friends there and the school principal.

77. The Parent appears to be requesting the transfer in part to have a fresh start at a new school for both herself and the Student. This may be a good idea, and the IEP team should consider it. The Parent may also want to submit a transfer application. However, this ALJ cannot order the transfer in the absence of record evidence to support it. For these reasons, this element of requested relief is denied.

Facilitated IEP Meeting

78. The Parent has not presented evidence of the kind of dysfunctionality on the IEP team that would warrant a four-hour IEP meeting facilitated by Sound Options. Sound Options requires parties to commit to a half-day as a condition for it to provide a facilitator for an IEP meeting.¹⁹ For these reasons, this element of requested relief is denied.

Compensatory Education

79. Compensatory education is a remedy designed “to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unif’d Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). Compensatory education is not a contractual remedy, but an equitable one. “There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid*, 401 F.3d at 523-524.

80. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid*, 401 F.3d at 524. Both parties behaved equitably in this case. The Parent worked collaboratively and cooperatively with District staff. District staff committed the IDEA violations discussed herein, but engaged in no inequitable conduct toward the Parent above and beyond that. There are therefore no equitable factors to consider that would alter the relief to which the Parent is otherwise entitled.

81. The sections below consider whether the Parent is entitled to compensatory education in several areas.

Reading

82. The Parent seeks compensatory education in the form of a reading program for students with CAPD, but offered no testimony from a professional knowledgeable about CAPD and qualified to recommend such a program. This form of compensatory education will therefore be denied. However, the Student’s deficits in reading stem directly from her deficits in language. Her reading skills stand to benefit from the speech-language services she is awarded below.

83. The only compensatory education requested by the Parent was in reading. However, the ALJ may award either the requested remedies, “or other equitable relief as appropriate.” Issue 2.a., above. Especially where the Parent is appearing *pro se* and the ALJ is denying most forms of her requested relief, it is fitting to award other equitable relief as appropriate.

¹⁹ See *Kent Sch. Dist.* 2017-SE-0081 (2018). A copy of this decision is available from the OSPI Public Records Officer. The decision will also be posted on OSPI’s website in the future.

Speech-language therapy

84. The Parent is entitled to compensatory education in speech-language therapy for the reasons set forth in the sections above entitled: Adequate Means to Address Student's Expressive and Receptive Language Deficits; Appropriate Assistive Technology; Related service: Augmentative Communication Systems and Training on them for Student and Staff; and Assistive Technology Assessment.

85. Reimbursement for expenses already incurred by parents may be awarded, and is a form of compensatory education. See *Sch. Committee of Burlington v. Massachusetts Dept. of Educ.*, 471 U.S. 359, 369, 105 S. Ct. 1996 (1985); *Foster v. Bd. of Educ. of the City of Chicago*, 611 F. App'x 874, 879 (7th Cir. 2015, unpublished); *I.T. v. Hawaii Dep't of Educ.*, 2013 US Dist. LEXIS 176695, *19, 2013 WL 6665459 (D. Hawaii 2013). The District shall reimburse the Parent for all out-of-pocket expenses she incurred in providing the Student's private SLP therapy for the two-year period preceding the filing of the due process complaint on October 10, 2017, and until a new IEP is adopted with appropriate communication and assistive technology provisions, as discussed below.

86. The District shall also fund the Student's attendance during the summers of 2018 and 2019 at a Lindamood Bell program. This was recommended by the SLP from Evergreen Speech and Hearing Clinic in December 2017 so the Student will receive speech and language services that incorporate multiple modalities, such as offered in the Visualizing and Verbalizing program at Lindamood Bell. These services are calculated to place the Student approximately where she would have been had the District provided her appropriate speech-language services and appropriate assistive technology during the period at issue.

87. The summer services shall be in an amount and frequency to be agreed upon by the District and the Parent, based on recommendations from Dr. Brooks and Ms. Howland (made at District expense). This will not be an IEP team decision, where District representatives would have the ultimate say if there is a disagreement. Rather, the frequency and amount of summer services must be agreed upon by the District team and the Parent, provided that the Parent may not require services in excess of what is recommended by Dr. Brooks and Ms. Howland.

