

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matters of:

Clover Park School District

Docket Nos. 10 2022 OSPI 01727
02 2023 OSPI 01794

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause Nos. 2022 SE 0131
2023 SE 0020

A due process hearing was held before Administrative Law Judge (ALJ) Paul Alig on March 27 through March 31, 2023, via videoconference. The Parents of the Student whose education is at issue¹ appeared and represented themselves. The Parents were accompanied and advised by their advocate, Shalanda Kangethe. The Clover Park School District (District) was represented by Erin Sullivan Byorick, attorney at law. Also present for the District was Vern Mills, Special Education Supervisor.

STATEMENT OF THE CASE

Procedural History

On October 31, 2022, the Parents filed a due process hearing request (Complaint) (Cause No. 2022 SE 0131), which was assigned to ALJ Paul Alig. On November 9, 2022, the District filed a response. On December 12, 2022, the Parents filed an Amended Complaint. On January 31, 2023, the Parents filed their Second Amended Complaint. On February 7, 2023, the District filed a Complaint (Cause No. 2023 SE 0020), which was assigned to ALJ Alig. On March 6, 2023, by agreement of the parties, these matters were consolidated. The ALJ issued prehearing orders on December 6, 2022; January 5, 2023; January 20, 2023; February 17, 2023; March 6, 2023; March 13, 2023; and March 28, 2023. On March 23, 2023, the District filed a motion in limine which was ruled on at the hearing.

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

Due Date for Written Decision

The deadline for a written decision in this case was extended at the parties' request to thirty (30) days after the record of the hearing closes.² The hearing ended on March 31, 2023, and the record closed on June 12, 2023, when the District timely filed its post hearing brief.³ The due date for a written decision is July 12, 2023.

EVIDENCE RELIED UPON

Exhibits Admitted:

Parents' Exhibits: P1 P3, P5, P7, P8.

District's Exhibits: D1 D8, D11 D19, D22, D24 D32, D34 D36, D38, D40 D41, D43, D45 D47, D49 D51, D54 D58, D63, D64, D66 D68, D70 D77, D81, D83 D85, D87 D93.

Witnesses Heard (in order of appearance):

Jinger Stevens, District Speech Language Pathologist (SLP) 2021 2022 school year
Angie Munoz, District Special Educational Teacher, 2021 2022 school year
Stephanie Miller, District Special Educational Teacher, 2021 2022 school year
Boz Kealy, District Special Educational Teacher, 2022 2023 school year
Dr. Michaela Clancy, District Director of Special Education
Emily Weems, District SLP 2022 2023 school year
Venetia Willis Holbrook, District Principal of Programs
Allen Spadafore, District School Psychologist
Roslyn Smith, District Alternative Learning Coordinator
Mary Healey, District Guidance Secretary, Lochburn Middle School
Rachelle Kautzman, District Audiologist, 2021 2022 school year
Tamar Peck, District Teacher of the Deaf, 2021 2022 school year
Vern Mills, District Special Education Supervisor
Carla Estes District Principal, Lochburn Middle School
Ashley Al Izzi, District Audiologist, 2022 2023 school year
Mother
Father

² See Prehearing Orders dated December 6, 2022, and March 6, 2023.

³ The Parents did not file a post-hearing brief.

ISSUES

1. As set forth in the prehearing order issued March 6, 2023, the issues for the due process hearing are as follows:

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

- i. Failing to provide any SDI to the Student from May 2021 to the present.
- ii. Failing to provide any related supports to the Student from May 2021 to the present.
- iii. Beginning May 2021, failing to provide any education that the Student could access during the 2021 2022 school year.
- iv. Denying the Parents the opportunity to meaningfully participate in the Individualized Education Program (IEP) process during the 2021 2022 school year and 2022 2023 school year.
- v. Failing to conduct a reevaluation beginning September 2021 to the present.
- vi. Denying the Parents an opportunity to meaningfully participate in the IEP process by failing to provide the Parents a report card for the Student beginning September 2021 to the present.
- vii. Whether a general education teacher was required at IEP meetings beginning September 2021 to the present.
- viii. Whether the Student was placed in the least restrictive environment (LRE) beginning September 2021 to the present.
- ix. Whether the Student received paraeducator support as required by the IEP beginning September 2021 to the present.
- x. Whether the Student received instruction from a deaf or hard of hearing teacher as required by the IEP beginning September 2021 to the present; and
- xi. Whether the Student received speech and language services as required by the IEP beginning September 2021 to the present.

b. And, whether the Parents are entitled to their requested remedies:

- i. Declaratory relief finding that the District violated the IDEA and failed to provide the Student a FAPE as alleged in their Complaint.
- ii. Compensatory education and supplemental services for the Student to provide the educational benefit that she would have received from

May 2021 to the present but for the District's violations of the IDEA and denial of FAPE.

- iii. A placement for the Student moving forward that offers a FAPE in her LRE which includes:
 - a. SDI in reading, writing and math.
 - b. Preferential seating at the front of the class with an unobstructed view of the teacher's face.
 - iv. An independent educational evaluation (IEE) at public expense completed by an evaluator chosen by the Parents.
 - v. Develop an IEP that provides programming elements set forth above; and
 - vi. An order that includes whatever additional relief the court may find just and equitable.
- c. Whether the District is entitled to conduct its own evaluation before the Parents are entitled to request an IEE.
 - d. Is the evaluation from the previous district that the District is relying upon appropriate to develop programs and services, and if not, whether the Parents are entitled to an IEE at public expense?⁴

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.

Some of the evidence presented was hearsay, which is a statement made outside of the hearing used to prove the truth of what is in the statement. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, "it is the kind of evidence on which reasonably prudent persons are accustomed to rely

⁴ See March 6, 2023 Prehearing Order.

in the conduct of their affairs.” Revised Code of Washington (RCW) 34.05.452(1). An ALJ may not base a finding of fact exclusively on hearsay evidence unless the ALJ determines that doing so “would not unduly abridge the parties’ opportunities to confront witnesses and rebut evidence.” RCW 34.05.461(4). To the extent any findings of fact are based on hearsay evidence, it is determined that such findings did not unduly abridge the parties’ opportunity to confront witnesses and rebut evidence.

The Student

1. At the time of the hearing the Student was [REDACTED] years old.⁵
2. It was undisputed that throughout the relevant period in this case the Student lived in the Clover Park School District (District).⁶
3. The Student was diagnosed with a hearing impairment by the age of 3 or earlier.⁷
4. The Student has received special education services through an Individualized Educational Program (IEP) since first grade.⁸
5. In the end of her third grade year, the Parents and Student moved from Montgomery Alabama to Iowa and the Student enrolled in the Clarinda School District (CSD).⁹ Beginning April 6, 2020, due to the COVID 19 pandemic CSD developed a new IEP for the Student to the change her services on line delivery.¹⁰

February 10, 2021 Reevaluation

6. On February 10, 2021, the CSD conducted a file review as part of the Student’s three year reevaluation. The Parents participated in the reevaluation. The CSD determined additional assessments were not required a part of the reevaluation as the Student continued to be eligible for special education services in reading, math,

⁵ D8p1. Citations to the exhibits of record are by the party (“P” for Parent; “D” for District) and exhibit and page numbers. For example, a citation to D8p1 is to the District’ Exhibit D8 at page 1.

⁶ Mother, T950:16. Citations to the hearing transcript indicate who provided the testimony followed by the page number(s) and line(s) on which the testimony appears. For example, a citation to Mother, T950:16 is a citation to the Mother’s testimony at page 950 line 16 of the transcript.

⁷ D3p2; D6p5.

⁸ D3p4.

⁹ D5p3; Mother T959:5.

¹⁰ D7pp1, 2.

and writing.¹¹ The CSD reevaluation team relied upon progress monitoring data, in reading, math and communication.¹² It also relied upon her progress on standardized benchmarks, audiological records, previous interventions, teacher observation, and the Parents' input.¹³

7. As part of the February 10, 2021, reevaluation, the team relied on the following prior evaluations and Student records in its file review:

- The Student's September 2017, comprehensive evaluation from the Montgomery Public School District in Alabama. This evaluation was conducted when the Student was determined eligible for special education services at the start of her second grade year.¹⁴ The evaluation included an audiological evaluation that indicated severe to profound hearing loss in both ears. The Student's skills were assessed in auditory processing; an expressive vocabulary test, language checklist, and information about surgery she had to correct fluid build in her ears.¹⁵ The evaluation contained a physician report regarding bilateral hearing loss, an oral peripheral examination, a Goldman Fristoe Test of Articulation and Weiss Comprehensive Articulation Test. Articulation was assessed to look at the sounds the Student was able to produce, specifically consonant sounds.¹⁶ The evaluation report included an Intelligibility Rating of Connected Speech. Connected speech is when a student is conversing and saying more than one sentence, as opposed to a single word or single sentence articulation.¹⁷ It also included Oral and Written Language Scales, and Preschool Language Scales, which are comprehensive language evaluations.¹⁸
- The Student's third grade IEP for the 2018-2019 school year. The IEP provided the Student required thirty minutes of specially designed instruction (SDI) per day in each of these areas in a special education classroom. The IEP also provided the Student required thirty minutes per day of supplementary aids and services in the general education curriculum. These included verbal/visual

¹¹ D7pp1, 2.

¹² D8p27.

¹³ D8pp31-34.

¹⁴ D3p1; D4p1; Spadafore, T593:6.

¹⁵ D3p2; Stevens T94:13-95:1.

¹⁶ D3p3; Stevens T95:2-19.

¹⁷ D3p4; T95:20-96:1.

¹⁸ D3p4; Stevens T96:2-18.

prompts, adult support, manipulatives, extended time, and simple directions. The IEP further provided the Student required twenty five minutes of related services to address her needs in articulation deliver by a speech language pathologist (SLP) in a speech room.¹⁹

- A July 2020, hearing aid and fitting evaluation for the Student was conducted by Boys Town National Research Hospital.²⁰ The Student's hearing loss was determined to be related to bilateral vestibular aqua duct syndrome (EVA). The evaluation concluded that the degree of hearing loss had the potential to limit her access to language and to negatively impact her in the areas of academics and social emotional skills.²¹

February 10, 2021 IEP

8. On February 10, 2021 CSD convened the Student's IEP team to revise her IEP. The Parents participated in the IEP development.²² The IEP included a communication goal that the Student would demonstrate an understanding of more complex language structures scored on a goal rubric attached to the IEP.²³ The communication goal provided that a teacher of Deaf/Hard of Hearing would score the rubric during a structured listening activity to monitor and report the Student's. Data was to be reported twice a month and graphed and reported to the Parents three times per year. The IEP included a monitoring log. Trendline analysis was to be used to determine if instructional changes were need based upon comparison to the goal line.²⁴

9. The February 10, 2021 IEP included a math goal on single and double digital addition and subtraction equations, recognizing time, and counting money. The IEP provided the math goal would be measured with math problems, reported every two weeks.²⁵ A monitoring log was included. The IEP included a math rubric and provided that after four weeks of instruction, if four consecutive data points fall above or below the goal line, the Parents, special education teacher and special education consultant

¹⁹ D4pp5-9.

²⁰ D6p1.

²¹ D6p5.

²² D8pp2, 3, 25; Miller T294:9.

²³ D8p7; Miller T294:5, 20-24.

²⁴ D8pp6, 10, 13.

²⁵ D8p7.

would meet to consider the need for instructional changes.²⁶

10. The February 10, 2021 IEP included a reading goal that the Student would progress from reading on hundred thirteen words per minute to one hundred seventy eight words correct per minute (WCPM). The Student progress was to be reported every week. A monitoring log was included. The IEP included a reading rubric and provided that after four weeks of instruction, if four consecutive data points fall above or below the goal line, the Parents, special education teacher and special education consultant would meet to consider the need for instructional changes.²⁷

11. The February 10, 2021 IEP included a writing goal that the Student would progress from writing thirty three total words written (TWW) getting fourteen correct word sequence (CWS) at grade level with seventy percent accuracy to one hundred TWW getting eighty CWS at grade level with eighty percent accuracy. The Student's progress was to be reported every two weeks. A monitoring log was included. The IEP included a writing rubric and provided that after four weeks of instruction, if four consecutive data points fall above or below the goal line, the Parents, special education teacher and special education consultant would meet to consider the need for instructional changes.²⁸

12. The IEP required that at the beginning of the year the Student's teachers be provided information about her hearing and the accommodations she required by an audiologist. It also required that an audiologist evaluate her needs twice annually.²⁹

13. The February 10, 2021 IEP listed accommodations to be provide by a general education teacher.³⁰

14. The February 10, 2021 IEP provided the Student with sixty minutes per day of SDI each in reading and math, and thirty minutes per day of SDI in writing, totaling one hundred fifty minutes per day. The SDI was to be provided by a special education teacher in the special education classroom provided by a special education teacher.

15. The IEP also provided one hundred twenty minutes per month of direct services by a teacher for the deaf/hard of hearing in a special education setting. The IEP noted these services would focus on listening and comprehension skills and could include

²⁶ D8pp7, 11, 15.

²⁷ D8pp8, 12, 16; Miller T302:19-303:2.

²⁸ D8pp9, 13, 17; Miller T309:5-13.

²⁹ D8p20.

³⁰ D8p19; Spadafore T572:19-25.

student contact, parent/teacher consultation, collaboration, and observations. The IEP also stated the Student would receive eighty minutes per month from a SLP.³¹ In addition, the IEP provided the Student with thirty minutes per day of paraeducator support, also referred to as paraeducator support, in the general education classroom. The IEP also provided the Student receive thirty minutes per week collaboration from the special education teacher with the general education teacher to support her progress in the general education classroom.³²

16. On April 20, 2021, the Student transferred out of CSD as the Parents moved to the District.³³

Four Heroes Elementary School

17. In May 2021, the Student began attending Four Heroes Elementary School within the District.³⁴ The Parents did not have concerns with the Student's special education and related services during the time she attended Four Heroes from May 2021 through June 2021.³⁵

18. On or about August 3, 2021, the District requested the Student's special education records from CSD.³⁶

Graduation Alliance

19. For the 2021 2022 school year, the District contracted with Graduation Alliance as the District's state approved virtual learning option to provide online learning for the general education curriculum.³⁷ Graduation Alliance used a separate curriculum from that used by District for in person instruction.³⁸ Middle School students could choose to participate in Graduation Alliance as an alternative learning experience (ALE) in lieu of in person instruction.³⁹

³¹ D8pp18, 36; Miller T359:22-360:4, 364:15-20, 365:10-17.

