



STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS

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DEC 16 2015  
SEATTLE-OAH

December 16, 2015

Adult Student

[Redacted]

Becky Anderson, Assistant Superintendent of  
Special Services  
Northshore School District  
3330 Monte Villa Parkway  
Bothell, WA 98021

Parents

[Redacted]

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RECEIVED

DEC 27 2015

In re: Northshore School District  
OSPI Cause No. 2015-SE-0043  
OAH Docket No. 05-2015-OSPI-00080

SUPERINTENDENT OF PUBLIC INSTRUCTION  
ADMINISTRATIVE RESOURCE SERVICES

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(i) (Individuals with Disabilities Education Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order, the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

Nicole A. Gaines Phelps  
Administrative Law Judge

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

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

MAILED  
DEC 16 2015  
SEATTLE-OAH

IN THE MATTER OF:

NORTHSHORE SCHOOL DISTRICT

OSPI CAUSE NO. 2015-SE-0043

OAH DOCKET NO. 05-2015-OSPI-00080

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Nicole A. Gaines Phelps in Bothell, Washington, on September 8-11, and 24, 2015. The Adult Student whose education is at issue<sup>1</sup> appeared and was represented by Maridith Ramsey, attorney at law. The Parents of the Adult Student were also present during the proceedings. The Northshore School District (District) was represented by Carlos Chavez, attorney at law. Shannon Hitch, District director of secondary special education, also attended the proceedings. The following is hereby entered:

**STATEMENT OF THE CASE**

The Adult Student filed a Due Process Hearing Request (Complaint) on May 6, 2015, and an Amended Complaint on June 18, 2015. Prehearing conferences were held on June 2, and June 29, 2015. Prehearing orders were issued on June 5, and 29, 2015.

On the District's Motion, the due date for the written decision was continued to thirty (30) days after the close of the hearing record. See Second Prehearing Order of June 29, 2015. The hearing record closed with the filing of post-hearing briefs on November 16, 2015. The due date for the written decision is therefore **December 16, 2015**.

**EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Adult Student Exhibits: S1-S9, S12-S27.

District Exhibits: D1-D9, D11-D25.

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

Julia Trembath-Neuberger, District Assistant Director of Secondary Special Education;  
Kelly McBain, District Adult Transition Program (ATP) Special Education;

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<sup>1</sup> In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and "Adult Student."

Frederick Butts, District School Psychologist;  
Janice Boyer, District Special Education Paraeducator;  
Kristen Hoeflin, District Speech Language Pathologist (SLP);  
Hyla M. Dobaj, Aural Habitational Therapist, Clinical Counselor; and  
The Adult Student's Mother.

### ISSUES

The issues for the due process hearing are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Adult Student a free appropriate public education (FAPE) during the 2014-2015 school year by:
  - i. Failing to appropriately reevaluate the Adult Student in December 2014 by:
    - A. Not considering information provided by the Parents;
    - B. Not having evaluations performed by qualified parties and/or using appropriate methods;
  - ii. Failing to develop appropriate Individualized Education Programs (IEP) by:
    - A. Not incorporating discussed edits into IEP drafts;
    - B. Not individualizing IEPs to address the Adult Student's unique needs;
    - C. Not providing specially designed instruction (SDI) in communication, including dedicated 1:1 speech language pathology (SLP) services;
    - D. Not providing a dedicated 1:1 American Sign Language proficient paraeducator;
    - E. Not including adequate benchmarks and short-term and annual goals;
  - iii. Failing to implement the Adult Student's IEPs by:
    - A. Not providing paraeducator support after March 24, 2015;<sup>2</sup>
    - B. Not providing assistive technology;
    - C. Not providing SLP services or providing those services inadequately;
    - D. Not providing an ASL proficient 1:1 paraeducator;
    - E. Nor (sic) providing instruction on any of the goal areas;
    - F. Not using the augmentative assistive device in the community;
    - G. Not providing adequate transition services and goals tailored to the Adult Student's specific needs to prepare her for employment and exposure to the community;
    - H. Not allowing the Adult Student to access tools designed to aid her ability to communicate with others during the school day;
    - I. Not collecting meaningful data regarding the Adult Student's progress toward benchmarks, short-term goals, and annual goals;

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<sup>2</sup> The June 29, 2015 Prehearing Conference Order mistakenly states the date as March 14, 2014. For clarity of the record, the undersigned has corrected this typographical error.

- iv. Making unilateral changes to the Adult Student's program without providing prior notice, obtaining the Adult Student's consent, or holding an IEP meeting by:
  - A. Removing the Adult Student from 1:1 SLP instruction;
  - B. Removing the dedicated ASL proficient 1:1 paraeducator;
  - C. Altering language regarding the Adult Student's present level of performance without discussion with the Parents; and
  - D. Removing communication from an area of SDI to a related service;
- b. Whether the Adult Student is entitled to her requested remedies:
  - i. Prospective provision of an ASL-proficient paraeducator to work one-on-one with the Adult Student;
  - ii. Prospective provision of status reports to the Adult Student's Parents on the Adult Student's assistive technology;
  - iii. Training for the Adult Student's Parents in assistive technology;
  - iv. Training for the Adult Student's paraeducator in assistive technology;
  - v. Compensatory education:
    - A. One-on-one instruction in ASL and connecting with the community by an ASL-proficient paraeducator six and one-half hours per day four days per week for an additional school year;
    - B. One-on-one SLP services 60 minutes per week for an additional school year;
  - vi. And/or other equitable remedies, as appropriate.

See, Second Prehearing Order dated June 29, 2015.

### FINDINGS OF FACT

1. 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 conflicts, the version adopted has been determined more credible than the conflicting evidence.

2. The Adult Student submitted declarations of four individuals as evidence (Exs. S23-S26),<sup>3</sup> none of whom appeared as witnesses during the Due Process Hearing. The ALJ granted the Adult Student's request to admit the declarations. The witnesses did not appear during the Due Process Hearing. Their lack of appearance impeded the Districts' ability to cross examine

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<sup>3</sup> Testimony from the hearing record is identified to by the witness's last name followed by the page number where the testimony is located in the transcript (e.g. McBain, Tr. \_\_\_\_). References to exhibits are identified by the party's exhibit and page number (e.g. Ex. S1 p. \_\_\_\_).

the Declarants. Therefore, limited weight was given to a Declarant's statement if the testimony was not supported or corroborated by other evidence with the record.<sup>4</sup>

### Background

3. The Adult Student is one of the Parents' four children. She is a "unique kid" and enthusiastic animal lover. Mother, Tr. 1001-1002. Although the Adult Student has a number of pets, she prefers the company of cats and kittens. Boyer, Tr. 621. She is twenty years old and lives at home with her parents and her siblings. At birth, the Adult Student was diagnosed with microcephaly. Ex. S16 p. 2; *see also*, Mother, Tr. 1001. Microcephaly is a congenital condition in which the child's skull is smaller than average, and therefore the brain is smaller than the mean. Mother, Tr. 1001. Microcephaly affects every child differently. For the Adult Student, the condition primarily affects her language center, and thereby impacts her ability to communicate verbally. *Id.* This presents as an expressive language disability but not a receptive language disability. The Adult Student is not hard of hearing or deaf. The Adult Student is high functioning. Hoeflin, Tr. 871. She has attended school in the District for several years. In June 2013, she graduated from Woodinville High School. Exs. D5, S3. She is currently completing a vocational program through the District. Ex. D13 p. 2. Her projected graduation date is June 20, 2016. *Id.*

4. The Adult Student can speak, but her speech is not always clearly articulated or understood by others. Trembath-Neuerger, Tr. 67; Ex. S24 p. 2. If one is unfamiliar with the Adult Student's speech patterns, understanding her verbal communication can be challenging. Although the Adult Student is not hearing impaired, she was introduced to sign language as an additional means of communicating. *Id.* Initially, she learned Signing Exact English (SEE). Later, she was introduced to American Sign Language (ASL). Mother, Tr. 1001. She now communicates using a variety of modalities, including: verbal speech, sign language,<sup>5</sup> gestures and assistive technology. Trembath-Neuberger, Tr. 181; Mother, Tr. 1001-1002; 1057; Butts, Tr. 451-460. Her preferred method is "verbalizing in conjunction with sign language." Mother, Tr. 1001. Her parents have always wanted ASL to remain an integral part of her educational experience. *See generally*, Ex. D4. However, because the Adult Student is a multi-modality communicator, she does not completely rely on ASL to communicate. Butts, Tr. 459-460. If she is not verbally understood, she will communicate using "finger spelling," gestures, or text messaging on her cellphone. *See generally*, Boyer, Tr. 540. The Adult Student:

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<sup>4</sup> "Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order." RCW 34.05.464(4)

<sup>5</sup> The Adult Student's sign language vocabulary includes signs from SEE, ASL, and signs she has created to express herself.

starts every conversation by verbal communication. And if there's any part...that is not intelligible...she will [verbally] repeat [it]...and work to enunciate it more clearly...that usually repairs the communication breakdown...[if that does not work] she will spell [the] word [that was not] understood. Typically in communication with the [Adult] Student it's not the entire communication that [is not understood].

McBain, Tr. 331.