Occupational Therapy

88. The Parent is entitled to compensatory education in occupational therapy for the reasons set forth in the sections above entitled Occupational Therapy for Graphomotor, Sensory, and Emotional Regulation Issues and Occupational Therapy Assessment.

89. The District shall reimburse the Parent for all out-of-pocket expenses she incurred in providing the Student's private occupational therapy for the two-year period preceding the filing of the due process complaint on October 10, 2017, and until a new IEP is adopted with appropriate occupational therapy services, as discussed below.

Mental Health Therapy

90. The Parent is entitled to compensatory education in the form of mental health therapy for the Student for the reasons set forth throughout this decision concerning the secondary mental health effects on the Student from the failure to provide her FAPE. She entered kindergarten a happy, well-adjusted child, according to her kindergarten teacher. Over the next two years, plummeting self-esteem, somatization, anxiety, and intense school refusal characterized her emotional life. The direct connection between being faced with tasks she is unable to comprehend or perform, and the emergence of anxiety, somatization and avoidance behaviors, was seen first-hand by evaluators when they gave her assessments.

91. The District shall fund an evaluation by a mental health therapist to be selected jointly by the District and the Parent. Since Dr. Brooks recommended play or art therapy rather than talk therapy for the Student, which makes sense due to her language deficits, the provider shall be someone qualified to deliver play and/or art therapy.

92. The District shall fund the provision of services in a type and amount recommended by the evaluating mental health therapist for one year from the date of this decision. One of the goals of the therapy shall be to achieve a successful transition of the Student back to school. Fees for the evaluation and therapy shall not to be more than 10% above the average fees for such services among mental health therapists with master's degrees in Pierce County.

IEP Revisions

93. The Parent requests that the District be ordered to amend the Student's IEP to provide for the following.

Personal FM system in all locations of instruction

94. There was insufficient evidence in the record to know whether a personal FM system (as opposed to a soundfield system) would be comfortable and appropriate for the Student. When the Student returns to school, the District shall conduct a trial with a personal FM system and the IEP team will determine whether that trial was successful and should be continued. This element of requested relief is therefore denied at this time.

Training for District staff on CAPD

95. The Parent has not presented sufficient evidence that training for District staff on CAPD is necessary or would benefit the Student. This element of requested relief is therefore denied.

Extended school year (ESY) services

96. The provision of ESY services is governed by the following regulation:

- (1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

- (a) Beyond the normal school year;
 - (b) In accordance with the student's IEP; and
 - (c) Are provided at no cost to the parents of the student.
- (2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.
- (3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.
- (4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.
- (5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.
- (6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.
- (7) For the purposes of subsection (6) of this section:
- (a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;
 - (b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

WAC 392-172A-02020; see 30 CFR §300.106.

97. The Parent offered no evidence of the Student's regression or recoupment history, nor evidence to meet any of the legal requirements of the regulation set forth above. For these reasons, this element of requested relief is denied.

Anti-bullying strategies

98. The Parent informed the District about many instances where the Student felt herself to be bullied. The Parent never observed at school, and no witness corroborated the hearsay from the Student about being bullied.

99. Hearsay statements about conflicts with peers, which often have two sides to the story, made by a first-grade or second-grade student are not "the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.461(4). Therefore, it was impermissible to make findings of fact based exclusively on such evidence. This

is not to diminish the Student's feelings, which are significant regardless of what may have triggered them. However, no findings can be made on the present record that bullying occurred. There is no basis for ordering a remedy for bullying where no bullying has been established. For these reasons, this element of requested relief is denied.

Training for District by Dr. Shanna Alvarez

100. For the reasons discussed in the section above entitled Contract with Dr. Shanna Alvarez, this element of requested relief is denied.

Augmentative and Assistive Communication Device

101. Much of the Parent's case concerned whether the Student should utilize an AAC device at school. That issue has been determined in the Parent's favor. However, the Parent did not request that a provision about the AAC be added to the Student's IEP. This is found to be "other equitable relief as appropriate" that the ALJ will order. See Issue 2, above.