³² D8pp19, 36; Miller T366:5-367:6.

³³ D8p35; Mother T95:18.

³⁴ Mother T950:16-24.

³⁵ Mother T977:5-17.

³⁶ D2; Mills T836:12; Healey T920:11.

³⁷ Clancy T449:8-15; Willis-Holbrook T558:10-559:7; Smith T627:21.

³⁸ Clancy T447:11; Willis-Holbrook T728:1-729:5.

³⁹ Clancy T498:14-499:15; Willis-Holbrook T622:8-17.

20. Graduation Alliance did not provide specially designed instruction.⁴⁰ It provided access to teachers, a local advocate, and an academic coach to support families and help students access curriculum.⁴¹ The Graduation Alliance platform used message boards for students to write comments.⁴² It also required students to have local meet ups for social emotional interactions with other students in the same grade “band” where middle and high school students were typically grouped together by the coaches.⁴³ Graduation Alliance allowed students to progress at their own pace.⁴⁴ It used pre recorded video taped lessons.⁴⁵ Graduation Alliance teachers taught in an asynchronous format and did not actually interact with students on screen.⁴⁶

21. Graduation Alliance students attended two classes that were active for a three week period.⁴⁷ Each student developed a written learning plan that outlined the classes that they would take.⁴⁸ The coach addressed any questions about the platform.⁴⁹ When a student completed a Graduation Alliance course, the final grade was issued by the District.⁵⁰ As Graduation Alliance students submitted work, Graduation Alliance teachers reviewed it and then made sure students received accurate feedback and grades through the District.⁵¹

22. Venetia Willis Holbrook,⁵² the Principal of Programs for the District,

⁴⁰ Clancy T448:12-18; Willis-Holbrook T743:14-19.

⁴¹ Willis-Holbrook T738:22.

⁴² Willis-Holbrook T739:3.

⁴³ Willis-Holbrook T739:6-10.

⁴⁴ Willis-Holbrook T560:3, 740:14; Smith 632:1-12.

⁴⁵ Willis-Holbrook T564:21-25.

⁴⁶ Smith T628:4-9, 629:4-15.

⁴⁷ Smith T630:18; Willis-Holbrook T747:19.

⁴⁸ Smith T631:17.

⁴⁹ Smith T632:1-12.

⁵⁰ Willis-Holbrook T746:4.

⁵¹ Willis-Holbrook T565:1-5.

⁵² Ms. Willis-Holbrook has worked for the District since 2014. She has certifications in career and technical education (CTE) and program administration. She has a master’s degree in education focused on integrating technology into the curriculum. She received a bachelor’s degree from the University of Washington in Liberal Arts. Prior to working for the District, Ms. Willis-Holbrook was a Business and Marketing Program Supervisor for OSPI. She joined the District as a consulting teacher and moved to specialty programs in 2016. D89p1; Willis-Holbrook T556:19, 557:19-558:1, 733:23.

administered the District's contract with Graduation Alliance.⁵³

23. Roslyn Smith,⁵⁴ the alternative learning experience (ALE) coordinator for the District, oversaw the enrollment of students in appropriate classes through Graduation Alliance.⁵⁵ She also worked with District personnel if students needed additional resources, such as having an IEP.⁵⁶

24. Michaela Clancy, the Director of Special Education for the District,⁵⁷ oversaw the District's Special Education Department and special education services.⁵⁸

25. On August 17, 2021, the District received the Parents' request that the Student attend Graduation Alliance.⁵⁹ Although the Parents were unfamiliar with the program,⁶⁰ they chose it because they did not believe the Student could safely attend school in person due to the COVID 19 pandemic and the only other option was homeschooling.⁶¹ The Parents were unaware that Graduation Alliance was only a general education program.⁶²

First and Second Quarters of the 2021-2022 School Year

26. September 1, 2021, was the first day of the 2021 2022 school year.⁶³ The Student's home school was Lochburn Middle School (Lochburn). She was in the sixth

⁵³ Clancy T447:2; Willis-Holbrook T558:13.

⁵⁴ Ms. Smith received a bachelor's degree from Smith College in 2002 with a Major in African American Studies. At the time of the hearing, she was registered with Antioch University to obtain a master's degree in education. She has worked for the District since 2005. D87pp1, 2; Smith T621:20-622:3.

⁵⁵ Smith T622:5.

⁵⁶ Smith T623:2-15.

⁵⁷ Dr. Clancy has a doctorate in educational leadership with a cognate in school psychology and educational administration. She has a master's in curriculum and instruction and counseling. All of Dr. Clancy's post-graduate degrees are from Seattle University. She has a bachelor's degree with a major in sociology from the University of Washington. Prior to joining the District in 2017, Dr. Clancy was the Director of Special Education for Seattle Public Schools. D76, Clancy T444:17-445:18.

⁵⁸ Clancy T 445:23-446:14, 458:17-19.

⁵⁹ D11p1; Smith T625:14.

⁶⁰ Mother T952:11.

⁶¹ Mother T951:18-25.

⁶² Mother T952:14.

⁶³ D1p1.

grade⁶⁴

27. Mary Healey is the registrar guidance secretary at Lochburn.⁶⁵ When a student transfers into the District she sends a records request to their previous school.⁶⁶

28. Vern Mills⁶⁷ administered special education services at Lochburn and oversaw hiring special education staff to ensure sufficient support for students.⁶⁸

29. During the 2021 2022 and 2022 2023 school years, the District had challenges hiring SLP service providers, deaf and hard of hearing teachers, and paraeducators. The District's efforts to hire sufficient staff included reaching out to other agencies, attending recruiting events, posting positions on online education billboards, including the District webpage, and constantly interviewing applicants.⁶⁹ When the District did not have sufficient staff to deliver the services in a student's IEP, it endeavored to provide compensatory services. The District preferred to provide compensatory services during non instructional times outside of school hours so that core instruction was not interrupted. The goal of compensatory services was to get the student who missed services back to the point where they would have been if those services were already provided. The District determined this point using the IEP team of the student on an individual basis.⁷⁰

30. The District did not have an SLP teacher or deaf and hard of hearing teacher for the Student when she began 2021 2022 school year because the District did not have a person to fulfill that role.⁷¹ The District also did have a specific person to provide paraeducator services to the Student for the entire 2021 2022 school year.⁷² The District believed those services were designed to provide the Student support to attend

⁶⁴ D34p3; Willis-Holbrook T565:18-22.

⁶⁵ Healey T918:12-24.

⁶⁶ Healey T919:5.

⁶⁷ Mr. Mills has a bachelor's degree in history and a master's degree in education. He has administrative credentials in Executive Leadership and a Principal Certificate from Washington State University. He has worked for the District for twenty-six years and became a special education coordinator in July 2015. He was a special education teacher in middle school for eighteen years. D84pp1, 2; Mills T795:12-23.

⁶⁸ Mills T829:4-24; Clancy T446:4.

⁶⁹ Clancy T463:9-464:13; Mills T828:4-829:6.

⁷⁰ Clancy T465:2-466:17.

⁷¹ Mills T801:8-23, 814:23, 831:18-23; Miller T324:13.

⁷² Munoz T196:19.

general education classes in person.⁷³

31. On or about September 8, 2021, Allen Spadafore,⁷⁴ a school psychologist for the District, completed a transfer review of the Student's incoming evaluation data and IEP.⁷⁵ A transfer review is conducted when a new student arrives from another district with special education records to determine if they meet State and District eligibility criteria.⁷⁶ Mr. Spadafore concluded that the Student's evaluation data as reflected in the February 10, 2023, reevaluation and IEP were sufficient to meet State and District criteria and complied with reevaluation and IEP timelines.⁷⁷ He agreed the Student qualified under the special education eligibility category of hearing impairment.⁷⁸ The District developed a "Special Education Transferring Student Records Review Summary." Through this process the District determined the Student met eligibility criteria and that it was required to provide her comparable services consistent with her February 10, 2021, IEP.⁷⁹

32. The District issued a prior written notice (PWN) on September 9, 2021, proposing to continue the Student's eligibility for special education services under the category of hearing impairment, and to continue her IEP and educational placement. The PWN stated the District received an evaluation report which contained sufficient data to determine the Student's eligibility for special education services. It also indicated the IEP case manager would coordinate an IEP meeting to determine if it was necessary to amend the IEP.⁸⁰

33. On or about September 10, 2021, the Student's special education teacher and

⁷³ Munoz T196:20-197:14.

⁷⁴ Mr. Spadafore graduated from Seattle University in 2002 with a certification as an Education Specialist. He has a double major in Psychology and Sociology from Western Washington University. Mr. Spadafore has worked for the District for eighteen years. D88p1; Spadafore T586:2.

⁷⁵ Spadafore T591:12-21.

⁷⁶ Spadafore T588:6-12.

⁷⁷ Spadafore T592:13-17.

⁷⁸ Spadafore T598:10.

⁷⁹ D8p1.

⁸⁰ D12p3; Spadafore T602:12-603:10.

case manager, Stephanie Miller⁸¹ was assigned to Lochburn.⁸² Ms. Miller provided the Student virtual instruction in her special education math and English Language Arts (ELA) classes via TEAMS. Ms. Miller developed her special education services for the Student based on her February 10, 2021, IEP, and evaluations from her prior school districts.⁸³ Ms. Miller's class periods were scheduled for fifty minutes in length. At times she went five minutes over the scheduled time. She estimated the period lasted nearly one hour. She sometimes worked with the Student 1:1 after the other students were dismissed.⁸⁴ She delivered services to the Student in a resource classroom that she attended online via TEAMS. In a resource classroom a special education teacher provides individualized instruction to each student in the class, as well as presenting grade level content depending on the students themselves.⁸⁵

34. On September 13, 2021, the Parents received a laptop for use with Graduation Alliance.⁸⁶

35. On September 14, 2021, the Student's Mother reviewed the Student's Graduation Alliance orientation class, "I Will Graduate," and concluded the curriculum was not for the Student because it was high school level.⁸⁷ The Mother contacted a Graduation Alliance advocate and was told they did not know about the Student's IEP. The Mother contacted Lochburn and the District over concerns that Graduation Alliance could not provide the accommodations so that she could access Graduation Alliance and that she was not receiving special education services.⁸⁸

36. The District issued a PWN dated September 14, 2021, proposing to provide SDI to the Student at Lochburn. The PWN stated the Parents rejected in person services and elected virtual special education services in the areas of reading, mathematics,

⁸¹ Ms. Miller has a bachelor's degree from Pacific Lutheran University with a major in ELA and a minor in special education. She has a master's degree in organizational leadership from Chapman University. She has twenty-nine years of experience as a special education teacher in the state of Washington. She began working for the District at the start of the 2021-2022 school year. She teaches the subject matters English, math and social emotional skills using co-teaching and resource models in small groups. D83; Miller T238:24-239:23.

⁸² Miller T240:7-16.

⁸³ Miller T288:11, 306:22-307:14, 309:17-310:18.

⁸⁴ Miller T312:14-25.

⁸⁵ Munoz T153:3-12.

⁸⁶ D13p1.

⁸⁷ D90pp1-6; Mother T952:15; 953:13-17.

⁸⁸ Mother T953:3-25.

writing and speech. The PWN further stated the District supported the Student attending in person and had clear masks available that allowed lip reading while the speaker wore a mask.⁸⁹

37. On or about September 14, 2021, the Parents contacted Ms. Miller, to discuss scheduling the Student's remote special education services and to arrange for the District to load TEAMS software onto the Student's Graduation Alliance laptop so.⁹⁰ Ms. Miller was immediately in daily contact with the Parents and communicated often about the Student's progress; however, due to unavailability of her virtual program through Lochburn the Student did not receive her special education services through the District until early October 2021.⁹¹

38. On September 20, 2021, Dr. Rachele Kautzman,⁹² a District Educational Audiologist, emailed the Parents about an frequency modulated (FM) system or hearing aid for the Student.⁹³ Educational audiologists verify that hearing assistance technology and hearing assistance equipment used in conjunction with hearing aids is working appropriately.⁹⁴ An FM system or digital modulation (DM) system, is a device where the teacher wears a microphone that transmits to a student's hearing technology either wirelessly or through an adapter receiver so that the student can hear the teacher in the classroom with minimal background noise.⁹⁵ FM and DM systems are essentially the same and both allow a student to hear the teacher's voice over other background voices and noises.⁹⁶

39. On September 21, 2021, the Student was scheduled for math and ELA classes through Graduation Alliance. The Student received a grade of D for the "I Will Graduate" class.⁹⁷

40. On September 24, 2021, the Mother spoke with Mr. Mills, because the Student was not receiving special education services and was not able to access Graduation

⁸⁹ Clancy T477:14-478:11, 479:13.

⁹⁰ Miller T240:7-16.

⁹¹ D26p1; Mother T955:11.

⁹² Dr. Kautzman is employed part-time by the District. She has a doctorate in audiology from A.T. Still University and a master's degree from Western Washington University. D85p1; Kautzman T688:2-22.

⁹³ D18p1.

⁹⁴ Al-Izzi T928:10.

⁹⁵ Kautzman T690:13-18.

⁹⁶ Al-Izzi T932:17-933:5.

⁹⁷ D49p2.

Alliance due to the lack of FM or system or any other method for the Student to hear through her laptop. Mr. Mills sent an email to ensure the Student was assigned to Ms. Miller for special education ELA and math online through Lochburn and at the sixth grade level.⁹⁸

41. On or about September 28, 2021, the District attempted to load the District's Microsoft TEAMS (TEAMS) software on the laptop provided by Graduation Alliance. This caused the entire device to lock out making it inoperable until TEAMS was removed.⁹⁹ As a result, the Student was unable to access her online special education program through Lochburn or her general education classes through Graduation Alliance from September 1, 2021 through early October 2021.¹⁰⁰

42. On September 29, 2021, Dr. Kautzman met with the Student and the Mother at Lochburn.¹⁰¹ Dr. Kautzman connected the Student's hearing aids via Bluetooth to her Graduation Alliance computer to effectively provide the Student with the same access that a FM or DM system would provide to her laptop. Dr. Kautzman also attempted to connect an FM system as a backup but was unable to get one of the Student's receivers to connect.¹⁰² A follow up meeting was needed to resolve the connection issues with the FM system. Dr. Kautzman was unable to resolve issues with the Student being locked out of her device.¹⁰³ There was no evidence that a follow up meeting was held.