5. After completing her general education requirements in June, the Adult began participating in the District's (ATP) Pathways Program, in the fall of 2013. The ATP Pathways Program focuses on assisting students between 18-21 years old with preparing for independent living in an adult setting, as well as the development of vocational skills through classroom and community-based training. D24; see also, Trembath-Neuberger, Tr. 131. The ATP Pathways Program develops each student's IEP postsecondary and measurable annual goals as a means of preparing students for "a part time, customized job where they will have on-going support." D24. The program runs four days each week; Monday, Tuesday, Thursday, and Friday. See generally, D9 p. 1.

6. The Adult Student's education has been designed around her postsecondary goals in her IEP. See generally, Ex. S16 p. 1. Likewise, her participation in the ATP Pathways Program centered on the specific postsecondary IEP goals outlined in her January 27, 2014 IEP.<sup>6</sup> At the time this IEP was developed, the Adult Student had been participating in the APT Pathways Program for approximately four months. The services in her IEP included transportation, adaptive, communication, organization, math, and written language. The Supplementary Aids and Services provided:

Service	Service Provider	Monitor	Frequency	Start/End dates
1:1 Paraeducator Support/Behavior Related	Paraeducator	Special Education Teacher	390 Minutes/ 4 Times Weekly	1/27/2014 through 9/11/2014

Ex. S6 p.16. Her IEP did *not* include services for an ASL *proficient* paraeducator.<sup>7</sup> See generally, Ex. S6.

<sup>6</sup> The record does not contain a signed finalized copy of the January 27, 2014 IEP. Both Exhibits S4 and S6 are drafts of the same January 14, 2014 IEP. Both were admitted into evidence. The ALJ has chosen to include the draft language contained in Ex. S6 because the parties did not dispute the nature of the services offered as reflected in the exhibit.

<sup>7</sup> The record indicates the Adult Student's IEPs prior to 2013, included language stating she was to receive "1:1 sign support." See generally, Ex. S8. Sometime in 2013 the District's IEP computer programming changed the term to "1:1 paraeducator." The record is unclear exactly when this change occurred in 2013. Regardless, of the timing of the change, no one testified any of the prior IEPs required ASL *proficient* 1:1 sign support. Mother, Tr. 1039; 1043; McBain, Tr. 195.

7. Kelly McBain has served as the Adult Student's special education teacher at ATP's Pathways Program since the Adult Student entered the program. Ms. McBain has over 30 years of experience as a certificated special education teacher. McBain, Tr. 326. She has worked for the District for 15 years. McBain, Tr. 192. Ms. McBain's ATP Pathways Program team consists of five other adult staff members and ten adult students. All of the paraeducators on Ms. McBain's team have "some [level of knowledge of] sign language." McBain, Tr. 238.

8. Mary Lamken, one of Ms. McBain's adult staff members, served as the Adult Student's 1:1 paraeducator in the ATP Pathways Program during the 2013-2014 school year. Ms. Lamken has over 25 years of experience using ASL in her work with special education students. Ex. S26 p. 1. By the end of the 2013-2014 school year, the Adult Student and Ms. Lamken had worked together for approximately 5.5 years. *Id.* During her time working with the Adult Student, Ms. Lamken used ASL, in addition to the Adult Student's other modalities, to communicate with the Adult Student and to assist the Adult Student in her communication with others. *Id.*

9. The Adult Student's IEP does not require an ASL proficient 1:1 paraeducator. The only discussion of the paraeducator's ASL abilities is found in the team considerations section which states, "[the Adult Student] has paraeducator's support throughout the day, in order to assist her to communicate through her primary means of communication, including sign language." S5 p. 3. Ms. Lamken, who worked with the Adult Student for over five years, has never been classified as ASL proficient. Trembath-Neuberger, Tr. 185-186.

#### **Summer of 2014**

10. By all accounts, the Adult Student's first year at the ATP Pathways Program was a success. Mother, Tr.1155; *see also*, Ex D2. At the conclusion of the 2013-2014 school year, Ms. Lamken left her employment with the District. Ex. S26. The long-term nature of the relationship between the Adult Student and Ms. Lamken, coupled with the Adult Student's increased anxiety when working with new personnel, raised concerns regarding who would replace Ms. Lamken going forward. *Id.* Ms. Lamken, Ms. McBain, and other school district employees deliberated over how to find a replacement for Ms. Lamken. Ex. S24 p. 2; Ex. S26 p.3; *see also*, McBain, Tr. 333. After speaking with another paraeducator, Joyce Boyer, who also worked in the ATP Pathways Program and was familiar with the Adult Student, it was decided to propose having Ms. Boyer work with the Adult Student as her 1:1 paraeducator. *Id.*; *see also* Boyer, Tr. 586. Ms. Boyer had 15 years of experience working as a paraeducator job coach with the District's ATP program. Her job focused on working as an in-room classroom helper, as well as doing outside job training with young adults in the community. Boyer, Tr. 510-511. Because of Ms. Boyer's limited ASL experience, she agreed to work on her knowledge of ASL prior to beginning the new assignment. *Id.*; Boyer, Tr. 523.

11. Ms. McBain made the proposal to the Mother. Mother, Tr.1023; McBain, Tr. 201-210. Specifically, two options were discussed with the Mother: (1) have Ms. Boyer work with the Adult Student, even though her signing skills were not at Ms. Lamken's level, or (2) find someone who had strong signing abilities but did not have a relationship with the Adult Student. McBain, Tr. 76-82; Mother, Tr. 1024. The Mother understood that Ms. Boyer did not have Ms. Lamken's ASL experience but chose to have Ms. Boyer work with the Adult Student because of the established relationship with the Adult Student. Mother, Tr. 1024.

12. Ms. Boyer agreed to review ASL materials over summer. Boyer, Tr. 523; McBain, Tr. 82. At no time did anyone request formal testing of the current level of Ms. Boyer's ASL proficiency. There was never an agreement, discussion, or agreed-upon plan as to what specific methods Ms. Boyer would use to increase her ASL proficiency over the summer months. Likewise, no agreed-upon requirement as to what level of ASL proficiency she would achieve prior to the beginning of the school year was ever discussed. *See generally*, Boyer, Tr. 526, 530. There was a general expectation that Ms. Lamken's replacement would "be able to understand the [ASL] alphabet for spelling words...and basic words." Trembath-Neuberger, Tr. 134-135. At the time, Ms. Boyer knew "about 20 ASL signs" and the ASL alphabet. Boyer, Tr. 523, 636 and 589-590. As such, she felt comfortable working with the Adult Student and the Adult Student appeared comfortable working with Ms. Boyer. They were familiar with one another. Boyer, Tr. 548, 550. During the summer, Ms. Boyer reviewed ASL videos online through [www.signingtime.com](http://www.signingtime.com). Boyer, Tr. 578.

13. On August 21, 2014, the Mother sent an email to Ms. McBain stating the following:

[The Adult Student] is ready to get back in the routine of school and seeing her teachers and friends. I know that [the Adult Student] and Janice will work well together. I am nervous about not having Mary, but I know she will be fine as long as we all stick to our plan. So, I just want to make sure that Janice has been working on sign language...

Exs. S20; D3 p. 2. Ms. McBain responded the next day, August 22nd, by email confirming that Ms. Boyer had viewed online training videos in ASL over the summer. *Id.* Additionally, she explained in detail the team's plan. *Id.* The plan included utilizing the skills of one of the new paraeducators, whose employment application mentioned she knew sign language, and reinforcing the Adult Student's ASL skills by having the Adult Student teach the other students and staff members ASL. *Id.* Ms. McBain also offered the Mother details on her personal observations of the Adult Student and Ms. Boyer's prior experiences working together. *Id.* In pertinent part she said,

Janice was working with [the Adult Student] a lot last year and working with her to develop a system where they can communicate well. She has learned that if she does not understand what [the Adult Student] is saying, she can ask her to spell it in sign alphabet, and then ask [the Adult Student] to teach her the sign, and this was working well.

Ex. D4 p. 1.

14. Although she was "nervous" about the new arrangement, the Mother was supportive of the plan. Ex. D4 p.1. Other than the August emails, the Mother never raised any concerns or questions about Ms. Boyer's progress or level of ASL proficiency. *See generally*, Mother, Tr. 1025. At the time, she knew Ms. Boyer had a family member who used ASL to communicate. *Id.* Given this, without any additional inquires, the Mother assumed Ms. Boyer was fairly proficient with ASL. *Id.*

15. During the summer of 2014, Brenna Nowak, MA, CCC-SLP, at Seattle Children's Hospital completed a Speech and Language Evaluation of the Adult Student's level of speech and language skills. Ex. S16. Ms. Nowak's evaluation also addressed suggested



recommendations for the Adult Student's educational needs. *Id.* In addition to speaking with the Adult Student and the Mother, Ms. Nowak's testing protocols included several standardized tests assessing the Adult Student's formal speech and language skills. *Id.*, p. 3. The Adult Student used a variety of modalities, including sign language and spoken word, to communicate with the evaluator. *Id.*, p. 5-6. Ms. Nowak's July 16, 2014 written evaluation report concludes with a summary of her recommendations. *Id.*, p. 8. Her recommendation regarding ongoing speech and language therapy states:

Continue with speech and language therapy services through the school district.  
[Adult Student] has received wonderful speech and language support from her school in the past. It is recommended that these services continue, and if possible, increase, given the significant negative impact [Adult Student's] communication skills can have in social, academic and vocational contexts.