102. District assistive technology lead Connie Haines shall collaborate with the Student's private SLP, Kendre Howland (at District expense), to develop IEP provisions, and additional guidelines as needed, for the Student's use of an AAC at school. They shall present these recommendations to the IEP team for decision. Whether the device used is the iPad Quick Talker purchased by the Parent, and/or the touch-screen Chromebook provided by the District, is up to Ms. Haines and Ms. Howland, as approved by the IEP team. Ms. Haines and Ms. Howland shall also recommend to the IEP team provisions on training for the Student on staff concerning the use of the Student's AAC and associated software. If the IEP team does not agree on any of these matters, the views of Ms. Howland (who serves the Student twice a week and uses her AAC) shall prevail.

Additional Visual Supports

103. The Student's private SLP, Ms. Howland, recommended visual supports throughout the school for the Student, even in the lunchroom. Ms. Howland shall observe at the school and collaborate with the District's SLP (at District expense) to develop and implement additional visual supports for the Student.

Occupational Therapy

104. The Parent did not request changes to the IEP's occupational therapy provisions, but such changes are needed in light of the occupational therapy evaluations the Student has received. This is "other equitable relief as appropriate" that the ALJ may award. See Issues Statement, above.

105. The Student's IEP shall be amended to adopt appropriate, measurable annual goal(s) in the area of sensory regulation. The District OT, in consultation with the Student's private OT, Ashley Spooner (at District expense), shall recommend such goal(s) to the IEP team. After adopting such goal(s), the IEP team will determine whether the 40 minutes per week of OT services are sufficient for the Student to achieve her OT goals, or whether additional minutes of

service should be added. If the IEP team does not agree on these matters, the views of the Student's private OT shall prevail, because the District OT failed to include sensory regulation goals in the Student's IEP.

Functional Behavioral Assessment

106. An FBA is not a remedy requested by the Parent, despite her having requested an FBA several times from the District. As mentioned above, the ALJ is not limited to awarding only requested remedies, but may award other equitable relief as appropriate.

107. For the reasons discussed in the section above entitled Functional Behavioral Assessment, the District shall conduct an FBA as soon as possible, provided the Parent gives written consent for it. One of the focuses of the FBA will be to understand the Student's school anxiety and refusal. If the evaluator deems it appropriate to then develop a Behavior Intervention Plan, the Student's IEP team shall do so. If the Student is still out of school and this presents an obstacle to conducting an FBA, then Dr. Brooks shall be consulted (at District expense) regarding how and when an FBA will be conducted.

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

ORDER

1. The District violated the IDEA and denied the Student a FAPE in the ways set forth in the Conclusions of Law, above.
2. The District shall provide compensatory education in the areas of speech-language therapy, occupational therapy, and mental health therapy, as set forth in the Conclusions of Law, above.
3. The District shall conduct a functional behavioral assessment of the Student on the terms set forth in the Conclusions of Law, above.
4. The Student's IEP team shall meet within four weeks²⁰ of the date of this order (unless this period is extended by agreement of the Parent) to review and revise the Student's IEP, as set forth in the Conclusions of Law, above, in the following areas: trial of a personal FM system; use of an AAC device at school; additional visual supports; and occupational therapy.

²⁰ Four weeks is longer than usually allowed to convene an IEP meeting ordered by an ALJ. However, this IEP meeting will require collaboration beforehand between District educators and some of the Student's private providers, so extra time is allowed.

Signed at Seattle, Washington on May 1, 2018.



Michelle C. Mentzer
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, Administrative Resource Services.

CERTIFICATE OF SERVICE

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

Parent



Karen Finigan, Executive Director of Special Services
Sumner School District
1202 Wood Ave
Sumner, WA 98390

Curtis M. Leonard, Attorney at Law
Craig S. Peters, Attorney at Law
Patterson Buchanan Fobes & Leitch, Inc., P.S.
2112 Third Avenue, Suite 500
Seattle, WA 98121

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