43. On October 4, 2021, the Parents advised Ms. Miller that the Student was still locked out of her Graduation Alliance laptop.¹⁰⁴ The Parents subsequently loaded TEAMS on their personal computer so that the Student could access her Lochburn special education classes.¹⁰⁵

44. On or about October 8, 2021, Ms. Miller requested the District provide a computer for the Student loaded with TEAMS that she could use for her online special

⁹⁸ D16p1, Mother T953:3-954:4.

⁹⁹ D26p1; Mother T954:18.

¹⁰⁰ P7pp1-4; Miller T2551-9; Mother T954:15-955:5.

¹⁰¹ D26p1; Kautzman T693:12.

¹⁰² Kautzman T691:3-23.

¹⁰³ Kautzman T701:12-705:14.

¹⁰⁴ D26p1.

¹⁰⁵ D26p1; Mother T955:11.

education classes.¹⁰⁶

45. On or about October 29, 2021, Ms. Miller contacted Graduation Alliance. She explained that the Student was receiving SDI in math and ELA from the District. Graduation Alliance removed the Student from math and ELA classes upon receipt of the District's email. The Student's Graduation Alliance advocate indicated she reached out to the Student via text and phone but could not get a hold of her. She stated she would reach out again and could set up a 1:1 meeting.¹⁰⁷ Due to the Student's hearing impairment, Ms. Miller did not believe the Student's education should be delivered through Graduation Alliance exclusively.¹⁰⁸ She opined that Graduation Alliance was not a general education delivery system that was effective for the Student at the time.¹⁰⁹

46. On November 1, 2021, a school counselor with the District spoke with the Mother, who was very upset at the program offered to the Student through Graduation Alliance as the classes were too difficult for her and she believed the program could not accommodate her hearing impairment. The counselor informed Graduation Alliance personnel of the Parents' concerns and willingness to meet. The Student was accessing Lochburn's programming through the TEAMS platform loaded onto the Parents' device.¹¹⁰ Despite the Parents' concerns the meeting with Graduation Alliance never occurred.¹¹¹

47. On November 10, 2021, based on the Parents' request, the Student was withdrawn from Graduation Alliance. The Mother informed Ms. Smith that she believed Graduation Alliance was too advanced. Ms. Smith withdrew the Student after confirming with Ms. Miller that she was receiving special education services through Lochburn.¹¹² At no time during the 2021-2022 school year did the Student access the Graduation Alliance program.¹¹³

48. On November 24, 2021, the District assigned an SLP service provider to the

¹⁰⁶ P7pp1-4; Miller T255:1.

¹⁰⁷ D22p2; Miller T378:22.

¹⁰⁸ Miller T243:5-20.

¹⁰⁹ Miller T254:7-13.

¹¹⁰ D22pp1-3; Smith T632:22.

¹¹¹ Mother T955:6-20.

¹¹² D24p1; D25p2; Smith T635:25-637:3.

¹¹³ Mother T953:3-17.

Student, Jinger Stevens.¹¹⁴ SLPs assist students to communicate, so that their speech is clearer and more intelligible, and their language skills allow them to comprehend information and express ideas.¹¹⁵ An SLP assesses and treats speech and language disorders. Ms. Stevens met with the Student once per week in 1:1 sessions.¹¹⁶ Ms. Stevens typically provided thirty minutes per session. She did this to provide the twenty minutes per week required by the Student's IPE and an additional ten minutes per week to make up for SLP services that were not provided at the beginning of the year.¹¹⁷ Beyond thirty minutes, the Student would become too exhausted to continue learning.¹¹⁸

49. In late November 2021, the District provided the Parents a laptop to use to access her special education program at Lochburn.¹¹⁹

50. On January 18, 2022, Tamar Peck,¹²⁰ a District deaf and hard of hearing teacher, was assigned to the Student. She initially observed the Student in both her online special education math and ELA classes. When she began working with the Student, Ms. Peck provided more than one hundred twenty minutes per month to the Student as she attended the Student's classes at least three hours per week to build a relationship with the Student.¹²¹ The Student was not receptive to one on one instruction when Ms. Peck initially began working with her. She had a negative reaction to Ms. Peck. The Student became more comfortable with Ms. Peck after using the

¹¹⁴ Ms. Stevens received a bachelor's degree in communication sciences and disorders from the University of Kentucky in 2015 and received her master's degree in speech language pathology from the same school in 2017. She has a Clinical Certificate of Competence through the American Speech Hearing and Language Association (ASHA) for speech language pathology and is licensed in Washington State and Missouri. She has a teaching certificate in Washington. At the time of the hearing, Ms. Stevens worked for College Place School District as an SLP. During the 2021-2022 school year she was employed as an SLP by the District. Stevens T90:11-91:14, 124:1.

¹¹⁵ Stevens T91:17-22.

¹¹⁶ Stevens T81:21-25.

¹¹⁷ Stevens T82:5.

¹¹⁸ Stevens T111:1.

¹¹⁹ Mother T955:15-23.

¹²⁰ Ms. Peck has worked for the District as a deaf and hard of hearing teacher since January 3, 2021. Ms. Peck has a bachelor's degree in business management and a master's degree in education. She has a CTE certification because she taught American Sign Language (ASL) for six years at a high school. She has also been an ASL interpreter for over thirty years. Ms. Peck is enrolled in Gallaudet University to obtain a master's degree in deaf education studies. She is in the Pathways program to complete her endorsement requirement as a deaf and hard of hearing teacher. Peck T766:19-769:4, 787:22.

¹²¹ Peck T776:16-777:17.

online chat box.¹²² At times Ms. Peck would alert the teacher to remind the other students in the Student's class not to talk at the same time and to turn their cameras on so the Student could lip read. She also provided consultation to the teacher.¹²³ Ms. Peck also used ASL with the Student after asking her permission.¹²⁴ Sign language services were not in the Student's February 10, 2021 IEP from CSD.¹²⁵ Ms. Peck consulted with the Student's special education teacher on strategies to prevent the Student from getting frustrated.¹²⁶

51. On January 20, 2022, Angie Munoz¹²⁷ emailed the Parents and introduced herself as the Student's new virtual special education teacher.¹²⁸ She began working with the Student around that time and after Ms. Miller stopped being the Student's teacher transitioned into the roles of her special education teacher and case manager.¹²⁹

52. On or about January 26, 2022, the Student's teachers completed progress reports that indicated the Student made progress toward her IEP goals regarding telling time, math word problems, addition and subtraction reading fluency, and paragraph writing goal. Although the Student was making progress, she had not completed her IEP goals.¹³⁰

53. During the time she was the Student's teacher, Ms. Miller told the Parents of the Student's progress toward her IEP goals on multiple occasions.¹³¹ She or another teacher hand wrote reports of progress the Student was making on to hard copies of the goal sections of her IEP documentation.¹³² The Parents repeatedly told Ms. Miller

¹²² Peck T777:24-778:15.

¹²³ D38p1; D41p1; Peck T778:18-780:1; 781:2-783:2.

¹²⁴ Peck T771:2.

¹²⁵ D8; Peck T789:16, 792:1.

¹²⁶ Munoz T160:4-25.

¹²⁷ Ms. Munoz holds a dual certification in elementary education and special education. She has a master's degree in special education, specializing in autism. She has been working as a special education teacher for six years. Munoz T137:24, 148:7-149:6.

¹²⁸ D29p1; Munoz T150:17.

¹²⁹ Munoz T136:24-137:24.

¹³⁰ D30pp1-5; Miller T297:18-298:11.

¹³¹ Miller T311:19-25.

¹³² D30pp2-6; Miller T312:1-10.

they were satisfied with the services she was providing on the occasions they spoke.¹³³ There was no evidence that any of the Student's teachers used the rubrics or monitoring logs from the CSD IEP for tracking progress contained in the February 10, 2021 IEP.

54. On January 31, 2022, Ms. Peck requested that Ms. Munoz require other students to keep their cameras on so that the Student could read lips. She also discussed the limits of the Student's cochlear implants.¹³⁴

February 7, 2022 IEP

55. On January 31, 2022, Ms. Miller spoke with the Parents about excusing the general education teacher from the IEP meeting.¹³⁵ Ms. Miller explained that the Student did not have a general education teacher available through Graduation Alliance, and a general education teacher was a required participant at the IEP meeting. She also told them that if there was not going to be one at the meeting, she needed the Parents' excusal.¹³⁶ The IEP documentation did not contain the Parent's signature verifying the general education teacher was excused. Mr. Kealy signed the excusal form but did not speak with the Parents.¹³⁷ Ms. Miller was unable to excuse the general education for the District because she was not the District administrator's designee.¹³⁸

56. Based on the testimony of the witnesses at hearing, I find that a preponderance of the evidence indicates that the Parents did not knowingly excuse a general education teacher from the February 7, 2022, IEP meeting. This finding is based in the facts that the Parents did not sign the excusal form and the District administrator's designee did not speak with them.

57. On February 1, 2022, the Parents requested an IEP meeting on February 7, 2022. On the same day, Ms. Miller learned Emily Weems¹³⁹ would be the Student's

¹³³ Miller T373:3.

¹³⁴ D31p1; Munoz T162:15.

¹³⁵ D34p26; Miller T250:2-10; 331:1-12.

¹³⁶ D34p26; Miller T330:17-25, 340:8-343:6

¹³⁷ D34pp5, 6, 25-26; Kealy, T401:9-22.

¹³⁸ Miller T331:25-332:15.

¹³⁹ Ms. Weems has a bachelor's degree in communication sciences from the University of Southern Mississippi and a master's degree from the University of South Alabama in speech language pathology. She currently works as an SLP for the Gulf Port School District. Weems T524:11-20.

new SLP provider.¹⁴⁰ Ms. Weems was self employed through Presence, an online platform, and was hired by the District to provide services to the Student.¹⁴¹

58. On February 7, 2022, the Student's IEP team met. The meeting included the Parents, Ms. Miller, Ms. Munoz, Boaz Kealy,¹⁴² Ms. Weems, Ms. Stevens, Ms. Peck, Lochburn Principal Carla Estes,¹⁴³ and Dr. Kautzman. The IEP signature sheet reflected the Parents, IEP manager, District representative, and SLP participated via TEAMS virtual platform.¹⁴⁴ Ms. Miller presented a draft of the Student's IEP to the Parents at the meeting.¹⁴⁵

59. The IEP included a general education teacher's report and statement of the Student's performance in the general education classroom. The IEP indicated that her disability affected her involvement and progress in the general education curriculum. It stated the Student may miss some of the detected language in the general education classroom due to background noises and overall communication breakdowns. It stated the Student's hearing disability had delayed her academic skills and she needed SDI and accommodations to make academic gains in the general education classroom with her peers. The IEP provided when the Student attended school in person she required a 1:1 paraeducator supporting her in the general education classroom for 30 minutes per day.¹⁴⁶

60. During the meeting, the Parents expressed that they were unhappy the Student could not access Graduation Alliance and was not receiving a full day of school. The Parents requested an increase in the Student's SDI in math, ELA, communication, and

¹⁴⁰ D32p1, Weems T528:14-18.

¹⁴¹ Weems T525:11-13.

¹⁴² Mr. Kealy received his bachelor's degree from Washington State University in 2015. He received a Master of Arts Education Program at Pacific Lutheran in 2018. He began working as a special education teacher in 2017. He is certificated to teach special education and math. Mr. Kealy began teaching at the District in 2019 as a special education teacher splitting time between Lochburn and Lakes High School. Prior to working for the District, he was a special education teacher at Baker Middle School in the Tacoma School District. During the 2021-2022 school year, he was a special education department chair. D81, Kealy T393:5-395:16.

¹⁴³ Ms. Estes has been the Principal at Lochburn for two years. She is a former Assistant Principal at Horace Mann UCLA Community School. She has a Master of Arts in Educational Administration from Concordia University Irvine, and Bachelor of Arts in Psychology, from University of Southern California. D77pp1-3; Estes T898:3, 904:15.

¹⁴⁴ D34p25; Miller T243:24-244:10, 248:14-16; 338:21-339:14, Weems T529:5-10.

¹⁴⁵ Miller T314:7-18.

¹⁴⁶ D34p10.

instruction from a deaf and hard of hearing teacher.¹⁴⁷ Ms. Estes encourage the Parents to have the Student attend Lochburn for her general education classes.¹⁴⁸

61. The IEP team developed an annual goal in reading at a sixth grade level focusing on reading comprehension. The reading goal would be reported to the parents quarterly through a written progress report.¹⁴⁹

62. The IEP team developed an annual goal in written expression. The written expression goal would be reported to the Parents quarterly through a written progress report.¹⁵⁰

63. The IEP team developed two annual goals in math. The math goals would be reported to the parents quarterly through a written progress report.¹⁵¹

64. The IEP team developed an annual communication goal. The communication goal would be reported to the parents quarterly through a written progress report.¹⁵²

65. The IEP team also developed a related services goals in speech language therapy directed toward her skills in vocabulary and figurative language.¹⁵³

66. The IEP detailed daily accommodations in the general education classroom that included amplification, assistive technology, access to a calculator, extended time on assignments and testing mathematics manipulatives, use of a multiplication table, preferential seating, providing individualized/small group instruction, speech to text, providing speech to text software, closed captioning, spell check/word prediction software, and text to speech. Additional accommodations were and closed captioning for testing and classwork the location when applicable. Ms. Miller consulted with general education teachers, Ms. Kautzman, and Ms. Peck, in drafting the accommodations.¹⁵⁴ Ms. Miller attended the IEP team meeting as the Student's

¹⁴⁷ Miller T245:24-246:6; Estes T898:19.

¹⁴⁸ Estes T900:11-18.

¹⁴⁹ D34p13; Miller T247:8-25, 317:2-7.

¹⁵⁰ D34p13; Miller T247:8-25.

¹⁵¹ D34p13; Miller T247:8-25, 318:21-319:23.

¹⁵² D34p14.

¹⁵³ D34pp14-15.