...  
**Continue to explore augmentative and alternative methods of communication to further [the Adult Student's] verbal expression.** She was observed in this evaluation to use pictures on her iPad to support stories she was telling, though, it often took a while for her to find the picture she wanted.

Ex. S16 p. 8-9 (emphasis in original). It is disputed what date the Parents provided this report to the District. McBain, Tr. 281-282; Mother, Tr. 1036.

### September 2014 IEP

16. On September 10, 2014, the Adult Student's IEP team met to review her IEP. Team members included the Mother, the Adult Student, Ms. McBain, Ms. Trembath-Neuberger, Ms. Boyer, and Ms. Hoeflin. Exs. D5; S3. Because the Adult Student was enrolled in the ATP Pathways Program, which did not include a general education component, the general education teacher was not included. *See generally*, Ex. D5 and S3; *see also*, Hoeflin, Tr. 714.

17. Ms. Trembath-Neuberger is the District's assistant director of secondary special education. Ms. Trembath-Neuberger oversees the ATP Pathways Program. Her responsibilities include attending each ATP student's IEP meetings, and creating and revising the ATP curriculum and special education program. She has worked at the District for three years. Her previous experience includes working two years in Wyoming as a high school special education case manager; a combined six years in Iowa, where she was a school district administrator for three years and a special education teacher for three. Her education includes an undergraduate degree in teaching and a master's degree in teaching students with special needs and behavior disorders. Trembath-Neuberger, Tr. 129-130.

18. The IEP meeting focused on the Adult Student's postsecondary and measurable annual goals in relation to the ATP Pathways Program's purpose of increasing the Adult Student's independence. Ex. D5 p. 4; Ex. S3 p. 4. During the meeting, the team discussed developing new measurable annual goals for the Adult Student in the areas of adaptive, behavior-organization, math, written language, communication, and the use of technology to assist the Adult Student with her communication. Mother, Tr. 1013; Exs. D5; S3. The communication goals also included working toward increasing the number of conversational turns between the Adult Student and her peers. Exs. D5; S3 p. 9. At the time, she faced challenges when addressing her peers in conversations. *Id.* Each of the measurable annual goals identified the

Adult Student's current level of performance as well as the level of performance which she was expected to achieve. Exs. D5; S3 p. 10-11. Her measurable annual goals did not include a level of ASL proficiency. See generally, *id.*

19. Her services included the following:

Service	Service Provider	Frequency	Start/End Dates
Transportation	District	30 minutes/8 times weekly	09/11/14 through 09/10/2015
Adaptive	Special Education Classroom Staff	10 minutes/1 time weekly	09/11/14 through 09/10/2015
Communication	Speech Language Pathologist	30 minutes/ 1 time weekly	09/11/14 through 09/10/2015
Adaptive	Special Education Classroom Staff	120 minutes/weekly	09/11/14 through 09/10/2015
Organization	Special Education Classroom Staff	40 minutes/8 times weekly	09/11/14 through 09/10/2015
Math	Special Education Classroom Staff	40 minutes/4 times weekly	09/11/14 through 09/10/2015
Reading	Special Education Classroom Staff	50 minutes/4 times weekly	09/11/14 through 09/10/2015
Written Language	Special Education Classroom Staff	50 minutes/4 times	09/11/14 through 09/10/2015

Supplementary Aids and Services:

Service	Service Provider	Monitor	Frequency	Start/End dates
1:1 Paraeducator Support/Behavior Related	Paraeducator	Special Education Teacher	390 Minutes/ 4 Times Weekly	09/11/2014 through 9/10/2015

Exs. D5 p.16; S3 p.16.

20. The IEP's postsecondary goals/outcomes state:

<b>Content Area: Education/Training</b>	
After graduation, [Adult Student] will participate with short-term job support on-the-job training.	
<b>Transition services</b>	<b>Staff/Agency Responsible</b>
During this IEP year, [Adult Student] will participate in a variety of community work sites including: working with animals at a pet store, custodial and recycle crew, and in the retail setting assisting with cleaning and stocking merchandise	Special Education Teacher

<b>Content Area: Education/Training</b>	
After graduation, [Adult Student] will work with animals at a pet store with minimal support	
<b>Transition services</b>	<b>Staff/Agency Responsible</b>
During this IEP year, [Adult Student] will participate in independent and life skills activities and on the job training to be able to live and work as independently as possible	Special Education Teacher

<b>Content Area: Education/Training</b>	
After graduation, [Adult Student] will live with parents for a few years and, with minimal support, prepare for work week each day, including making her meals and using a planner.	
<b>Transition services</b>	<b>Staff/Agency Responsible</b>
During this IEP, [Adult Student] will develop a weekly schedule in order to become more independent with transition of activities both daily and weekly.	Special Education Teacher

Exs. D5 p.5; S3 p. 8.

21. The Adult Student's postsecondary goals and services did not change from the January 27, 2014 IEP. Her measurable annual goals changed to reflect her current challenges and needs. However, like previous January 27, 2014 IEP, the September 10, 2014 IEP's measurable communication goal did not list a specific assistive technological program the Adult Student would use to assist her with communication. Exs. D5 p.11; S3 p. 11.

22. Also, for an unknown reason, there was a change in wording in the medical-physical section: the section explaining the Adult Student's communication skills. The January 27, 2014 IEP described the Adult Student's communication skills as "she will sign for 'much' of her communication efforts," whereas in the September 10, 2014 IEP her skills are described as "she

will sign for 'some' of her communication efforts." *Compare*, Ex. S3 p. 4 to S5 p. 4 (emphasis added). Who made the change and the reason for the change are unknown. See, Trembath-Neuberger, Tr. p. 87-92; 143; Hoeflin, Tr. 874-875. However, the Parents did not notice the change in the wording until after the filing of the Complaint. Mother, Tr. 1086. The Mother does not recall the change being discussed during the September 2014 IEP meeting. *Id.* Had the change been discussed she would have requested removal of the word "some" and replacement with the original language of "much". Although the Adult Student utilizes a number of communication modalities, the Parents do not agree with the statement that she signs "some" of her efforts to communication.

23. During the September 2014 IEP meeting, the Mother expressed her ongoing desire for reinforcement of ASL with the Adult Student. She did not, however, request a revision of the Adult Student's goals to include a specific level of ASL proficiency. Exs. D5; S3; Mother, Tr. 1013. The Mother's desire for the reinforcement of ASL was noted in the team consideration section. Exs. D5; S3 p. 3. Also noted was the need for the Adult Student to explore other communication modes, including the use of cellphone apps, emails, text messaging, taking pictures, and expanding her skills with the Proloquo assistive technology program.<sup>6</sup> *Id.* Under the IEP, the District's SLP, Kristin Hoeflin, was responsible for the Adult Student's communication services. Exs. D5; S3 p. 16.

24. Ms. Hoeflin started working as a SLP with the District's ATP Pathways Program in the fall of 2014. She began her SLP career with the District in 2005. Since that time, she has worked with students at all grade levels from preschool through high school. Hoeflin, Tr. 664. She has her Certificate of Clinical Competency (CCC) from the American Speech-Language-Hearing Association (ASHA). Hoeflin, Tr. 655.

25. Ms. Hoeflin did not begin working with the Student until the fall of 2014. Prior to their sessions, Ms. Hoeflin reviewed the Adult Student's file, spoke to the prior SLP (Carly Lawhead), observed the Adult Student's interactions with the other educational professionals, and spoke to the Mother. Hoeflin, Tr. 665. During her review of the Adult Student's records, she noticed that, although the Proloquo program had been installed on the Adult Student's electronic devices for almost two years, the Adult Student had shown little to no interest in using the program. McBain, Tr. 242-243; 253; 255; Boyer, Tr. 609; McBain, Tr. 781. The Adult Student had never used the program in a meaningful way. McBain, Tr. 349-350; 395; Hoeflin, Tr. 836. In fact, the Adult Student intentionally removed it from her devices. See, Ex. D3; D4. Additionally, the family did not use the Proloquo program at home. McBain, Tr. 350; 395. Based upon this information, Ms. Hoeflin suggested exploring expanding the Adult Student's use of different types of assistive technology, including Proloquo, to supplement her verbal and ASL communication. The team adopted this suggestion. See *generally*, Exs. D5; Ex. S3 p. 3 (team considerations).

### **Prior Written Notice**

26. Following the September 10, 2014 IEP meeting, Ms. McBain issued a Prior Written Notice (PWN) to the Parents. Exs. D5; Ex. S3 p. 18. Under the description of options

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<sup>6</sup> Proloquo, also referred to as Proloquo2go, is an assistive technology communication application that utilizes pictures and words to help students communicate their thoughts. Hoeflin, Tr. 667.

considered and rejected, the PWN stated "[a]ll instructional support changes discussed regarding encouraging different modes of communication *were implemented. No changes discussed were rejected.*" *Id.* (emphasis added). The PWN also included the following:

The IEP team reviewed the last years [sic] IEP, most recent psych evaluation, and input from professionals, parent, student, and teachers. The team determined that the ATP is the most appropriate placement for [Adult Student] at this time, and current goals in academic, vocational, adaptive, behavior and communication will be continued with minor changes made.