¹⁵⁴ D34pp16-17; Miller T320:4-14, 322:6-19, 323:6-8.

special education case manager and not her general education teacher.¹⁵⁵

67. The IEP provided the Student would receive special education services in reading fifty minutes three times weekly, math fifty minutes five times weekly, written expression, fifty minutes two times weekly, and communication twenty minutes weekly. The IEP also provided the Student receive supplementary aids and services from a teacher of the deaf one hundred twenty minutes monthly in a special education setting and 1:1 paraeducator support thirty minutes daily in a general education setting.¹⁵⁶

68. Ms. Miller opined that more than fifty minutes per session in reading or math would overload the Student, meaning that increased services would amount to diminishing returns.¹⁵⁷ Ms. Miller believed that during the time she was the Student's teacher, the District provided the Student the special education services in math and ELA as required in her IEP in the virtual environment chosen by the Parents.¹⁵⁸

69. The IEP team identified the Student's LRE as forty percent to seventy nine percent in the general education classroom. The IEP stated that due to the Student's hearing impairment she would not participate with nondisabled peers in the general education setting while she was receiving SDI in communication, reading, writing and math, It stated she would be in the general education setting 70.11 percent of the time.¹⁵⁹

70. The District issued a PWN dated February 10, 2022, proposing to implement the IEP. The PWN stated that the Parents' request to increase the Student SDI minutes in the areas in which she qualified for services was rejected. The reason for the rejection was because the Student could achieve academic benefits in the general education setting with support and accommodations. The PWN noted the Parents had chosen to have the Student receive instruction and support virtually. It stated the District would provide all services, accommodations, and support as proposed in the IEP if the Student attended general education classes in person. It stated that until that time, the Student would continue to receive her services in a virtual setting from home. The PWN clarified that when she participated in her classes in person, the Student required a 1:1 paraeducator support for one hundred and fifty minutes per

¹⁵⁵ Miller T331:25-332:15.

¹⁵⁶ D34p29; Miller 325:17326:1.

¹⁵⁷ Miller T327:1-19.

¹⁵⁸ Miller T276:14-24.

¹⁵⁹ D34p21; Miller T328:1.

week.¹⁶⁰

71. It was Ms. Miller's practice to provide parents with a copy of the finalized IEP either at the meeting or within ten days of the meeting.¹⁶¹ Because the Student's IEP required revision based on the meeting Ms. Miller believed she provided the Parents a copy of the IEP after the meeting.¹⁶² The Parents did not receive a copy of the IEP until October 2022.¹⁶³ A preponderance of evidence at hearing established that Ms. Miller sent the final IEP documentation to the Parents no more than ten days after the meeting consistent with her practice, however, the IEP documentation was not received by the Parents until they subsequently requested her records in October 2022.

Third and Fourth Quarters of the 2021-2022 School Year

72. At the start of the third quarter, in February 2022, Ms. Munoz took over Ms. Miller's classroom and the role as the Student's special education case manager.¹⁶⁴ She would frequently read with the Student, work on math problems, and sentence writing.¹⁶⁵

73. Beginning February 9, 2022, Ms. Weems was assigned to provide weekly SLP services for the Student. The Student was absent February 9, and 16, 2022.¹⁶⁶ On February 23, 2022, Ms. Weems had her first session with the Student. She believed the Student was performing at baseline as stated in the IEP. Ms. Weems met with the Student 1:1 for twenty minutes.¹⁶⁷ During their sessions they worked on vocabulary, including figurative language, and a variety of activities including games and worksheets.¹⁶⁸ The tools Ms. Weems used with the Student included the pointer, the text box, and the highlighter, among others.¹⁶⁹

¹⁶⁰ D34p22; Miller T251:2-:21, 382.1.

¹⁶¹ Miller T252:3-7.

¹⁶² Miller T252:8-10.

¹⁶³ Mother T985:22.

¹⁶⁴ Munoz T150:11.

¹⁶⁵ Munoz T164:4, 18.

¹⁶⁶ D28p7; Weems T527:13-528:5, 531:2.

¹⁶⁷ D28p7; Weems T531:5.

¹⁶⁸ D28p1; T531:9-14.

¹⁶⁹ Weems T534:4.

74. By February 9, 2022, Ms. Peck was visiting the Student's classroom three times per week. She provided at least thirty minutes per week of services. Ms. Peck's services included one on one sessions, in class observation, and consultations.¹⁷⁰

75. On February 16, 2022, Ms. Peck and Ms. Munoz consulted by email regarding the Student's participation in class. Ms. Peck suggested Ms. Munoz spend a little more time with the Student online 1:1 after other students left so she could get to know her and identify how to help her learn better.¹⁷¹ Ms. Munoz worked with the Student after class two or three times per week, through the end of the school year, sometimes with help from Ms. Peck. The extra time ranged from thirty minutes to an hour.¹⁷²

76. Ms. Weems had twenty minute sessions with the Student on March 2, 9, 16, 23, and 30, 2022.¹⁷³

77. By the beginning of April 2022, the District issue progress reports that indicated the Student had progressed in accuracy providing vocabulary definitions given structured language activities and explaining the meaning of figurative language idioms.¹⁷⁴ She had progressed in reading comprehension and sentence writing. In math the Student was multiplying at twenty percent accuracy which indicated progress.¹⁷⁵

78. Beginning April 13 through June 8, 2022, Ms. Weems had nine sessions 1:1 with the Student once per week for twenty minutes each.¹⁷⁶

79. On June 15, 2022, the District issued reports that indicated the Student had progressed toward her IEP goals in reading, writing, math, and communication. She showed development reading comprehension, writing sentences, multiplication and division problems, and use of figurative language.¹⁷⁷

80. Ms. Munoz believed the Student worked best 1:1. She observed that the

¹⁷⁰ Peck T785:8-24.

¹⁷¹ D38p1.

¹⁷² Munoz T156:24-157:11, 167:14.

¹⁷³ D28pp4-6; Weems T534:12-535:4.

¹⁷⁴ D34p5; Weems T536:4-9, 538:3-10.

¹⁷⁵ D35 pp1, 2.

¹⁷⁶ D28pp1-4.

¹⁷⁷ D35pp1-3; D45pp3-5; Weems T536:10-537:5, 538:11-14; Munoz T168:23-171:4.

Student would grow frustrated in a classroom that would get a little too loud for her.¹⁷⁸ She observed the Student would reach a shut down point when doing extra work and this could result in a loss of progress through work avoidance.¹⁷⁹

81. Other than the “D” grade for the Graduation Alliance “I Will Graduate” class, no other grades were provided for the Student for the 2021 2022 school year.¹⁸⁰

82. Effective June 15, 2022, the last day of the 2021 2022 school year, the Student was withdrawn from the District.¹⁸¹

September 2022-2023 School Year

83. At the start of the 2022 2023 school year the Student remained withdrawn from the District as the parents were seeking to enroll the Student in Washington connections academy.¹⁸²

84. On September 14, 2022, the Parents obtained the Student’s school records from the District to enroll the Student in Washington Connections Academy.¹⁸³

85. On October 13, 2022, the District was notified that the Parents’ request to enroll the Student in Washington Connections Academy as a nonresident student had been accepted.¹⁸⁴

86. On October 26, 2022, the Parents notified the District that they planned to reenroll the Student in the District and requested an IEP meeting.¹⁸⁵ The District responded that it would convene the Student’s IEP team.¹⁸⁶

87. On October 27, 2022, the District assigned Mr. Kealy as the Student’s special education case manager.¹⁸⁷

¹⁷⁸ Munoz T163:20-25.

¹⁷⁹ Munoz T173:25, 175:4-14.

¹⁸⁰ P1, D40pp2-5; Munoz T163:9.

¹⁸¹ D1p1; D50p1; Clancy T505:4-14.

¹⁸² D46p1.

¹⁸³ D47pp1-4; Healey T915:13.

¹⁸⁴ D51pp1, 2; Clancy T508:14-18.

¹⁸⁵ D54p1; Clancy T452:8-453:9.

¹⁸⁶ Clancy T454:2-458:8.

¹⁸⁷ D55p1; Kealy T395:25396:2.

88. On October 31, 2022, the Parents provided the District with reenrollment paperwork.¹⁸⁸ On the same day, the Parents filed a due process hearing request with the Office of Administrative Hearings (OAH). As a remedy, the complaint requested an Independent Educational Evaluation (IEE).¹⁸⁹

89. On November 4, 2022, the District conducted a transfer review of the Student's February 2021 evaluation report and prior IEPs, including the District's February 7, 2022, IEP. Because the evaluation report was within the three year reevaluation timeframe the District determined it was still valid.¹⁹⁰

90. On November 7, 2022, the Student began seventh grade attending a full day schedule in person at Lochburn.¹⁹¹ The teacher of the Deaf and Hard of Hearing assigned to the Student was AnneMarie Defayette.¹⁹² Dr. Ashley Al Izzi¹⁹³ was the audiologist assigned to the Student.¹⁹⁴ The Student did not have an assigned paraeducator.¹⁹⁵ The Student did not have an assigned SLP services provider.¹⁹⁶ The Student's schedule included first period, special education math with Mr. Kealy; fifth period, special education ELA with Venice Amador.¹⁹⁷ General education classes included Physical Education (PE); science, Stem Tech, and Washington State History.¹⁹⁸ A meeting was held with Dr. Al Izzi to make sure the Student's teachers knew how to use her microphone amplification device and who to contact if issues

¹⁸⁸ D57pp3-6; D58p2; D59p2.

¹⁸⁹ Parents' complaint.

¹⁹⁰ D64p2; Spadafore T606:12-23; 697:13.

¹⁹¹ D63p1, Mills T831:21.

¹⁹² Ms. Defayette began working for the District in September 2022. She has a bachelor's degree and a master's degree in the education of the deaf. Prior to working for the District, she was a teacher of the deaf at the Colorado School for the Deaf and Blind. She was also a teacher of the deaf at the Kansas City School District. Mills T851:1-852:7.

¹⁹³ Dr. Al-Izzi received bachelor's degrees from the University of Washington in French and speech and hearing sciences. She has a master's degree in audiology from the University of Washington. She has a doctorate degree in audiology from AT Still University in Mesa, Arizona. Prior to working for the District, Dr. Al-Izzi was in private practice in audiology. Al-Izzi T927:15-20.

¹⁹⁴ D66pp1, 2; Kealy T421:24, Mills T823:14.

¹⁹⁵ D68p1.

¹⁹⁶ Mills T828:16.

¹⁹⁷ Ms. Amador has a master's degree in education and a bachelor's degree in history. Prior to joining the District, she was a special education teacher in the Intensive Academic Center for the Chinook Middle School in SeaTac, Washington. D75pp1, 2; Mills T862:22-863:6.

¹⁹⁸ D63p1; D71p1; Mills T863:17.

arose.¹⁹⁹ In each of her classrooms the Student was provided a DM system.²⁰⁰ The microphone was connected directly to the Student's hearing aid.²⁰¹

91. The Student's math class with Mr. Kealy had no more than seven students.²⁰² The Student received a microphone to watch video lessons and, sat up front to read the teacher's lips.²⁰³ She was provided a graphic organizer and explicit instructions through broken down by topics for her math work. Mr. Kealy used calculators, multiplication charts, thinking supports and written and verbal processing manipulatives.²⁰⁴ She had access to speech and text software in her math class but did not use it much.²⁰⁵ The Student's first period math class was fifty six minutes except for Wednesdays when it was forty minutes.²⁰⁶

92. The Student also received special education services in ELA from Ms. Amador for fifty five minutes per day.²⁰⁷

93. The Student was working on grade level curriculum in her math class. Mr. Kealy used scaffolding which in this context was taking big concepts from a lesson and breaking down important pieces for the Student into smaller steps. He also moved at a slower pace.²⁰⁸

94. The Student was absent November 22, 23, and 28, 2022, totaling three school days.²⁰⁹

95. On December 6, 2022, Mr. Kealy emailed the Parents to schedule a check in meeting to make sure that in person learning was going well and determine if any

¹⁹⁹ D67; Kealy T409:11-22.

²⁰⁰ Al-Izzi T929:4-23.

²⁰¹ Kealy T405:7.

²⁰² Kealy T404:4-8.

²⁰³ Kealy T404:12-18.

²⁰⁴ Kealy T404:19-24.

²⁰⁵ Kealy T405:17.

²⁰⁶ Kealy T405:20-24.

²⁰⁷ Mills T850:5-21.

²⁰⁸ Kealy T406:5-14.

²⁰⁹ D92p1; Mills T858:10.

adjustments that she needed.²¹⁰

96. On January 12, 2023, Mr. Kealy emailed the Parents to report the Student was struggling with completing her work in math. When he checked in with her, she was usually unsure about what she was supposed to be working on. She rarely advocated for herself or asked questions when she was confused. The Parents responded that the Student was not receiving the help stated in her IEP and requested a meeting with Mr. Kealy.²¹¹

97. The Student was absent January 19 and 20, 2023, totaling two school days.²¹²

98. On January 23, 2023, the Parents had a check in meeting with Mr. Kealy, Ms. Defayette, Dr. Al Izzzi, Mr. Mills, and others to discuss the Parents' concerns and the Student's services.²¹³ The Parents requested a new evaluation, but did not consent to the District conducting a reevaluation although the District was willing to do so.²¹⁴ Mr. Kealy believed a reevaluation of the Student would be beneficial.²¹⁵ The District provided the Parents a consent form and requested permission to reevaluate the Student.²¹⁶ After taking time to consider the District's request to reevaluate the Student, the Parents refused to provide consent.²¹⁷

99. The first semester ended January 26, 2023.²¹⁸ The Student's general education grades included a P in advisory; C+ in math, B in PE, D+ in science, A in Stem Tech; B in ELA; and B+ in social studies.²¹⁹

100. At the end of January 2023, the District assigned Sarah Steiner,²²⁰ an SLP, to

²¹⁰ D70p1; Kealy T410:11-411:2.

²¹¹ D72p2; D73p1; Kealy T389:3, 412:12-21.

²¹² D92p1.

²¹³ Kealy T389:13-390:11.

²¹⁴ Kealy T414:17-23.

²¹⁵ Kealy T417:6.

²¹⁶ Mills T819:5.

²¹⁷ Mills T819:13.