*Id.* The Parents did not raise any concerns about the IEP or the information in the PWN. The Parents did not question why Ms. Nowak's July 16, 2014 report, which had previously been prepared during the summer at Children's Hospital, was not reviewed or discussed at the meeting.<sup>9</sup> Mother, Tr. 1036; 1091.

27. In October 2014, the Mother emailed Ms. McBain about possible communication problems between the Adult Student and Ms. Boyer. Ex. D7. In the same email, the Mother also expressed concerns about having adequate time in the Adult Student's schedule for supporting her ASL needs. *Id.* In response, Ms. McBain and her team began "beefing up" the amount of time spent working on the Adult Student's ASL signing. *Id.* This included incorporating dedicated time in the Adult Student's daily schedule for ASL instruction with Ms. Boyer. McBain, Tr. 214; 340; 398-400. The instruction time included having the Adult Student teach other students ASL signs. *Id.*

28. The District's ATP Pathways Program staff tracked the Adult Student's progress on her IEP measurable annual goals through handwritten data collection sheets and progress reports. *See generally*, Ex. D6 (Adult Student's Progress report for fall 2014); Ex. D21 p. 1-4 (data collection sheets for budgeting; scheduling; and emotional-behavior goals); Ex. S14 (various progress reports from the 2014-2015 school year); *see also*, McBain, Tr. 306. The team also collected data on the Adult Student's progress at the various job site locations. *See generally*, D22 p. 1-18; S15 p.1-16 (data collection sheets for job sites). Although data was not collected on all of the Adult Student's activities, data was collected on her measurable annual goals as identified in her IEP. *See generally*, McBain, Tr. 317-319; 434-437.

### **Assistive Technology**

29. In the fall of 2014, Ms. Hoeflin and the Adult Student began working together on a regular basis for 30 minutes per week. Hoeflin, Tr. 676. Additionally, Ms. Hoeflin interacted and observed the Adult Student during weekly Friday afternoon outings with the Adult Student's peers. *Id.* Despite the Mother's desire to have the Adult Student use the Proloquo program at school, the Adult Student showed no interest in increasing her knowledge or usage. Hoeflin,

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<sup>9</sup> The Parents have participated in numerous IEP Meetings throughout the Adult Student's educational career. Likewise, throughout the Adult Student's participation in the ATP Pathways Program, the Mother and Ms. McBain regularly spoke about the Adult Student's progress. It is clear from the record that the Mother contacted the District whenever she had concerns about the Adult Student's educational environment or programs.

Tr. 668. After observing the Adult Student's preferred assistive technology method, texting on her cellphone, Ms. Hoeflin decided it was best to explore other types of assistive technology that would be better suited for her.<sup>10</sup> See generally, *Id.* p. 668- 674. Specifically, Ms. Hoeflin opined another assistive technology program, TouchChat with Word Power (TouchChat<sup>11</sup>), was a better fit for the Adult Student. Hoeflin, Tr. 674. Following Ms. Hoeflin's referral for an assistive technology evaluation, the Adult Student was evaluated for the possibility of using TouchChat. The assistive technology evaluator, Cathy Kennedy<sup>12</sup>, agreed with Ms. Hoeflin's idea to introduce the Adult Student to the TouchChat with Word Power program. Ex. S13.

### December 2014 Reevaluation Meeting

30. On December 11, 2014, Fred Butts, District School Psychologist, completed the Adult Student's triennial evaluation. Ex. D11; S9. Mr. Butts attended college at Tacoma Community College and completed his undergraduate work at Central Washington University, where he focused on behavioral psychology. Butts, Tr. 444. He later graduated from Seattle University with an Educational Specialist (Ed.S). *Id.* His has worked at the District since he finished his graduate degree. Butts, Tr. 466. For the past eleven years, he has worked primarily with the District's older student population, high school through age 21 students. *Id.* p. 467. Has known the Adult Student since she entered Woodinville High School. *Id.* p. 468. Since then, he has performed three evaluations of the Adult Student, including the December 2014 re-evaluation. *Id.* p. 446.

31. At the time of the re-evaluation, the Adult Student was actively engaged in the ATP Pathways Program. The purpose of the ATP Pathways Program dictated that Mr. Butts focus on determining what skills the Adult Student needed for furthering her vocational and life skills. Butts, Tr. 456-458; 476-478; 490-495. Therefore, he did not utilize traditional standardized testing but instead relied upon his and others' observations of the Adult Student's skill set and challenges in drafting his report and recommendations. *Id.*

32. Prior to preparing his written report, Mr. Butts conducted observations of the Adult Student in the ATP Pathways Program classroom setting, as well as in the community at her job sites. Butts, Tr. 454. He reviewed her educational records. He also spoke to the Parents, Ms. McBain and Ms. Hoeflin, all of whom were asked to share their observations of the Adult Student's progress and needs. Butts, Tr. 468-469. The Parents expressed concern that the Adult Student's communication techniques were interfering with her ability to form friendships with her peers and were negatively impacting her education experience. *Id.* The Adult Student struggled with the appropriate way to initiate a conversation with others. Instead of introducing

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<sup>10</sup> Ms. Hoeflin opined the Adult Student preferred texting because Proloquo was overly simple for her high level of communication skills. As such, the Adult Student found using it was cumbersome and did not allow her to say exactly what she wanted to say. Hoeflin, Tr. 669; 674; see also, Exs. D11 p. 8; S11 p. 8.

<sup>11</sup> TouchChat is a communication program designed to assist persons with limited verbal communications. Once loaded on the user's electronic device, it allows the user to combine pictures to create sentences which the device then verbalizes.

<sup>12</sup> Ms. Kennedy works for the District in the technology department. She has Masters of Science with a Certificate of Clinical Competence in Speech Language Pathology. See generally, Ex. S13 p. 1.

herself, she would stand exceptionally close to the other person and stare at them without speaking. This reportedly made her peers uncomfortable. See generally, Hoeflin, Tr. 728-739.

33. The Parents asked to continue incorporating ASL into her education. Butts, Tr. 469-471. After concluding the evaluation, Mr. Butts recommended the IEP team continue the Adult Student's special education and related services including SDI as follows:

SDI	Area Assessed	Description
Adaptive	Adaptive	Continued SDI focused on her development of independent living skills
Social Emotional	Social/Emotional	[Adult Student] demonstrates a need for Social/Emotional management skills as related to her adaptive and vocational skills development
Behavior	Behavior	[Adult Student] should receive SDI focused on behavioral management; her time on-task and attentiveness.
Vocational	Vocational	[Adult Student] should receive SDI focused on her development of vocational skill that incorporate functional academics, adaptive, social and behavioral skills in a vocational environment.

Exs. D11; S9 p. 2. Given the Adult Student's participation in the ATP Pathways Program, Mr. Butts recommended she receive her SDI for her vocational goals because the IEP no longer had academic goals. Butts, Tr. 482-483.

34. Ms. Hoeflin also contributed to the reevaluation report. Butts, Tr.463-464. Specifically, Ms. Hoeflin completed the communication evaluation section. See generally, Ex. D11 p. 8; Ex. S11 p. 8. This included the findings from the assistive technology evaluation. *Id.* In addition to Mr. Butts's suggestions for SDI, Ms. Hoeflin recommended the Adult Student receive communication support as a related service.<sup>13</sup> *Id.* p. 6. Based upon her experience as an SLP,

<sup>13</sup> Interestingly, without having read Ms. Nowak's July 16, 2014 written evaluation report, Ms. Hoeflin reached the same conclusions regarding the Adult Student's challenges and the need for speech language services to support her communication needs. Compare, Exs. S16; D11 p. 8-11. Ms. Hoeflin credibly testified that neither her recommendations for the Adult Student's communication goals nor her recommendations for speech language services would have changed *even if* she had read the report prior to the reevaluation meeting. Hoeflin, Tr. 826, 834 She agreed that Ms. Nowak's report accurately "reflects [the Adult Student's] skills." Hoeflin, Tr. 826. Additionally, Ms. McBain credibly testified the District already provided most of Ms. Nowak's suggestions. McBain, Tr. 282.

Ms. Hoeflin placed the communication support as a related service because the purpose of the communication piece "is to support her ability to access her [postsecondary] goals." Hoeflin, Tr. 714-715; see also, McBain, Tr. 416; Butts, Tr. 463-464. In spite of the change in characterization, the recommendation remained to continue the Adult Student's weekly communication services as previously provided. Hoeflin, Tr. 820-821. The Adult Student's 30 minutes per week of SLP services did not change. Trembath-Neuberger, Tr. 95-96. However, the measurable annual goals relating to the SLP services changed to include "further social skills development, specifically focused on what is appropriate and how to initiate social interactions [with her peers]." Ex. D11 p. 11; see also, *Id.* p. 9; Hoeflin, Tr. 822-824. After showing the Parents a video of the Adult Student using TouchChat, Ms. Hoeflin also suggested encouraging the Adult Student's use of the program for communication support. Hoeflin, Tr. 826. The Parents stated "they wanted to do a trial with it." Hoeflin, Tr. 826-827; 681. The program was not immediately purchased by the District for the Adult Student. *Id.* Instead, Ms. Hoeflin continued trying different types of assistive technology with the Student, including TouchChat. During the trial period, the Adult Student had access to her cellphone's text and email features. Proloquo and pictures were also on her cellphone.<sup>14</sup>

35. During the reevaluation meeting, the team<sup>15</sup> discussed at length the Adult Student's progress and ongoing needs. See generally, Ex. D6; McBain, Tr. 343. The Mother and the team agreed the Adult Student's time in the ATP Pathways Program had been successful but she continued demonstrating a need for special education and related services. See generally, Exs. D11; S11. Despite Ms. Nowak's recommendation to increase the amount of speech language services, at no time did the Parents mention or request the review or inclusion of Ms. Nowak's July 16, 2014 written evaluation report in the Adult Student's reevaluation. Mother, Tr. 1091. Neither Mr. Butts nor Ms. Hoeflin were aware of the report until after the filing of the Complaint. Butts, Tr. 480-481; Hoeflin, Tr. 825-826.

36. The Mother testified that she was a bit confused after the reevaluation meeting. Mother, Tr. 1015. However, she never reached out to the District with questions. McBain, Tr. 349. Even though Mr. Butts issued a PWN dated December 11, 2014, summarizing the agreed-upon actions, no further communication regarding the reevaluation or Mr. Butts's report occurred between the District and the Parents until after the January 2015 IEP meeting. McBain, Tr. 349; Butts, Tr. 483; Mother, Tr. 1089-1090 and 1094.

### January 2015 IEP Meeting

37. On Thursday, January 8, 2015, the IEP team convened to develop a new IEP for the Adult Student. See generally, Ex. D12. The Adult Student, the Mother, Ms. McBain, Ms. Trembath-Neuberger and Ms. Hoeflin were all present. Exs. D13; D19. The Review Invitation lists the "general education teacher" as an invitee, but because the Adult Student previously completed her general education requirements, a general education teacher did not participate. See generally, Exs. D13 p. 1; D19 p. 6; and Hoeflin, Tr. 857. The IEP team's

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<sup>14</sup> The Adult Student had access to Proloquo on her iPhone during the 2014-2015 school year. Ex. S2 p. 2; Mother, Tr. 1110.

<sup>15</sup> The reevaluation team consisted of the Parents, Mr. Butts, Ms. Hoeflin and Ms. McBain. Ex. D11.



discussion included information provided by the Mother and the results of the December 2014 reevaluation, as well as Ms. McBain and Ms. Hoeflin's observations of the Adult Student's progress and needs. Specifically, the team considered the Mother's concerns about the Adult Student's anxiety related to her interactions with another Student from the program and her ongoing communication and assistive technology needs. See *generally*, Exs.D13; Ex. S1 p. 3; McBain, Tr. 230; 351-352; Hoeflin, Tr. 828.

38. In summary, the IEP team determined the Adult Student was making progress towards her measureable annual goals, particularly in the area of adaptive skills. The team noted, that since she began in the ATP Pathways Program:

... [the Adult Student] had increased her independent job skills, her home living skills, including meal prep and cleaning tasks with more independence as well as her communication skills. [The Adult Student] has improved her ability to communicate her needs and one of the resources she uses is to use different modes of communication to make sure that all adults in the school environment understand her needs. [The Adult Student] has enjoyed the job tasks that she has been given and has developed an intrinsic motivation to follow the conduct outlined at each of the job sites. She has been able to ask for help when needed.

Exs. D13; S1 p. 5.

39. During the IEP team meeting, the team determined her postsecondary goals were still appropriate and did not need to change. However, the team decided it was appropriate to develop new measurable annual goals in the areas of Social Emotional-Feelings, Adaptive-Schedule, Adaptive Budget, Behavior-Coping Strategies, Vocational-Task Independence and Communication. Exs. D13; S1. The Mother did not request the development of measurable annual or postsecondary goals related to the Adult Student's ASL proficiency. *Id.* The Mother did request and the team developed measurable annual goals to address the Adult Student's challenges with communicating with peers and expressing feelings. McBain, Tr. 306; Trembath-Neuberger, Tr. 144; *compare also*, Exs. D13 and S1 to S2.

40. It was agreed to continue the Adult Student's special education and related services at the same level as in the September 2014 IEP. Exs. D13; S1 p. 17. This included providing services in the areas of transportation, adaptive, behavior, vocational, and social-emotional, with supplementary aids and services of "1:1 paraeducator support/behavior for 390 minutes 4 times per week." *Id.* The IEP did not require the paraeducator to have ASL proficiency or experience with ASL. The team discussed at length the Adult Student's need for assistive technology to support her communication needs. Trembath-Neuberger, Tr. 120-122; Hoeflin, Tr. 822; Mother, Tr. 1013. The team revised the Adult Student's measurable annual goals as follows:

Measurable Annual Goal	Reasoning	Baseline Level	Agreed Upon Achievement Level (By January 8, 2016)
<i>Social Emotional-Feelings</i>	Development of the Adult Student's ability to discuss her feelings and situations which make her uncomfortable	When prompted to discuss her feelings she is able to identify 3 things that made her feel good and 3 things that made her feel anxious or were difficult 0% of the time	When prompted she will identify 3 things that made her feel good and three things that made her feel anxious or were difficult 50% of the time.
Adaptive-Schedule	Development of Adult Student's independent living skills	When given a schedule of events or activities, she independently enters the schedule into her phone 20% of the time	When given a schedule of events or activities, she will independently enter the schedule into her phone 50% of the time
Adaptive Budget	Development of Adult Student's independent living skills	When given a budget weekly, she plans purchases within the budgeted amount with 70% accuracy with staff prompts	When given a budget weekly, she plans purchases within the budgeted amount with 90% accuracy with staff prompts
Behavior-Coping Strategies	Development of Adult Student's ability to ask for assistance when she needs it	When given an activity or event that produces anxiety, [Adult Student] uses her coping strategies of finding a trusted person and taking deep breaths 40% of the time	When given an activity or event that produces anxiety, [Adult Student] uses her coping strategies of finding a trusted person and taking deep breaths 70% of the time
Vocational-Task Independence	Development of Adult Student's independent living skills	When given a multi-step task, she performs the task independently 20% of the time	When given a multi-step task, she performs the task independently 50% of the time
Communication	Encourage Adult Student to communicate with others, including non-staff members in the community.	When discussing a topic she is interested in e.g. pets, she has 100% accuracy with 2-turn take conversation. Other topics her accuracy drops to 75%	When given a conversational topic about a work or school activity, she will expand her conversation to elaborate on the topic using her assistive technology device, sign language or verbal speech from 2 exchanges to 3 exchanges with 75% accuracy
Communication	Foster appropriate peer to peer interactions and engagement	With peer interaction conversation she is independent 0/3 times.	With peer interaction she will use her assistive technology device, sign language or verbal speech to approach a peer with greetings and invite to an activity with independence 3/3 times.

See generally, Exs. D13; S1 p. 4-8; 11-12. The need to address the Adult Student's inappropriate interactions with her peers is discussed throughout the January 8, 2015 IEP, as well as the Behavioral Intervention Plan. See generally, Exs. D13; S1.

41. Following the January 8, 2015 IEP meeting, Ms. McBain issued a PWN summarizing the actions taken by the IEP team. Ex. D13 p. 23. The PWN discussed the incorporation of the Parents' concerns into the IEP. The PWN specifically states in developing the IEP, the team took into consideration:

[r]eview of past IEP, psych evaluation, parent input, classroom data, and input from teachers and staff. The team discussed [the Adult Student's] current progress in her educational placement. Current data as well as input from all team members indicate that [Adult Student] is making progress in her current placement. IEP was reviewed for goal progress and changes were made to reflect her current progress.

Ex. D13 p. 23.

42. After the January 8, 2015 IEP meeting, the Mother emailed both Mr. Butts and Mrs. Trembath-Neuberger with questions. See generally, Ex. D16-D19. After discussing the Mother's concerns and implementing her suggestions, the team completed the IEP. See generally, Exs. D13; S1; D19 p. 1. Although the IEP team changed the Adult Student's measurable annual goals, her matrix of special education, related services and postsecondary goals remained the same as in her previous IEP. Immediately following the IEP meeting, Ms. McBain created specific programs to address the agreed-upon new measurable annual goals. McBain, Tr. 431; Ex. S15 p. 1-16; Exs. D21-D22.

### **Implementation of the Adult Student's IEPs**

43. Despite the Mother's concern, during the 2014-2015 school year, there were few reports of communication breakdowns between the Adult Student, Ms. Boyer, the other ATP Pathways Program staff members, or at her community job sites. See generally, Boyer, Tr. 512; 581-582; 591; Hoeflin, Tr. 736-737. When the communication breakdowns did occur the communication was generally repaired using the Student's various communication modalities, including her phone.<sup>16</sup> See generally, McBain, Tr. 294-295; Boyer, Tr. 551, 554; 599-600; 630; 639. Even in the community and at job sites, the Adult Student effectively communicated with others. See generally, McBain, Tr. 409-412, 426-430; Boyer, Tr. 593-596; 624-627; 633-634; Hoeflin, Tr. 707; 836-838; 843.

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<sup>16</sup> Counsel for the Adult Student alleges she was denied access to her phone on a regular basis. Although the Adult Student was told to put her phone away after she inappropriately used it to communicate with another student, the undersigned finds this was a limited instance and appropriate in consideration of the Adult Student's actions at that time. Additionally, in consideration of the entire record, the undersigned finds this allegation is not supported. In contradiction to this allegation, the record reflects because the Adult Student used her phone as a means of communicating, she was allowed to use it whenever needed.