²¹⁸ D1p2.

²¹⁹ D74p8.

²²⁰ Ms. Steiner received her state certification as an SLP in 2006. She received a master's degree in speech and hearing sciences from the University of Washington and a bachelor's degree in foreign languages and literature from Washington State University. D93pp1, 2; Mills T828:4, 856:4.

work with the Student. To make up for SLP services that the District did not provide during the school year the District committed to delivering compensatory education services until it completed delivery of the SLP services that resulted from not having an assigned SLP provider.²²¹ In addition to twenty minutes per week of SLPs services. Ms. Steiner provided a second session of SLP services of twenty minutes per week totaling forty minutes weekly and was assigned to do so through the end of the school year.²²²

101. The District sent the Parents an invitation dated February 3, 2023, for an IEP meeting on February 28, 2023.²²³

102. In the beginning of February 2023, the Student began working with a paraeducator for sixty minutes per day.²²⁴ The paraeducator continued to work with the Student until mid March 2023. At the time of the hearing, the Student did not have a paraeducator assigned to work with her.²²⁵ The District was looking for a paraeducator for her.²²⁶

103. On February 6, 2023, the Student's IEP team met but the Parents did not want to proceed with the meeting because the SLP was not present. The team agreed to reschedule the IEP meeting to February 27, 2023.²²⁷

104. On February 7, 2023, the District filed a due process hearing request with OAH to "defend the appropriateness of the existing evaluation and, in the alternative, to grant the District an opportunity to conduct its own evaluation" of the Student.²²⁸

105. On February 14, 2023, the District sent the Parents a reminder email about the February 28, 2023 IEP meeting. The Parents indicated that they wanted the Student to be evaluated prior to proceeding with the IEP meeting. The Parents refused to sign consent for the District to reevaluate the Student as they wanted an independent provider, Center for Deaf and Hard of Hearing Youth (CDHY), to conduct the

²²¹ Mills T828:16-22.

²²² Mills T828:25-829:10.

²²³ D74p1.

²²⁴ Mills T831:19-833:6.

²²⁵ Mills T824:4.

²²⁶ Mills T833:20-25.

²²⁷ D74p21; Kealy T390:17-22.

²²⁸ District complaint.

evaluation.²²⁹ CDHY has expertise to conduct an evaluation of the specialty services, accommodations, and assistive technology (AT), required by students with hearing impairments. They do not have expertise to make recommendations regarding academic needs.²³⁰

106. The District would like to conduct a reevaluation to determine the Student's current overall baseline and her progress.²³¹ Given the time the Student was withdrawn, and the virtual services provided previously, the District believes that a reevaluation should be conducted urgently even though the Student's three year evaluation was not due until February 10, 2024.²³² Dr. Clancy testified the District was willing to consult with CDHY as part of its reevaluation. Based on its experience, the District believed CDHY will be able to respond faster when handling a portion of a reevaluation rather than an IEE and that this is a faster approach to reach the Student's baseline.²³³

107. The District issued an IEP progress report for the first half of the 2022 2023 school year. With respect to her annual IEP goal in multiplication, Mr. Kealy reported the Student was making steady progress but did not provide any specific measurements. In division, her skills were emerging which meant that the Student was progressing but not fast enough to master her goal within the IEP period. The Student demonstrated a rate of success of forty five to fifty percent accuracy in her annual goal in reading. In her written expression goal, the Student demonstrated a rate of progress of forty percent accuracy.²³⁴

February 28, 2023 Carry Over IEP

108. The District issued a PWN dated February 28, 2023, proposing to implement a "carryover IEP" that day, meaning the District would extend the Student's prior IEP to continue providing services while litigation was pending.²³⁵ The Student's IEP team had created a new IEP, however, when the Parents did not attend the IEP meeting the

²²⁹ D74p21; Clancy 469:2–24.

²³⁰ Clancy T470:11-471:7.

²³¹ Clancy T469:9-14.

²³² Clancy T473:18-474:4.

²³³ Clancy T473:6-15.

²³⁴ D91p2; Kealy T406:15-408:9.

²³⁵ Kealy T416:7.

team pulled forward the February 2022 IEP to allow the Student continuity.²³⁶ The District rejected the option of creating a new IEP because the IEP team wanted to allow the parents to fully participate in the IEP process. The PWN stated the District issued the February 28, 2023, IEP to reflect services identical to the previous IEP except for an increase of paraeducator services from thirty minutes per day to sixty minutes per day consistent with the Parents request. The increase in paraeducator services was meant to reflect the District intention to provide compensatory education services. The PWN stated that the District was willing to consult with the CDHY as part of the reevaluation of the Student. The PWN stated that it offered multiple meeting times to the Parents to convene the IEP team and they did not attend. The PWN stated that that the District is adding twenty minutes per week of SLP services as compensatory education minutes to address the minutes the Student missed between November 9, 2022 and February 2023.²³⁷

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief.²³⁸ The Parents and District are each seeking relief through their respective complaints and each bear the burden of proof with respect to their claims in these combined cases. The U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence.²³⁹ Therefore, the burden of proof in these matters is preponderance of the evidence.

²³⁶ Kealy T415:19-416:2.

²³⁷ D74p21; Mills T860:2, 861:23-862:11.

²³⁸ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

²³⁹ *Steadman v. SEC*, 450 U.S. 91, 102 (1981); *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep't of Social & Health Services*, 172 Wn.2d 1, 4 (2011).

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential maximizing” education, but rather a “basic floor of opportunity.”²⁴⁰

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the IEP developed under these procedures is reasonably calculated to enable the child to receive educational benefits. As stated in *Rowley*, “[i]f these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.”²⁴¹

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent’s right to be involved in the development of their child’s educational plan.²⁴² Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

(III) caused a deprivation of educational benefits.²⁴³

6. In *Endrew F. v. Douglas County Sch. Dist. RE 1*, the U.S. Supreme Court stated, “[t]o 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.”²⁴⁴ The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs.²⁴⁵ The “essential function of an IEP is to set out

²⁴⁰ *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

²⁴¹ 458 U.S. at 206-07.

²⁴² *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

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

²⁴⁴ 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

²⁴⁵ *Id.*

a plan for pursuing academic and functional advancement.”²⁴⁶ Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.”²⁴⁷ Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances”²⁴⁸

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.”²⁴⁹ The determination of reasonableness is made as of the time the IEP was developed. An IEP is “a snapshot, not a retrospective.”²⁵⁰

Issues Raised in Parents’ Due Process Hearing Request

8. At hearing the Parents clarified that they did not wish to contest the Student’s receipt of services prior to September 2021. Therefore, this issues in this case concern the Student’s receipt of special education during the 2021 2022 and 2022 2023 school years.

I. Failing to provide any SDI to the Student from September 2021 to the present.

9. The Parents assert that the Student did not receive any of the SDI required by her IEPs during the 2021 2022 and 2022 2023 years. Their assertions regarding services delivered by an SLP, deaf and hard of hearing teacher, and paraeducator are addressed separately below.

10. Only material failures to implement an IEP violate the IDEA. Minor discrepancies in the services required by the IEP do not violate the IDEA.²⁵¹

“[S]pecial education and related services” need only be provided “*in conformity with*” the IEP. [20 USC §1401(9).] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

* * *

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 1000.

²⁴⁸ *Id.*

²⁴⁹ *Endrew.* at 999 (emphasis in original).

²⁵⁰ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

²⁵¹ *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811 (9th Cir. 2007).

We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.²⁵²

11. Reasonable delays incurred in implementing an IEP while a school district conducts assessments and negotiates with parents are not material.²⁵³

12. Under Washington law, when a student transfers to a new school district from another state, and the Student had an IEP that was in effect in the previous state, the new school district, in consultation with the parents, must provide FAPE to the student including services *comparable* to those described in the student's IEP. This obligation remains until the new school district conducts an evaluation to determine whether the student is eligible for special education services in Washington state or develops and implements a new IEP, if appropriate, that meets the applicable requirements.²⁵⁴ The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled.²⁵⁵

13. According to the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS):

After taking reasonable steps to obtain the child's records from the public agency in which the child was previously enrolled, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, if the new public agency is not able to obtain the IEP from the previous public agency or from the parent, the new public agency is not required to provide special education and related services to the child pursuant to

²⁵² *Id.* at 821-22 (italics in original).

²⁵³ See *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1189 (W.D. Wash. 2002) (finding that implementation delay that occurred at "behest of the parents ... was reasonable and was not ... error"); *cf. Tracy N. v. Haw. Dep't of Educ.*, 715 F. Supp. 2d 1093, 1112 (D. Haw. 2010) (finding that delay in determining student's educational placement was reasonable because there were "ongoing discussions regarding placement in response to [the student's mother's] concerns, a reassessment of [the student's] cognitive and academic skills, and a reevaluation of [her] behavior").

²⁵⁴ WAC 392-172A-03105(5) (emphasis added).

²⁵⁵ WAC 392-172A-03105(6).

SDI in Academics During the 2021-2022 School Year

14. In the Student's case, the February 10, 2021 IEP developed by CSD in Iowa, required the Student to receive sixty minutes per day of SDI each in reading and math, and thirty minutes per day of SDI in writing, (totaling one hundred fifty minutes per day) in the special education classroom provided by a special education teacher. After obtaining the Student's school records the District conducted a transfer review and determined the Student was eligible for special education services in Washington state consistent with WAC 392 172A 03105(5). The District determined the February 10, 2021, reevaluation was appropriate and sufficient to develop a program to meet the Student's needs and that it would provide comparable services consistent with the Student's IEP developed by CSD. During the 2021 2022 school year, Ms. Miller provided the Student with online special education instruction in math and ELA for two fifty minute periods per day. Ms. Miller sometimes provided five minutes extra service minutes to the Student beyond the fifty minute periods. She also worked with the Student 1:1 at times after dismissing the other students. When Ms. Miller provided services more than fifty minutes per period the Student became overloaded with diminishing returns. The Parents expressed that they were satisfied with Ms. Miller's services. Therefore, the evidence in this case established that the Student was provided comparable special education services in academics consistent with her February 10, 2021 IEP.²⁵⁷

15. The Student's special education services were not provided immediately at the beginning of the 2021 2022 school year as Ms. Miller was not assigned to the Student until September 14, 2021. The facts of the case support the conclusion that the District established online special education services in math and ELA for the Student by early October 2021. The five week timeframe to establish the Student's special education services at the start of the 2021 2022 school year was not unreasonable as the District had requested the Student's special education records from the CSD after obtaining consent from the Parents and was still in the process of reviewing those documents. The District required the Student's special education records from CSD to develop Lochburn's on line programming consistent with her IEP. Moreover, this delay was not a material failure to implement the Student's IEP resulting in a denial of FAPE as the Student made progress toward the reading, writing, and math goals in her IEP

²⁵⁶ *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11).

²⁵⁷ See, WAC 392-172A-0105(5)

as evidenced by her first and second semester progress reports.

16. After the District developed the Student's February 7, 2022, IEP, Ms. Munoz took over Ms. Miller's classroom and delivered the Student's SDI in her math and ELA classes. Ms. Munoz provided reading instruction fifty minutes three times weekly, math instruction fifty minutes five times weekly, and written expression fifty minutes two times weekly in the special education classroom. This was consistent with the amount, frequency, and location of special education services in reading, writing and math required by her IEP. Prior to fully taking over the classroom from Ms. Miller, Ms. Munoz went through a transition process to get to know the Student and attended the IEP meeting. Ms. Munoz also provided the Student extra 1:1 instruction after class which further alleviated the delay in academic instruction from the start of the school year. The Student's progress reports evidenced that she was progressing toward her IEP goals in math, reading and writing at the end of the 2021 2022 school year. Because Ms. Miller delivered services comparable to those in the Student's IEP from Iowa, and Ms. Munoz delivered services consistent with the Student's IEP developed by the District, the Parents did not meet their burden of proof to establish that the District denied the Student a FAPE by failing provide SDI with respect to the Student's academic instruction during the 2021 2022 school year.

SDI in Academics During the 2022-2023 School Year

17. State law determines which school district is responsible for the provision of FAPE.²⁵⁸ Under Washington law, the residence of the student generally controls which school district is responsible for FAPE.²⁵⁹ An exception to this rule exists when a student's parents or guardians enroll the student in a non resident school district through a transfer application under RCW 28A.225.220 and RCW 28A.225.225.²⁶⁰

18. From the start of the 2022 2023 school year through November 7, 2022, the

²⁵⁸ *J.S. v. Shoreline*, 220 F. Supp. 2d 1175, 1192 (W.D. Wash. 2002); See also, *N.F. v. Antioch Unified School District*, 79 IDELR 107 (N.D. Cal. July 2, 2021).

²⁵⁹ WAC 392-172A-01160; WAC 392-137-115; *D.T. and J.H., ex rel. J.T. v. Tahoma Sch. Dist.*, 83 IDELR 60 (W.D. Wash. May 16, 2023); *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1130 (9th Cir. 2003).

²⁶⁰ WAC 392-137-235 (The nonresident district is obligated to provide special education services when a parent or guardian obtains release from the resident district and acceptance of the transfer request from a non-resident school district.); See also, *J.S. v. Shoreline*, 220 F. Supp. 2d at 1192 (The resident school district is not obligated to provide FAPE to a student who enrolls in an out-of-district residential private school); *L.B. v. Kyrene Elementary District No. 28*, 75 IDELR 44 (D. Ariz. Sept. 4, 2019) (a school district is "required to provide FAPE to students that reside in its district, but it is not required to provide FAPE 'if the parent makes clear his or her intention to keep the child enrolled' in an out-of-district private school").

Student was withdrawn from the District and either enrolled or pursuing enrollment in Washington Connections Academy. Therefore, the District was not obligated to provide her FAPE during this time.²⁶¹

19. Beginning November 7, 2022, the Student received fifty six minutes of special education instruction in math four times per week and forty minutes one time per week. This totaled two hundred and sixty four minutes per week of instruction, which was greater than the two hundred and fifty minutes per week required by her IEP. The Student also attended an ELA class taught by a special education teacher for a full class period each day, which met the requirements respective to SDI in reading and writing consistent with the February 7, 2022 IEP. Moreover, the Student's progress reports reflected that she progressed toward her IEP goals in academics during the first semester of the 2022 2023 school year. The evidence and testimony did not indicate a lapse in academic instruction in SDI after the Student resumed attending Lochburn in November 2022. Therefore, a preponderance of the evidence established that the District provided the Student with SDI in academics consistent with her IEP during the 2022 2023 school year.