44. During spring term of the 2014-2015 school year, the District created specific programs to assist the Adult Student in meeting her measurable annual goals. McBain, Tr. 398-399; 403-406. Although neither the Adult Student's postsecondary nor measurable annual IEP goals included ASL proficiency, during class time, Ms. Boyer, Ms. McBain, and other members of the ATP Pathways Program team worked with the Adult Student on her ASL skills.<sup>17</sup> McBain, Tr. 398; Boyer, Tr. 600-601. This included continuing the previous activities of completing ASL assignments in workbooks provided by the Parents, watching online videos, and having the Adult Student teach others ASL. McBain, Tr. 403-407. Ms. Boyer assisted the Adult Student's ASL skills by practicing ASL with the Adult Student and testing her knowledge of various basic signs. *See generally*, Ex. S15; Boyer, Tr. 584-585; 639-642. She also assisted the Adult Student with the January 8, 2015 IEP's weekly goal of entering her schedule into her iPhone<sup>18</sup>. McBain, Tr. 327; Boyer, Tr. 590-591. Ms. McBain worked with the Adult Student on budgeting, and created a program for the Adult Student to identify three good and three troubling things that happened each day. McBain, Tr. 434; Boyer, Tr. 632.

45. Ms. Hoeflin continued working on the Adult Student's communication goals by providing the required weekly 30 minutes of SLP services. Hoeflin, Tr. 724; 828-829. Ms. Hoeflin also worked with the Student during the Friday group outings.<sup>19</sup> Hoeflin, Tr. 783, 792-795; *see also generally*, Ex. D23 p. 1. During the 2014-2015 school year, Ms. Hoeflin was absent and missing four out of thirty-five of the Adult Student allotted SLP sessions. Whenever possible, she used time during the Friday outings to work with the Adult Student to compensate for missed sessions. Hoeflin, Tr. 792.

46. To assist the Adult Student with her peer-to-peer interactions, Ms. Hoeflin incorporated playing "go fish" or "bingo" games into the sessions. Trembath-Neuberger, Tr. 178; Hoeflin, Tr. 741-742; 775-778; 812; 816; 822. Playing games during the Adult Student's SLP services helped the Adult Student develop appropriate greetings to invite her peers to play games with her. *Id.* During these sessions, the Adult Student was encouraged to engage in conversations with her peers on various topics. *Id.* The pictures on the game cards served as a way to help the Adult Student find topics to discuss. *Id.*

47. Additionally, at the Parent's request, Ms. Hoeflin continued exploring various assistive technology devices, including TouchChat, with the Adult Student. The Adult Student's resistance to using assistive technology prolonged the trial period. *See generally*, Hoeflin, Tr. 780-781. Around February 2015, Ms. Hoeflin tried using TouchChat with the Adult Student

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<sup>17</sup> This was done to address the Mother's repeated request to have dedicated time for ASL instruction within the Adult Student's daily schedule.

<sup>18</sup> Counsel for the Adult Student argues the District failed to implement the Adult Student's weekly budgeting goal. The Adult Student's weekly budgeting goal was not implemented after the completion of the January 8, 2015. The Data sheets reflect weekly budgeting goal documentation after the January 8, 2015 IEP was implemented.

<sup>19</sup> The Adult Student's schedule included weekly outings with other students in the community Fridays. Generally, the students would go out to lunch after completing their job site obligations. Ms. McBain's entire team took part in these outings. Generally, Ms. Hoeflin also attended the outings. She used this time to work with and observe the students in a community setting. *See generally*, Hoeflin, Tr. 676; 838.

utilizing a colleague's iPad.<sup>20</sup> After testing the program three times with the Adult Student, the Adult Student told Ms. Hoeflin "she didn't like it." Hoeflin, Tr. 683. Ms. Hoeflin felt that given the Adult Student's resistance, it was best to try another method. *Id.* Ms. Hoeflin noticed the Adult Student regularly using the text messaging feature on her phone. McBain, Tr. 350. Since the Adult Student was comfortable with this technology, Ms. Hoeflin decided to ask the Mother and IEP team about trying to utilize text messaging on the Adult Student's phone to assist her with communication. Hoeflin, Tr. 687-688; 691-692. McBain, Tr. 342.

48. After observing the Adult Student's slow typing skills and poor spelling, Ms. Hoeflin decided texting was not the best option. Hoeflin, Tr. 697; 850. Ms. Hoeflin researched the possibility of using TouchChat's dialogue feature. She opined this would be a better fit for the Adult Student because of her preference to communicate with dialogue instead of pictures. See *generally*, Hoeflin, Tr. 849-855; see also, S19. Ms. Hoeflin again reached out to the assistive technology consultant for advice on what other technology existed to meet the Adult Student's needs. Ex. S19 p.1; see also, Exs. S20 p. 1; D20. The Mother was included in the email communication to the District's technology consultant. *Id.*

49. In May 2015, Ms. Hoeflin determined TouchChat provided the best possible solution. Hoeflin, Tr. 698. Unlike texting, the TouchChat program provided the capacity to add pictures, had better word prediction to compensate for the Adult Student's poor spelling, as well as a dialogue program which was similar to the Adult Student's preferred choice of texting. Hoeflin, Tr. 697; 700; 781. Once Ms. Hoeflin reached the decision to utilize TouchChat, the District purchased the program for the Adult Student's use.

#### Data Collection

50. The District used data collected by the ATP Pathways Program staff member to track the Adult Student's progress towards meeting her annual goals. See *generally*, Ex. D21-22; S15. For example, in January, 2015, the Adult Student's adaptive-budgeting, goal changed from the previous goal of entering "an event or assignment" into her phone independently to entering a "schedule of events or activities." See, Exs. D5; S3; D13; S1. The goal was changed to reflect the Adult Student's accomplishment of being able to enter single events into her cellphone. *Id.* The new goal reflected the need to expand her skills to entering multiple events and tracking the events over the course of multiple days. Indeed, the data sheets show a progression from entering a day's worth of events to 2 days of events to eventually entering an entire week. See D21 p. 2.

51. At the Parents' request, the goal of identifying the Adult Student's feelings appears in her January 8, 2015 IEP. During the January IEP meeting, the Parents expressed concerns that the Adult Student was not communicating her anxiety. In response, the District began collecting data measuring her ability to discuss three positive and negative events. Ms. McBain created the lesson plan and data sheet for tracking the goal. The data appropriately reports the Adult Student's progression on the goal. From January 29 through May 21, 2015, 64.4% of the time

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<sup>20</sup> At the time, the District only had one copy of the TouchChat program. The District's only copy was housed on another SLP's iPad. Thus, during the testing phase, Ms. Hoeflin only had access to the program when her colleague was not using the iPad.

(58 out of 90), the Adult Student successfully identified things that were good and difficult for her. Ex. D21 p. 3.

52. Data was also collected on the Adult Student's ability to use coping skills, including asking for help. The ATP Pathways Program staff appropriately collected the data in accordance with the related annual goal. Ex. D21 p. 4. This evidence contradicts the Adult Student's argument that the District failed to collect this data. Furthermore, the Adult Student's argument misstates the context in which Ms. Hoeflin stated the Adult Student did not need help. See generally, Hoeflin, Tr. 732-738.

53. The District also prepared a written report summarizing the Adult Student's progress on vocational skills. The summary includes information and details about the Adult Student's entire 2014-2015 school year for each of her job sites and the related transportation goals. Ex. D22. The written narrative states the Adult Student's baseline level and current level of achievement in each goal area. *Id.* The written report addresses the Adult Student's successful progress towards her vocational goals during the 2014-2015 school year. *Id.*

54. Ms. McBain and Ms. Hoeflin credibly testified the information inputted into the progress reports was based upon the information collected on the data sheets. The progress reports show the Adult Student made progress in each of her measurable annual goals during the 2014-2015 school year. Ex. D14. It is anticipated upon her graduation from the ATP Pathways Program, in June 2016, that the Adult Student will be prepared to enter the work force through other employment programs that offer job coaches. McBain, Tr. 360-361; 442-443.

55. The Adult Student argues because the data collection sheets from prior goals and IEPs were not included in the evidence, the record is insufficient to establish the data was ever collected. The undersigned rejects this argument. First of all, the Adult Student not the District has the burden of establishing a violation of the IDEA or the denial of FAPE; thus to the extent the Adult Student argues the District has not produced evidence, the argument is rejected. Secondly, regarding the lack of data sheets from prior IEPs, the undersigned finds it is not the "best practice" to destroy data related to a student's progress. Indeed, the IDEA allows a two-year period to file for a due process hearing. In light of such, it is not in the District's best interest to disregard data prior to the end of the statute of limitations. However, in this instance, the undersigned finds Ms. McBain's testimony credible that she did collect and complete data sheets relating to the Adult Student's annual measurable goals but "threw the data sheets away" after completing the corresponding IEP and progress reports. McBain, Tr. 309-317.

56. The Adult Student identified incorrect dates of service located in the data sheets. Based upon the incorrect dates, she argues the District denied the Adult Student services. Although, the undersigned agrees the District's written data was not presented the best manner, the undersigned finds the errors do not rise to a level of finding the data collection methods were completely inappropriate. When asked, the District gave reasonable explanations for the inconsistencies. Therefore, the undersigned finds Ms. McBain's and Ms. Hoeflin's testimony credible that the wrong dates of service on the data sheets was accidental.

### March 2014 Departure of Joyce Boyer

57. A family emergency led to Ms. Boyer's temporary leave of absence from employment for several weeks. Trembath-Neuberger, Tr. 151. The Mother learned of Ms. Boyer's anticipated leave of absence through a Facebook posting the first week of February, 2015. Mother, Tr. 1030. At the time, the District did not have notice of Ms. Boyer's intentions. Indeed, the Facebook posting was not meant to serve as Ms. Boyer's official leave notice of her intent to take a leave of absence. Boyer, Tr. 565. Approximately two weeks later, Ms. Boyer submitted her official request for leave to Ms. Trembath-Neuberger. Trembath-Neuberger, Tr. 183.

58. After receiving Ms. Boyer's official request for leave, but prior to her leave, Ms. McBain, Ms. Trembath-Neuberger, and the other ATP Pathways Program team members discussed how to address Ms. Boyer's absence. Trembath-Neuberger, Tr. 184; 151-152. They decided to meet the Adult Student's need for 1:1 paraeducator support by assigning another one of Ms. McBain's team members, paraeducator Deb Cox, as the Adult Student's 1:1 paraeducator support. McBain, Tr. 355-356. Ms. Cox, like her colleagues, had some familiarity with ASL and had previously worked with Adult Student. *Id.*; see also, McBain, Tr. 237; Trembath-Neuberger, Tr. 184.

59. The Parents were not satisfied with this proposal. Trembath-Neuberger, Tr. 183-184. In an effort to find a compromise, the District issued an employment notice for an ASL-fluent paraeducator. Ex. S17 p. 1. Mary Lamken, the Adult Student's former paraeducator, applied but was ineligible for employment with the District. Trembath-Neuberger, Tr. 105; see also, Ex. S21. Other than Ms. Lamken, no other applications were timely received by the District. Trembath-Neuberger, Tr. 103; 111-112; 116. Ms. Boyer returned from her leave of absence the first week of June and continued supporting the Adult Student through the end of the 2014-2015 school year. Boyer, Tr. 597.

60. Ms. Boyer's leave began at the end of March and concluded the first week of June, 2015. Boyer, Tr. 597; 602. During Ms. Boyer's absence, Ms. Cox served as the Adult Student's assigned 1:1 paraeducator. Trembath-Neuberger, Tr. 152-154. In Ms. Boyer's absence, no communication problems were reported between the Adult Student and Ms. Cox. Other than requesting that to the District hire a paraeducator with extensive ASL experience to work with the Adult Student during Ms. Boyer's absence, the Parents did not report problems or concerns. Trembath-Neuberger, Tr. 150.

### Testimony in Support of Adult Student's Requested Remedies

61. In support of the requested remedies, the Adult Student offered the testimony of Hyla M. Dobaj, M.A. Ms. Dobaj is an "aural habilitational specialist, also called a communication specialist, and a counseling psychologist." Dobaj, Tr. 884. Ms. Dobaj obtained her undergraduate degree in speech science at Portland State University in 1993. Ex. S27 p. 2. She continued her education at Gallaudet University, a liberal arts college for the deaf community, where she obtained her Masters in Audiology. *Id.*; see also, Dobaj, Tr. 887. She completed her education at Northwest University with a Masters in Counseling Psychology. Ex. S27 p. 2. She has been a member of the American Speech, Language, Hearing Association for 19 years. *Id.* She has extensive experience working with the deaf community, and is fluent in both SEE and ASL. Ex. S27. She has used sign language for 23 years. Dobaj, Tr. 888. In the past, she has

worked with school districts outside Washington State establishing ways to work with children with hearing deficiencies, including teaching children how to talk and hear with cochlear implants or hearing aids. Dobaj, Tr. 885. Additionally, she has worked as a consultant for the Seattle School District and as an advocate for parents. Dobaj, Tr. 886. Early in her career, she spent two years at John Hopkins University "learning speech, language, and audition training...so [she] could work with deaf and hard of hearing children." Dobaj, Tr. 951. She has experience working in the area of speech-language services but is not a licensed speech pathologist, and is still working to obtain her counseling license in Washington State. Dobaj, Tr. 896; 950; 970. As such, she is not qualified to provide speech-language services in a school setting. Dobaj, Tr. 952.

62. In preparation for her testimony, Ms. Dobaj worked with the Adult Student and the Mother for approximately two hours the week before the due process hearing began. Dobaj, Tr. 960. Ms. Dobaj read with the Adult Student as a way of examining her verbal skills. Dobaj, Tr. 893. She was impressed with the Adult Student's signing ability and language level. Dobaj, Tr. 893; 913. She evaluated the Adult Student's ability to communicate with sign language, both SEE and ASL, by communicating with the Adult Student using sign language. Dobaj, Tr. 902. Based upon her experience, Ms. Dobaj opined:

[The Adult Student is] a good communicator...she uses all avenues. She uses lang—(sic) she uses speech, she uses sign, she uses everything to communicate. And she uses SEE sign, she uses some ASL signs, so she was using whatever she could to get her point across.

Dobaj, Tr. 902.

63. Ms. Dobaj also spoke to the Mother and reviewing some of the Adult Student's educational records, including her IEPs and progress reports from 2014 and 2015. Dobaj, Tr. 909. She also reviewed Ms. Hoeflin's data sheets. *Id.* In total, she spent approximately five hours in preparation for the due process hearing. Dobaj, Tr. 891. She did not prepare a written report. Dobaj, 961.

64. Ms. Dobaj did not reach out to any of the District's professionals who either worked with the Adult Student or had knowledge of the Adult Student. She neither performed any type of standardized test to assess the Adult Student's intelligence or signing proficiency nor requested testing information from the District. Dobaj, Tr. 961; 984-986.

65. While the undersigned finds Ms. Dobaj is exceptionally experienced in working with the deaf and hearing impaired community and has extensive knowledge of sign language, the undersigned finds it inappropriate to give substantial weight to Ms. Dobaj's opinions in this matter. She has offered opinions related to the Adult Student's speech-language pathology service needs, the appropriateness of Ms. Hoeflin's implementation of those services, the appropriateness of Ms. Hoeflin's means of collecting data on the Adult Student's SLP services, and the trial methods and use of assistive technology with the Adult Student. However, unlike Ms. Hoeflin, Ms. Dobaj is not a speech-language pathologist and nor is she licensed to provide speech language services in a school setting in Washington State. Ms. Dobaj neither observed the Adult Student as she interacted with her peers, educators or others involved in the ATP Pathways Program, nor observed the Adult Student while she was engaged in vocational activities. Ms. Dobaj did not speak to any of the District's ATP Pathways Program staff,



Mr. Hoeflin or Mr. Butts. Also, because the Adult Student is not deaf or hearing impaired, the undersigned finds it inappropriate to give substantial weight to Ms. Dobaj's opinions.

66. Similarly, the ALJ gives no weight to the Declaration of Marci Revelli. Ex. 23. Ms. Revelli is a speech-language pathologist specializing in augmentative alternative communication and assistive technology. Ex. S23 p. She has worked in the field since 1991 and has been employed by Seattle Children's Hospital since 2001. Through written declaration, Ms. Revelli opines the Adult Student is in need of additional services to compensate for lost educational opportunities. However, Ms. Revelli's testimony lacks a foundation for the basis of her opinions. The declaration does not explain how she reached her opinions, e.g. how she is familiar the Adult Student. Additionally, because her written testimony was submitted without the opportunity for cross examination by the District, the undersigned cannot rely on her opinions without corroborating evidence.

67. The undersigned gives more weight to the testimony of Mr. Butts, Ms. Hoeflin, Ms. McBain, Ms. Boyer, and Ms. Trembath-Neuberger for a number of reasons. All three of these individuals have professional degrees related to the area in which they are providing the Adult Student services. With the exception of Ms. Hoeflin, all have known the Adult Student for at least two years. Ms. Boyer, Ms. McBain and Ms. Hoeflin interact regularly with the Adult Student and as such have had an opportunity to observe her at various times and in various situations. Each of them appeared during the due process hearing, allowing the opportunity for direct and cross examination.

## CONCLUSIONS OF LAW

### The IDEA

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

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

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

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

3. A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's general education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act.

*Rowley*, 458 U.S. at 188-189.

4. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201. An IEP must be "reasonably calculated to enable the child to receive educational benefits." *Id.*, 458 U.S. at 207. "Under the 1997 amendments to the IDEA, a school must provide a student with a 'meaningful benefit' in order to satisfy the substantive [FAPE] requirement [ ]." *M.M. v. Lafayette School Dist.*, 767 F.3d 842,852 (9<sup>th</sup> Cir. 2014) (internal citation and quotation marks omitted).