20. Because the Parents did not establish by a preponderance of the evidence that the District failed to provide SDI in academics resulting in a deprivation of FAPE during the 2021 2022 and 2022 2023 school years, the Parents did not prevail on this issue.

II. Failing to provide any related supports to the Student from September 2021 to the present.

21. The Parents assert that during the 2021 2022 and 2022 2023 school years the Student did not receive any related supports or services required by her IEPs, including audiological services and assistive technology. Their assertions regarding services delivered by an SLP, deaf and hard of hearing teacher, and paraeducator are addressed in separate issues discussed below.

22. Related services are transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education.²⁶² Audiology is listed among the definition

²⁶¹ WAC 392-172A-03105(1) ("At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education services that it is serving through *enrollment* in the district.") (emphasis added).

²⁶² WAC 392-172A-01155(1).

of related services.²⁶³

23. “Assistive technology device” is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such a device.²⁶⁴ “Assistive technology service” means “any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.”²⁶⁵

2021-2022 School Year

24. In this case, the Student’s IEP from CSD in Iowa required that at the beginning of the year an audiologist provide the Student’s teachers information about her hearing and the accommodations she required. Her IEP also required that an audiologist evaluate her needs twice annually. The District assigned an audiologist, Dr. Kautzman, who began reviewing the Student’s technology needs on September 20, 2021. Dr. Kautzman met with the Student on September 29, 2021, and connected her hearing aids to her Graduation Alliance laptop via Bluetooth. Dr. Kautzman also identified the need for an FM system as a back up and offered to provide plugins to connect the system. The evidence at hearing did not indicate an FM system was ever connected, however, once the Parents loaded TEAMS on their device and subsequently received a laptop from Lochburn, additional technology issues were not reported.

25. The Student’s IEP required that an audiologist evaluate the Student at the start of the year. It was not established what the term “evaluate” means as used in the IEP. Dr. Kautzman met with the Student on September 29, 2021, and ensured she had the technology to hear through her computer. While this was approximately a one month delay from the start of the school year, it did not ultimately deprive the Student of receipt of FAPE with respect to her special education instruction in math and ELA. Therefore, the Parent’s did not establish that the delay was a material failure to implement the Student’s IEP with respect to her receipt of special education services that violated the IDEA.²⁶⁶ The impact of this delay on the Student’s opportunity to access Graduation Alliance is addressed below. Other than this initial delay in

²⁶³ WAC 392-172A-01155(3).

²⁶⁴ WAC 392-172A-01025. See generally, *In re: Student With a Disability*, 119 LRP 21260 (SEA WA 2018).

²⁶⁵ WAC 392-172A-01030.

²⁶⁶ *Van Duyn*, 502 F.3d at 821, 822 (9th Cir. 2007).

assessing the Student, Dr. Kautzman was available to school staff during the first half of the year and provided comparable services to the Student consistent with her February 10, 2021 IEP from CSD. Dr. Kautzman participated in the February 7, 2022 IEP meeting, providing input to the IEP team. Based on the evidence provided at hearing, the Parents did not meet their burden to establish that the District committed a material failure to provide an audiologist or assistive technology to address the Student's hearing needs to a degree that she was unable to benefit from her special education services during the 2021-2022 school year. Accordingly, the Parents have not shown the Student was deprived of FAPE.

2022-2023 School Year

26. When the Student resumed attending school in the District in November 2022, Dr. Al Izzi was the Student's audiologist. She met with the Student and took steps to ensure the Student's teachers knew how to use her microphone amplification device and who to contact in case of issues with it. The Student was provided a DM system in her classes. Dr. Al Izzi participated in the January 23, 2023, meeting with other District staff and the Parents regarding their concerns. The meeting resulted in the District identifying the need for an early triennial reevaluation. Dr. Al Izzi also provided a report to the February 28, 2023 IEP team about the Student's use of assistive technology at school. Based on the evidence provided at hearing, the Parents did not establish that the District committed a material failure to provide to provide an audiologist or assistive technology to address the Student's hearing needs consistent with her IEP during the 2022-2023 school year.

Summary

27. With respect to the Parents' issue concerning related services/supports, other than the opportunity to access Graduation Alliance as addressed below, the Parents did not establish by a preponderance of the evidence that the District denied the Student FAPE during the 2021-2022 and 2022-2023 school years. Therefore, the Parents have not met their burden on this issue.

III. Beginning September 2021, failing to provide any education that the Student could access during the 2021-2022 school year.

28. The Parents alleged the general education program offered by the District for the 2021-2022 school year, Graduation Alliance, could not be accessed by the Student.

29. "General education is what is provided to non-disabled students in the classroom. Special education, on the other hand, is 'specially designed instruction' to

meet the unique needs of a child with a disability.”²⁶⁷

30. Supplementary aids and services are aids, services, and other supports that are provided in general education or other education related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements.²⁶⁸

31. In the present case, the District offered Graduation Alliance to middle school students as an online alternative learning experience in lieu of in class instruction. The Parents opted into Graduation Alliance due concerns over the potential health risk to the Student during the COVID 19 pandemic and concerns that the Student would not be able to fully access general education in the classroom due to her hearing impairment. Among these concerns was that Student would not be able to read lips due to the need for other students and teachers to wear masks. The Student was unable to access the Graduation Alliance laptop until early October 2021 as her hearing aid was not connected to her laptop via Bluetooth or a FM system, and her laptop was subsequently locked until that time. The Parents ultimately withdrew the Student from Graduation Alliance on November 10, 2021, as they believed it was too advanced for her. Graduation Alliance provided a variety of supports including breaks as needed, peer access, the ability to replay classes, written class transcripts, a coach, an academic advocate, and a local coach. The evidence in this case did not establish these supports were insufficient to address the general education accommodations listed in the Student’s IEP as the Student did not attempt to access the program when it was available to her in October 2021, and after November 10, 2021, did not reenroll in the program.

32. The Student’s opportunity to access Graduation Alliance was delayed because her laptop was not connected through Bluetooth to her hearing aids or loaded with a FM system and subsequently it was locked when the District loaded it with TEAMS. This delay, which was not fully resolved until October 2021, deprived the Student of education benefit as Graduation Alliance classes were delivered on three week periods. The District, therefore, denied the Student a FAPE by not ensuring the Student had a laptop that she could use to access Graduation Alliance beginning September 1 until October 2021.²⁶⁹

²⁶⁷ *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2017).

²⁶⁸ WAC 392-172A-01185.

²⁶⁹ “Procedural inadequacies that result in the loss of educational opportunity, *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990), or seriously infringe the parents opportunity to

33. Based on the facts in this case, other than the delay in providing her a laptop she could use to access Graduation Alliance, the Parents did not establish that the District failed to provide an education program that the Student could access. After the issues with the laptop were resolved, the Student did not attempt to access Graduation Alliance.

IV. Denying the Parents, the opportunity to meaningfully participate in the IEP process during the 2021-2022 school year and 2022-2023 school year.

34. The Parents allege that they were not permitted to participate in the development of the Student's February 7, 2022 IEP.

35. The IDEA requires that parents have the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child."²⁷⁰ Parental participation includes notifying parents of IEP team meetings and scheduling the meeting at a mutually agreed upon time and place.²⁷¹ The school district must take whatever action is necessary to ensure the parents understand the proceedings of the IEP team meeting.²⁷² The school district must give the parent a copy of the student's IEP at no cost to the parent.²⁷³ A school district may conduct an IEP meeting without a parent in attendance if it is unable to convince the parents they should attend. In such circumstances the school district must keep detailed records of its attempts schedule the meeting and communicate with the parents.²⁷⁴

36. Procedural safeguards to ensure parents have an opportunity to participate are essential under the IDEA. The Ninth Circuit has stated:

Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests

participate in the IEP formulation process, *Roland M.*, 910 F.2d at 994; *Hall*, 774 F.2d at 635, clearly result in the denial of a FAPE." *W.G. v. Bd. of Trustees of Target Range School Dist.*, 960 F.2d 1479, 8 IDELR 1019 (9th Cir. 1992.); See also, *Timothy O v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1124 (9th Cir. 2016) (To succeed on a claim that a child was denied FAPE, the aggrieved party need not definitively show that the child's educational placement would have been different absent the procedural violation.)

²⁷⁰ WAC 392-172A-03100; 34 CFR §300.322.

²⁷¹ WAC 392-172A-03100(1) and (2).

²⁷² WAC 392-172A-03100(7).

²⁷³ WAC 392-172A-03100(8).

²⁷⁴ WAC 392-172A-02100(6).

of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.²⁷⁵

37. To comply with this requirement, parents must not only be invited to attend IEP meetings but must also have the opportunity for “meaningful participation in the formulation of IEPs.”²⁷⁶ However, a school district does not necessarily violate the IDEA if it refuses to implement a parent's requests, and a parent does not have “veto” power over IEP provisions.²⁷⁷

38. Neither the IDEA nor Washington special education law specifically define “meaningful participation.” Determining what is “meaningful” requires balancing of the totality of the circumstances specific to an IEP meeting.²⁷⁸ In reviewing and balancing the totality of the circumstances, a tribunal may consider items including whether the parents received notice of the meeting, received draft documents before the meeting, were represented by an attorney, engaged in discussion, posed questions, and had opportunities to comment. *Id.*

February 7, 2022 IEP

39. In the present case, the District invited the Parents to the February 7, 2022 IEP meeting. Both Parents attended the meeting and had an opportunity to review a draft IEP at the meeting. The Parents participated in the meeting and expressed their concerns about Graduation Alliance and requested an increase in the SDI services minutes provided to the Student. The fact that the Parents expressed themselves in a manner that reflected they were upset did not change that they were given an opportunity to participate. Although the Parents did not receive the copy of their IEP documentation that was initially sent to them, they were given the opportunity to participate in developing of the Student's IEP. The Parents were aware that the Student's IEP was revised and ultimately received a copy of the IEP documentation when they requested it in October 2022.

40. Therefore, the evidence at hearing did not establish that the Parents were deprived of an opportunity to participate in the IEP process with respect to the February

²⁷⁵ *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

²⁷⁶ *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007); *See also, Vashon*, 337 F.3d at 1131.

²⁷⁷ *Ms. S.*, 337 F.3d at 1131.

²⁷⁸ *Mercer Island Sch. Dist.*, 121 LRP 1640 (SEA Wash. 2020).

7, 2022 IEP.

February 28, 2023 Carry Over IEP

41. The Parents were also given an opportunity to participate in the development of the Student's February 28, 2023 carry over IEP. They participated in the January 23, 2023 check in meeting. They communicated their desire for increased paraeducator service minutes. They asked that the meeting be rescheduled from February 6, 2023, to February 28, 2023, so that the Student's SLP provider could attend. The District sent the Parents a reminder of the IEP meeting on February 14, 2023. The Parents then declined to participate in the February 28, 2023 IEP meeting, as they wanted a comprehensive IEE to be conducted by CDHY prior to meeting with the IEP team. Because the Parents would not agree to meet, the District issued the February 28, 2023 carry over IEP to enable it to continue implementing the Student's previous IEP while the Parents' due process hearing was pending. Issuing the carry over IEP did not deny the Parents an opportunity to participate in the Student's IEP as they were invited to attend the IEP meeting and ultimately declined to do so. Moreover, because the Parents' due process hearing request was pending at the time the February 28, 2023 carry over IEP was developed, the District could not make any changes to the previous IEP without the Parents' agreement.²⁷⁹ The fact that the District indicated through its PWN that the Student's paraeducator were increased was evidence that the District considered the Parents' input through prior communications.²⁸⁰ Accordingly, the Parents have not met their burden to show that they were deprived of an opportunity to participate in the IEP process with respect to the February 28, 2023 carry over IEP.

V. Failing to conduct a reevaluation beginning September 2021 to the present.

42. The Parents alleged that the District violated the IDEA by not conducting a reevaluation of the Student during the 2021 2022 and 2022 2023 school years.

43. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary.²⁸¹ A reevaluation must also be conducted if a district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student

²⁷⁹ See, WAC 392-172A-05125.

²⁸⁰ See, *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441, at *16-18 (E.D. Cal. June 14, 2016) (Parents failed to meet their burden where evidence demonstrated several instances in which the district changed their course of action in response to the parents' requests and concerns).

²⁸¹ WAC 392-172A-03015(2)(b).

warrant a reevaluation or if the child's parent or teacher requests a reevaluation.²⁸²

44. To be appropriate, a school district's evaluation must be sufficiently comprehensive to identify all the student's special education and related service needs.²⁸³ When a school district conducts a special education evaluation, a "group of qualified professionals selected by the school district" must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent.²⁸⁴

45. Students must be assessed in all areas related to the suspected disability and the evaluation must be sufficiently comprehensive to identify all the student's special education and related services needs.²⁸⁵

46. WAC 392 172A 03025 concerns the review of existing data for evaluations. It provides that evaluators must review existing evaluation data on the student and identify what additional data is needed to determine whether the student meets eligibility criteria.²⁸⁶

47. If a parent does not provide consent for a reevaluation requested by a school district, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures.²⁸⁷ If the district does not pursue due process to override a parent's lack of consent, the district does not violate its evaluation obligations.²⁸⁸

48. In the present case, the Student was last reevaluated in February 2021, and her next required reevaluation is in February 2024. When the Student began attending Lochburn for the 2021 2022 school year, the District reviewed the Student's evaluation records and other special education records from her prior school districts. The District's school psychologist assigned to Lochburn, Mr. Spadafore, determined that the Student's February 10, 2021 reevaluation from CSD was sufficient to meet

²⁸² WAC 392-172A-03015(1).

²⁸³ WAC 392-172A-03020.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ See also, *Tacoma School District 119 LRP 31918* (June 26, 2019).

²⁸⁷ WAC 392-172A-03000(3)(d).

²⁸⁸ WAC 392-172A-03000(3)(b).

State and District criteria for a comprehensive reevaluation. He agreed the documentation established that the Student qualified under the special education eligibility category of hearing impaired. The Student's assigned SLP for the 2021 2022 school year, Ms. Stevens, opined that the prior special education documentation including the Student's 2017 evaluation report, in addition the February 10, 2021 reevaluation, and the Student's current and prior IEPs, were sufficiently comprehensive for the District to determine programs and services for the 2021 2022 school year. At the hearing, there was no expert testimony from a school psychologist, SLP, or qualified specialist in hearing impairments that refuted the opinions of the District's experts that the Student's evaluation documentation was sufficient when she began attending Lochburn. Additionally, there is no evidence in the record that the Parents or any of the Student's teachers requested a reevaluation when the Student transferred into the District.²⁸⁹ On balance, the Parents have not met their burden to prove that the District violated the IDEA in not conducting a new reevaluation when the Student transferred into the District.²⁹⁰

49. The District proposed a reevaluation in January 2023. At that time, Mr. Kealy was concerned that the Student was not completing her work in math. Even though the Student's triennial reevaluation is not due until February 4, 2024, the District identified the need to determine the Student's current baseline and progress due to the time she was withdrawn from the District and the amount of time she received virtual instruction. The District's reasoning for wanting to conduct a reevaluation is reasonable considering the amount of time the Student has missed in general education and the difficulty her special education teacher identified. As explained by the U.S. Supreme Court in *Endrew F. v. Douglas County School Dist. RE 1*, whenever possible a student's performance in the regular classroom helps to monitor the educational progress of the child.²⁹¹ In the Student's case, she missed out on her general education experience for the entire 2021 2022 school year and two months at the start of the current school year and had begun to demonstrate an inability to complete her special education math work. Therefore, the District correctly identified that the Student required a reevaluation prior to the conclusion of the three year

²⁸⁹ WAC 392-172A-03015(1)(b).

²⁹⁰ *L.C., on behalf of A.S. v. Issaquah School District*, 74 IDELR 132 (W.D. Wash. May 8, 2019), *aff'd sub nom. Crofts v. Issaquah School District No 411*, 80 IDELR 61 (9th Cir 2022). (Consistent with WAC 32-172A-03025(2) a school district must review existing evaluation data on the student and based on that review and input from the parents, identify what additional data, if any, are needed to ensure the child receives a FAPE).

²⁹¹ 580 U.S. 386, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

period.²⁹²

50. The Parents' rejection of a District conducted reevaluation and insistence on a comprehensive evaluation conducted by CDHY through an IEE was a refusal to consent.²⁹³ Because the Parents refused to consent to a reevaluation, the District could have sought to override the Parents' refusal through due process procedures. However, the District was not required to pursue an override of the Parents' refusal to consent to a reevaluation and did not violate the IDEA when it declined to do so.²⁹⁴

51. Because the District was not required to conduct a reevaluation of the Student during the 2021-2022 school year, and the Parents refused to provide consent to the District's proposal to reevaluate the Student during the 2022-2023 school year, the Parents did not meet their burden to prove by a preponderance of the evidence that the District violated the IDEA by not reevaluating the Student during this timeframe.

VI. Denying the Parents an opportunity to meaningfully participate in the IEP process by failing to provide the Parents a report card for the Student beginning September 2021 to the present.

52. The Parents allege that they did not receive a report card for the Student and that this prevented them from meaningfully participating in developing the Student's IEPs during both the 2021-2022 and 2022-2023 school year.

53. IDEA regulations do not use the term "report card." Rather, a school district's obligation under the IDEA is to measure annual progress toward IEP goals in the areas of reading, math, written language, and social emotional behavioral.²⁹⁵ The regulations do not specify the exact content of progress reports, which is an IEP team decision. A district's failure to provide progress reporting data can be a procedural violation of the IDEA that prevents a parent from meaningfully participating in the development of a

²⁹² *W.S., M.S., and C.S. v. Edmonds School District*, 81 IDELR 1010 (W.D. Wash. July 6, 2022) (School district staff recognition of need for additional evaluation, changes of student performance and severe loss of educational instructions are reasons to conduct a reevaluation prior to completion of the three-year period.).

²⁹³ See, *G.J. v. Muscogee County School District*, 668 F.3d 1258 (11th Cir, 2012) (Conditions imposed on evaluations constitute refusal to consent.); See also, *Federal Way Sch. Dist.*, 107 LRP 11238 (SEA WA 2007).

²⁹⁴ WAC 392-172A-3000(3)(b)-(d).

²⁹⁵ WAC 392-172A-03090(1)(c)(ii).

student's IEP and results in a denial of FAPE.²⁹⁶

54. In this case, the Parents did not receive a report card from either Graduation Alliance or Lochburn for the entire 2021-2022 school year. The Student received only one grade from Graduation Alliance for the "I Will Graduate" class and the Parents were not made aware of the grade until obtaining the Student's records in September 2022. The Parents were, however, provided progress reports from Lochburn through the draft IEP at the February 7, 2022 IEP meeting. The Parents were also given oral reports of the Student's progress by Ms. Miller on multiple occasions and told Ms. Miller they were satisfied with her services to the Student. Ms. Miller tracked the Student's progress and documented it through handwritten reports on the Student's February 10, 2021, IEP from CSD. The District also developed written quarterly progress reports consistent with the February 7, 2022, IEP. The evidence at hearing demonstrated that the Parents were sufficiently aware of the Student's present levels of performance to allow them to meaningfully participate in the development of her IEP goals during the 2021-2022 school year. The lack of a Graduation Alliance report card did not impact the Parents' opportunity to meaningfully participate in the February 7, 2022 IEP team meeting as the Parents were aware that the Student had not received any instruction from that program.

55. During the first semester of the 2022-2023 school year, the Student received grades in her classes and the Parents were provided reports of her progress toward her IEP goals consistent with her February 7, 2022 IEP. Therefore, the Parents did not establish by a preponderance of the evidence that the Student was denied a FAPE due to the District's failure to provide them with report cards during the 2021-2022 and 2022-2023 school years.

VII. Whether a general education teacher was required at IEP meetings beginning September 2021 to the present.

56. The Parents alleged that the District violated the IDEA and denied them a FAPE by failing to have a general education teacher of the Student participate in the February 7, 2022 IEP team meeting.

57. Under the plain language of WAC 392-172A-03095, when a student is or may be participating in the general education environment, at least one of the student's general education teachers must be part of the student's IEP team.²⁹⁷ In *M.L. v. Federal Way Sch. Dist.*, the United States Court of Appeals for the Ninth Circuit held

²⁹⁶ *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 855-856 (9th Cir. 2014).

²⁹⁷ *Hockinson School District*, 120 LRP 32846 (WA SEA September 18, 2020).

that this requirement is mandatory.²⁹⁸ The court, in *M.L.*, emphasized that Congress, in defining the necessary members of an IEP team, recognized that “[v]ery often, regular education teachers play a central role in the education of children with disabilities . . . and have important expertise regarding the general curriculum and the general education environment.”²⁹⁹

58. Based on the evidence in this case, a general education teacher was not excused by the Parents from participating in the February 7, 2022 IEP team meeting. As found above, the Parents did not excuse a general education teacher from participating in the February 7, 2022 IEP team meeting. Moreover, there is no question that at the time of the meeting, the Student was participating in the general education environment and would continue doing so. The Student’s CSD IEP called for her to spend sixty one percent of her school day in general education, and the IEP the District developed increased her time in the general education classroom to more than seventy percent. One of the Parents’ primary concerns at the time of the February 7, 2022 IEP team meeting was that the Student was not in general education classes. The Parents wanted the Student to spend more time in the special education classroom and receive increased minutes in SDI in all qualifying areas. The District was offering a general education program within the building and Principal Estes tried to convince the Parents that she could safely attend and access a program at Lochburn. These facts support the conclusion that the nature and extent of the Student’s participation in the general education environment was an important issue for discussion at the time of the February 7, 2022 IEP team meeting. Therefore, the District was required to have “a general education teacher of the student” present for the team meeting.

59. Ms. Miller testified that because the Student was withdrawn from Graduation Alliance, she did not have a general education teacher assigned to her. However, for the February 7, 2022, IEP meeting, the District made no effort to find any general education teacher who could provide the Parents information about her opportunity to access the general education classroom including a prior general education teacher or a Lochburn teacher she could work with if she attended Lochburn. The District argued in its closing brief that Ms. Miller could have provided information about general education to the Parents. However, Ms. Miller participated in the meeting as the Student’s special education case manager and the Parents were not made aware that she could provide information as a general education teacher of the Student. Because the February 7, 2022 IEP team was considering the amount of time the

²⁹⁸ 394 F.3d 634, 643 (9th Cir.), *cert. denied*, 545 U.S. 1128, 125 S.Ct. 2941 (2005).

²⁹⁹ (Citations omitted.) *Id.* at 643.

Student was to spend in the general education classroom, it was important for the Parents to have input from a general education teacher and an opportunity to ask that teacher questions so that they could understand the best setting to meet the Student's needs and ensure that the Student had the supports she required to succeed.³⁰⁰ Considering that the District increased the Student's time in the general education classroom and rejected the proposal to increase the Student's SDI service minutes, the Parents have shown that the District's failure to include a general education teacher during the February 7, 2022 IEP team meeting significantly impeded their ability to participate in the decision making process and amounted to a denial of FAPE.³⁰¹

VIII. Whether the Student was placed in the least restrictive environment (LRE) beginning September 2021 to the present.

60. The Parents allege the Student was not placed in her LRE for the 2021-2022 and 2022-2023 school years.

61. School districts must ensure that special education students are served in the "least restrictive environment."³⁰² This means students should be served "(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily."³⁰³

62. The Ninth Circuit has developed a four part test to determine whether a student's placement represents the least restrictive environment, as first set out in *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994).

We consider: (1) the academic benefits of placement in a mainstream setting, with any supplementary aides and services that might be

³⁰⁰ See *S. H. v. Mount Diablo Unified Sch. Dist.*, 263 F. Supp. 3d 746, 767-769 (N.D. Cal. 2017) (District's failure to include general education teacher at IEP meeting addressing recommendations of expert who evaluated student and concluded she was likely to experience difficulties in general education setting significantly impaired Mother's ability to participate in IEP process because Mother was deprived of opportunity to ask questions about general education portion of student's day).

³⁰¹ *Amanda J.*, 267 F.3d at 882.

³⁰² WAC 392-172A-02050.

³⁰³ *Id.*

appropriate; (2) the non academic benefits of mainstream placement, such as language and behavior models provided by non disabled students; (3) the negative effects the student's presence may have on the teacher and other students; and (4) the cost of educating the student in a mainstream environment. . . . The first factor requires us to analyze the educational benefits available to the child in a regular classroom, supplemented with appropriate aids and services, as compared to the educational benefits of a special education classroom.³⁰⁴

The Ninth Circuit has also held that “While every effort is to be made to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child’s IEP goals.”³⁰⁵

63. Whether an IEP placed a Student in the least restrictive environment is subject to the “snapshot” rule of *Adams*, which mandates that the review of an IEP is “not retrospective,” and reasonableness is determined at the time of the development of the IEP.³⁰⁶ Additionally, under the *Rowley* rule, a District is not required to provide a “potential maximizing” education, but rather a “basic floor of opportunity.”³⁰⁷

64. The Parents maintained the Student required more SDI services in all areas in which she qualified and requested an increase in her special education services at time of the February 7, 2022 IEP team meeting. The District witnesses who worked with the Student testified that the amount of SDI services was appropriate for the Student. Testimony at hearing also indicated that if the Student were provided increased special education services, there was the possibility the Student would become overloaded or frustrated resulting in diminishing returns. The Parents did not offer credible evidence that the Student required increased special education services to progress toward her IEP goals. The Parents did not meet their burden to provide that the LRE identified in the Student’s February 7, 2022 IEP was not appropriate to meet her needs or that the Student was not placed in her LRE for the 2021 2022 and 2022 2023 school years.

³⁰⁴ *Vashon*, at 1137 (Internal quotation marks omitted; citations omitted).

³⁰⁵ *City of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (9th Cir. 1996).

³⁰⁶ *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

³⁰⁷ *Rowley*, 458 U.S. at 206-07.

IX. Whether the Student received paraeducator support as required by her IEP beginning September 2021 to the present.

65. The Parents allege that the District violated the IDEA by not providing paraeducator support during the 2021 2022 and 2022 2023 school years consistent with the Student's IEP.

66. Paraeducators may assist in the provision of special education if the instruction is designed and supervised by special education certificated staff and the Student's progress is monitored and evaluated by special education certificated staff.³⁰⁸

67. The Student's February 10, 2021 IEP from CSD provided thirty minutes per day of paraeducator services to support the Student in the online general education classroom to help ensure she understands the instruction. However, the District did not offer paraeducator services or assign a paraeducator to support the Student during the 2021 2022 school year. During the hearing, Ms. Munoz testified that the paraeducator support required by the Student's February 10, 2021 IEP was limited to in class support. This was not consistent with the paraeducator services documented in the Student's IEP from CSD because the Student was attending school virtually when the IEP was developed, and the IEP was implemented online. The Parents withdrew the Student from Graduation Alliance on November 10, 2021. From the first day of the 2021 2022 school year, September 1, 2021, through November 10, 2021, fifty school days were held. The District did not provide the Student with 30 minutes of paraeducator support on these days. Based on the evidence presented at hearing, the District did not offer comparable services because it failed to provide the Student with twenty five hours of paraeducator services to support her in Graduation Alliance (50 days; 30 minutes daily). Based on the Mother's testimony, paraeducator support was very helpful as a check in and supplement to the Student to allow her to access the general education classroom online. Therefore, the Parents established by a preponderance of the evidence that the failure to provide the Student paraeducator services to support her in Graduation Alliance was a significant IDEA violation that resulted in the loss of educational opportunity and denied the Student a FAPE.³⁰⁹

68. During the 2022 2023 school year, the Student did not have a paraeducator while attending general education classes at Lochburn through the first half of the 2022 2023 school year. Based on the District calendar, ninety school days were held through the beginning February 2023. The Student was absent five school days during that period. Therefore, the Student was not offered forty three and a half hours of

³⁰⁸ WAC 392-172A-02090(1)(i).

³⁰⁹ *Target Range School Dist.*, 8 IDELR 1019 (9th Cir. 1992).

paraeducator services during the first two semesters of the 2022 2023 school year. The District hired a paraeducator in February 2023 and began providing the Student sixty minutes per day in paraeducators services which was an extra thirty minutes per day from what was required in her IEP. Unfortunately, the paraeducator stopped working for the District in mid March, and the Student did not have a new paraeducator assigned at the time of the hearing. Therefore, the Parents established by a preponderance of the evidence that the failure to provide the Student paraeducator services to support her at Lochburn during the first half of the 2022 2023 school year was a significant violation that resulted in the loss of educational opportunity and deprived the Student of a FAPE.³¹⁰

69. In summary, the Parents proved by a preponderance of the evidence that during the 2021 2022 and 2022 2023 school years, the District violated the IDEA and denied the Student a FAPE by failing to provide a total of sixty seven and a half (67.5) hours of paraeducator services to the Student.

X. Whether the Student received instruction from a deaf or heard of hearing teacher as required by the IEP beginning September 2021 to the present.

70. The Parents allege that during the 2021 2022 and 2022 2023 school years, the District did not provide the Student a deaf or hard of hearing teacher as required by her IEP, which violated the IDEA and deprived the Student of a FAPE.

71. School district personnel providing special education services and/or related services must hold the credentials, licenses, certificates, endorsements, or permits required by the professional educator standards board for the position of employment. Special education must be provided by appropriately qualified staff. School district personnel who provide special education services or related services must have “substantial professional training.”³¹¹ A teacher with a pre endorsement waiver from Washington’s special education office is considered to have met the requirements for “substantial professional training” for the appropriate endorsement to teach special education under WAC 392 172A 02090.”³¹²

The Student’s February 10, 2021 IEP from CSD provided she receive one hundred twenty minutes (two hours) per month of services by a teacher of the deaf or hard of hearing. These services could include student contact, parent/teacher consultations and/or collaboration and observations. The District did not assign a deaf or heard of

³¹⁰ Id.

³¹¹ WAC 392-172A-02090.

³¹² WAC 181-82-110(2)(a).

hearing teacher to the Student until January 18, 2022. The deaf or hard of hearing teacher assigned, Ms. Peck, was in the Pathways program working toward her certification and was, therefore, qualified under WAC 392 172A 02090. Between the start of the school year and the date Ms. Peck was assigned to work with the Student, she missed four months of direct services from a deaf or hard of hearing teacher, totaling eight hours. Initially, Ms. Peck worked with the Student for approximately three hours per week while building their connection. Ms. Peck also consulted with Ms. Munoz while she developed her relationship with the Student. Therefore, during the second half of the 2021 2022 school year, Ms. Peck provided sufficient extra services to make up for the loss of services. As discussed previously, only material failures to implement an IEP violate the IDEA.³¹³ Here, the Parents have not established that any shortfall in the services offered by Ms. Peck during the 2021 2022 school year was material, and therefore have not established that the District violated the IDEA.

72. When the Student reenrolled in the District in November 2022, the District assigned Ms. Defayette to work with her as her deaf and hard of hearing teacher. The record does not contain any evidence that Ms. Defayette did not provide the Student the services identified in her IEP. Therefore, the Parents did not establish by a preponderance of the evidence that the Student was denied a FAPE due to failure to provide services from a deaf or hard of hearing teacher during the 2021 2022 and 2022 2023 school years.

XI. Whether the Student received speech or language services as required by the IEP beginning September 2021 to the present.

73. The Parents allege that the District did not provide SLP services to the Student consistent with her IEP during the 2021 2022 and 2022 2023 school years.

74. The Student's February 10, 2021, IEP from the CSD provided she receive eighty minutes per month of SLP services in the special education setting. The District did not assign an SLP provider or deliver any SLP services until Ms. Stevens began working with the Student on November 24, 2021. Ms. Stevens provided thirty minutes of services to the Student per week which was ten minutes more per week than required by her IEP. Based on the District calendar for the 2021 2022 school year, the Student missed SLP services in the amount of twenty minutes per week for the first fourteen weeks of the school year. The Student received an extra ten minutes per week of SLP services for the next twenty five weeks of the school year. It is, therefore, concluded that Ms. Stevens provided sufficient extra SLP services to make up for the loss of educational opportunity the Student experienced during the first fourteen weeks of the

³¹³ *Van Duyn*, 502 F.3d at 822.

school year. Therefore, the Parents did not establish, by a preponderance of the evidence, that the District committed a material failure to implement the Student's IEP due to the provision SLP services during the 2021 2022 school year.

75. During the 2022 2023 school year the District did not assign and SLP to work with the Student until the end of January 2023. Based on the District calendar for the 2022 2023 school year, the Student missed approximately eighteen weeks of SLP services, at one twenty minute session per week. Ms. Steiner began providing two twenty minute session per week to make up for the lost services. At the time of the hearing ten more weeks remained in the school year and Ms. Steiner had provided approximately eight make up sessions. The District committed to provide an additional twenty minutes per week of SLP services required to make up the missed sessions through the February 10, 2023 PWN. Both Mr. Mills and Dr. Clancy testified the District was committed to making up the missed services as compensatory education. The Parents, therefore, did not establish by a preponderance of the evidence that the District committed a material failure to implement the Student's IEP due to the provision SLP services during the 2022 2023 school year.

76. In summary, the Parents did not establish by a preponderance of the evidence that the Student was denied FAPE due to failure to provide SLP services during the 2021 2022 and 2022 2023 school years.

District's Due Process Hearing Request Regarding Parents' Request for an IEE

XII. Whether the evaluation from the previous district that the District is relying upon was appropriate to develop programs and services and, if not, whether the Parents are entitled to an IEE at public expense.

77. Under WAC 392 172A 05005, parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student if the parent disagrees with the school district's evaluation. If a parent requests an IEE at public expense, the school district must either initiate a due process hearing within fifteen days to show that its evaluation is appropriate or ensure that an IEE is provided at public expense without unnecessary delay.³¹⁴

78. The District relies on the case of *C.M. v. Tacoma School District* 77 IDELR 48, 476 F. Supp 3d 1112 (W.D. WA, August 3, 2020). In that case, the Court affirmed the ALJ's conclusion that the Tacoma School District's reevaluation was appropriate stating:

³¹⁴ WAC 392-172A-05005(2)(c).

Smith fails to cite any record evidence in support of her argument that the team did not review existing data or authority for the proposition that a reevaluation must include the same assessments used in evaluating a child for special education, so the Court finds these objections unfounded. Further, Smith fails to provide, and the Court is unaware of, authority for the proposition that the ALJ made a legal error in concluding that the BASC 3, classroom observation, parent input, classroom academic and social performance data in the form of the TS Gold assessment, and review of medical provider records together constitute a sufficient variety of assessment tools and strategies for the purposes of the reevaluation at issue. See *Robert B. ex rel. Bruce B. v. W. Chester Area Sch. Dist.*, No. Civ. A. 04 CV 2069, 2005 U.S. Dist. LEXIS 21558, 2005 WL 2396968 (E.D. Penn. Sept. 27, 2005) (upholding administrative conclusion that "reevaluations may be properly limited under the statute to a review of records, observations, curriculum based measures and other non standardized assessments when the child's broad needs have already been established and when there is no evidence that the child's needs have changed substantially.").³¹⁵

The Court in *C.M.* held there was no basis to conclude the school district's reevaluation that utilized existing data did not use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student as required by WAC 392 172A 03020.³¹⁶

79. As discussed above, and consistent with *C.M.*, the evidence at hearing established the February 10, 2021 reevaluation was sufficiently comprehensive to identify all the Student's special education needs and any necessary related services. Because the February 10, 2021 reevaluation was appropriate, the Parents are not entitled to an IEE at public expense under WAC 392 172A 05005(2)(c)(i).

80. Because the District has demonstrated that the Parents are not entitled to an IEE under WAC 392 172A 05005(2) and (3), further analysis of the District's hearing request is not required. However, for completeness the District's additional arguments are addressed below.

81. The District relies on *Educational Service District 112*, 115 LRP 16924 (SEA WA 2014) and *Seattle School District*, 52 IDELR 30 (SEA WA 2008). In each of these

³¹⁵ *C.M.*, 476 F. Supp at 1127.

³¹⁶ *C.M.*, 476 F. Supp at 1126.

cases, the ALJ concluded that the Parents were not entitled to an IEE at public expense as they had already been provided an IEE by the District. These cases do not apply here as the Parents have not been provided an IEE at public expense by the District at their request under WAC 392 172A 05005.

82. The District also relies on *F.C. v. Montgomery County Pub. Schs.*, 68 IDELR 6 (D. Md. 2016). Unlike the preliminary review at issue in *F.C.*, Mr. Spadafore did not conduct his September 8, 2021, transfer review to planning for an upcoming reevaluation. Rather, his review was for the purpose of determining the appropriateness and sufficiency of the February 10, 2021, reevaluation, and IEP. Therefore, *F.C.* does not support the District's argument in this case.

XIII. Whether the District is entitled to conduct its own evaluation before the Parents are entitled to request an IEE.

83. The District argues that Mr. Spadafore's September 8, 2021 transfer review of the Student's records did not constitute a reevaluation triggering the Parents' right to an IEE. This distinction does not matter here because the evidence demonstrates that an appropriate reevaluation was conducted by the CSD on February 10, 2021, and the three year triennial reevaluation period has not yet expired. As discussed above, CSD's evaluation was based on a review of existing data, Student progress, the Parents' input, and the hearing aid and fitting and orientation conducted by Boys Town National Research Hospital.

Summary of Violations

84. The District violated the IDEA and denied the Student a FAPE by:
- a. Failing to provide a laptop loaded with assistive technology and unlocked so the Student could access Graduation Alliance until October 2021 (Issue 1 a.iii.) (Conclusion of Law (COL) 32).
 - b. Failing to include a general education teacher at the Student's February 7, 2022 IEP team meeting (Issue 1.a.vii.) (COLs 58, and 59) and
 - c. Failing to provide paraeducator support during the 2021 2022 school year and the 2022 2023 school year (Issue 1.a.ix.) (COLs 67, 68, and 69).

The Parents have not otherwise proven a denial of FAPE.

85. All arguments made by the parties have been considered. Arguments not specifically addressed have been considered but are found not to be persuasive or not

to substantially affect a party's rights.

Remedies

86. When a parent proves a violation of the IDEA, a tribunal may “grant such relief as the court determines is appropriate.”³¹⁷

Compensatory Education

87. 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.”³¹⁸ It is intended to place the student in the same position they would have occupied if the District had honored its obligation to provide FAPE.³¹⁹ 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.”³²⁰ Compensatory education is an equitable remedy, calling for flexibility rather than rigidity, meaning the tribunal must consider the equities existing on both sides of the case.³²¹ Any award of compensatory education must be based on the evidence, and that evidence must provide reasonable certainty to determine what kind and how much compensatory education a student is entitled to. Absent such reasonable certainty, there is authority supporting a denial of any compensatory education despite a demonstrable violation and denial of FAPE.³²²

88. The Parents have proved by a preponderance of the evidence that the Student was deprived of the opportunity to receive instruction in the general education setting of Graduation Alliance. As discussed, the District failed to provide paraeducator services consistent with the Student's IEPs and failed to provide a functioning laptop with the audiological services and assistive technology the Student required to access Graduation Alliance in a timely manner. Consequently, it is concluded that the Student is entitled to compensatory education.

³¹⁷ 20 U.S.C. § 1415(i)(2)(C)(iii).

³¹⁸ *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).

³¹⁹ *Id.*; *Letter to Riffel*, 34 IDELR 292 (OSEP 2000).

³²⁰ *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

³²¹ *Reid v. District of Columbia*, *supra*, 401 F.3d at 524.

³²² See e.g., *Bethel Sch. Dist.*, 109 LRP 39477 (SEA WA 2009).

89. An award of compensatory education should not be based on the amount of services the student missed, but rather the amount of services needed to place the student in the position they would have been in if the District had fulfilled its FAPE obligations. In this case, both the paraeducator services developed by the Student's IEP team and the assistive technology identified by the audiologist were intended to enable the Student to understand instruction and make progress in the general education classroom. When the District obtained staffing, it added increased paraeducator services and additional thirty minutes per days as compensatory education. On balance, this evidence supports an award of compensatory education for paraeducator services for the Student based on a 1:1 formula. The District failed to offer seventy hours of paraeducator support, comprised of twenty five hours during the 2021 2022 school year and forty five hours during the first half of the 2022 2023 school year. The Student was absent five school days during the first half of the 2022 2023 school year, totaling two and half hours of paraeducator services she would not have been available to receive. Therefore, the Student is awarded compensatory education in the amount of sixty seven and a half (67.5) hours of paraeducators services.

90. The District is required to deliver these compensatory education services through a qualified paraeducator trained to provide services to students with disabilities in the general education classroom under the supervision of a special education teacher. After consulting with the Parents, the District shall make the determination regarding the scheduling of the compensatory paraeducators services to supplement paraeducator services identified by the Student's IEP team necessary to provide FAPE. The District shall deliver the compensatory paraeducator services within two school years of this order. Recognizing that the District has experienced staffing challenges, it shall remain obligated to make best efforts to provide the services until they are delivered or the Student's eligibility for special education ends.

IEP Team Meeting

91. Within twenty school days of this order, the District shall convene the Student's IEP team at a mutually agreeable time with the Parents. The District shall ensure that a general education teacher of the Student attends the meeting in addition to the other required members of the Student's IEP team. The team shall review the Student's access to the general education classroom and curriculum in addition to any issues identified by the IEP team members. The IEP team meeting shall comply with all regulations at WAC 392 172A 03090 through 392 172A 03115.

ORDER

1. The District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education as set forth in Conclusions of Law 32, 58, 59, 67, 68 and 69.
2. The Parents have not otherwise established that the District denied the Student a FAPE.
3. As a remedy, the District shall provide the Student compensatory education in the form of sixty seven and a half (67.5) hours of paraeducator services as described in Conclusions of Law 89 and 90.
4. As an additional remedy, the District shall convene the Student's IEP team as described in Conclusion of Law 91.
5. The Parents' remaining requested remedies are denied.

SERVED on the date of mailing.



Paul Alig
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

DECLARATION OF SERVICE

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

Parents

[REDACTED]
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via E mail

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Dated July 12, 2023, at Seattle, Washington.

Jazmyn Johnson

Representative

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cc: Administrative Resource Services, OSPI