### **Procedural Compliance with the IDEA**

5. Under the IDEA, procedural safeguards are essential. The IDEA requires that parents be given the opportunity to actively participate in their child's education, both in the formulation and review of the student's IEP. WAC 392-172A-03040, -03050, -03095, -03100, and -03115. The appendix to the Federal Regulations gives further definition to the parents' role in the process:

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

64 Federal Register 12406, 12473 (Appendix A)(1999).

6. The importance of parental participation in the special education process was discussed at length by the Ninth Circuit Court of Appeals in *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877 (9<sup>th</sup> Cir. 2001). The Court of Appeals stated:

Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved or fully informed. In *Target Range*, for example we held that the Target Range School District failed to fulfill the goal of parental participation in the IEP process and failed to develop a complete and sufficiently individualized educational program according to the procedures specified by the Act. Because Target Range had developed the IEP without the involvement of the child's parents, his teacher, or the school in violation of 20 U.S.C. 1401(a)(19), its decision to place the child in its special education class did not take into consideration the recommendations from those who best knew the child. We therefore held that Target Range's refusal to include the child's parents in the IEP process denied the child a FAPE and that his parents were entitled to reimbursement for the cost of providing an appropriate education.

*Id.* at 892. (internal citations omitted). In *Amanda J.*, the Court of Appeals ultimately determined that the school district's failure to provide the parents with information on the student's previously unknown diagnosis of autism resulted in a denial of FAPE because it infringed upon the parents' ability to meaningfully participate in the IEP process. *Id.* at 892-894.

7. A district violates this procedural requirement if it predetermines a student's placement, meaning that it "independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003). Likewise, a district "may not enter an IEP meeting with a 'take-it-or-leave-it' approach." *Id.* However, preparation by a district prior to an IEP meeting, including developing a draft IEP, does not itself establish predetermination. *Lee's Summit R-VII Sch. Dist.*, 112 LRP 14677 (SEA MO 2012). And Parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

8. Procedural violations of the IDEA amount to a denial of FAPE only if they:

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); See WAC 392-172A-05105(2).

## Substantive Compliance with the IDEA

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

“[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.

...  
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.

*Van Duyn, supra*, 502 F.3d at 821 and 822 (italics in original).

10. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Accordingly, in this case the Adult Student bears the burden of presenting sufficient evidence to support a conclusion the District violated the IDEA and denied the Adult Student FAPE with respect to all issues raised in this case.

### Issues<sup>21</sup>

#### A. Failure to Appropriately Reevaluate the Student

11. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). A reevaluation must also be conducted if a district determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the child's parent or teacher requests a reevaluation. WAC 392-172A-03015(1); 34 CFR §300.303(a)(1)-(2).

12. The Adult Student has not met her burden of proof of proving the District did not consider information proved by the Parents as part of the December 2014 reevaluation. Throughout the 2014-2015 school year, the Parents played an integral part in the development of the Adult Student’s education. The District actively sought their input regarding the Adult Student’s needs prior to the December 2014 reevaluation meeting. Both Parents participated in the December 2014 reevaluation. Their concerns regarding the Adult Student’s ongoing needs were included in the written reevaluation report. There is no indication the District entered the

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<sup>21</sup> The Adult Student’s post-hearing closing brief raises issues and arguments outside of the Issues Statement identified in the Amended Complaint as stated in the Second Prehearing Order. “The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.” WAC 392-172A-05100 (3). The District has not agreed to the adjudication of issues not raised in the Amended Complaint. The Adult Student is therefore barred from raising new issues and they will not be considered herein.

reevaluation with a predetermination of the Adult Student's needs or without consideration of the Parents' input.

13. Special education evaluations are to be conducted by a "group of qualified professionals *selected by the school district.*" WAC 392-172A-03020(2)(emphasis added). Transition plan evaluations must contain age appropriate assessments but do not require formalized or standardized testing. *See, e.g. Oakland Unified Sch. Dist.*, 115 LRP 53402 (SEA CA 2015). A school district generally has the right to choose its evaluators so long as they are trained and knowledgeable personnel as required by WAC 392-172A-03020(3)(a)(iv).

14. The reevaluation was appropriately conducted by Mr. Butts and Ms. Hoeflin, both of whom are licensed professionals and have extensive experience within their respective fields. Mr. Butts's reevaluation conclusions were based upon his personal observations of the Adult Student as well as the observations of others who were most familiar with the Adult Student. Mr. Butts took into consideration the Adult Student's past educational records, IEP, and other appropriate data. Ms. Hoeflin explained that her portion included information gathered from her observations, conversations with the Parents, and the results of the assistive technology evaluation report. The evidence shows the reevaluation was conducted in a manner consistent with the Adult Student's age, interests, and educational placement in the ATP Pathways Program.

15. The Adult Student argues the reevaluation was inappropriately conducted because ASL is the Adult Student's "native language." Therefore, the reevaluation should have been conducted by someone who was ASL proficient. This argument is unpersuasive. First of all, the Adult Student is not deaf or hearing impaired. ASL is one of many modalities the Adult Student uses to communicate. Secondly, Mr. Butts and Ms. Hoeflin, both of whom prepared the reevaluation report, credibly testified they do not have difficulty communicating with the Adult Student. The Adult Student has not carried her burden of proof on this issue.

#### **B. Failure to Develop Individualized IEPs during the 2014-2015 School Year**

16. As noted above, an IEP is substantively appropriate if it is developed in compliance with the IDEA's procedures and is reasonably calculated to enable the child to receive an educational benefit. *Rowley*, 458 U.S. 176. Whether an IEP was reasonably calculated to provide educational benefit is measured at the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). The pertinent question is whether the IEP was "appropriately designed and implemented so as to convey [a student] with meaningful benefit." *Id.*

##### **i. failure to include parents' requested edits**

17. As discussed above, the IDEA requires that parents have the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child." WAC 392-172A-03100; 34 CFR §300.322. Parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

18. The Adult Student argues that the District failed to include the Mother's suggestion of a 1:1 sign support paraeducator; therefore the Adult Student's IEP is inappropriate. The Adult Student has not met her burden of proof on this issue. The District need only create an IEP that provides the student an opportunity to receive a meaningful educational benefit and gives the parents an opportunity to participate in the development of the IEP. The IDEA does not require a perfect educational program.

19. The Adult Student uses ASL as one of her multiple communication modalities. Her usage of sign language is because of her expressive not receptive communication needs. She is not hearing impaired or deaf. Therefore, although the Parents requested incorporation of 1:1 sign support, the Adult Student is not reliant upon ASL exclusively for her communication needs.

20. The Adult Student has not proven the lack of a 1:1 sign support impeded her ability to communicate. Indeed, Ms. Dobaj acknowledged with the use of all of her communication means, the Adult Student was "good communicator." While providing a 1:1 sign support paraeducator may have been ideal, the exclusion of the Parents suggestion did not deny the Adult Student a meaningful educational benefit. Similarly, the District's decision did not deny the Parents an opportunity to participate in the development of the IEP.

21. The Adult Student has not carried her burden of proof on this issue.

ii. failure to develop an individualized IEP

22. The Adult Student has not established that her IEPs were not developed to meet her individual needs. As discussed in the Findings of Fact, when the 2014-2015 IEPs were developed, the Adult Student was a participant in the ATP Pathways Program. This is a transition program for students who have completed their general education requirements. IEPs created for transition services are appropriate if the IEP is based upon individual strengths, preferences, and interests of the student. WA 392-172A-01190 (b).

23. The IEP team created IEPs tailored to provide an educational benefit to the Student during the 2014-2015 school year. Postsecondary and measurable annual goals were created to address her specific interests and needs. The Adult Student's job locations included a job site where she could work with animals. Her measurable annual goals were designed to help her develop independent living skills e.g. budgeting and riding public transportation. Ms. Hoeflin worked with the Adult Student in the area of communication to assist the Adult Student with developing appropriate conversational skills.

24. As discussed above, the Adult Student communicates through a variety of means, including ASL. While the "ideal" IEP may have included a goal of increasing the Adult Student's ASL fluency, based upon the record, the undersigned concludes not including a measurable annual goal related to the Adult Student's ASL abilities did not deny her FAPE. The District need not provide a maximum educational benefit but a meaningful educational benefit. The record indicates the Adult Student received a meaningful educational benefit without an ASL fluency goal. The Adult Student has not carried her burden of proof on this issue.

iii. failure to provide SDI in communication and 1:1 SLP services

25. IEPs must include a statement of the related services and supplementary aids and services to be provided to the student. 20 USC § 1414(d)(1)(A)(i)(IV); WAC 392-172A-03090(1)(d).

26. "Related services" under the IDEA are such supportive services as are required to assist a child with a disability to benefit from special education. 20 USC § 1401(26)(A); see WAC 392-172A-01155(1). An IEP created during a student's transition services can include a related service if required to assist the student in achieving an educational benefit. WAC 392-172A-01190(2).

27. Although during the 2014-2015 school year, communication was moved from SDI to a related service in the Adult Student's September 10, 2014 IEP, the Adult Student failed to establish this was inappropriate.

28. In June, 2014, the Adult Student completed her general education course work. By the fall of 2014, she was fully engaged in the ATP Pathways Program working towards developing independent living skills and vocational skills. Her communication goals were targeted to address her ability to communicate with her peers and others in the community, e.g. persons at her assigned job locations. Her IEPs were created to insure she progressed to meet those needs. Ms. Hoeflin appropriately suggested moving the communication service from an SDI to a related service because it was meant to assist the Adult Student in receiving an educational benefit. Moreover, there is no indication the change in location denied the Adult Student services or impacted her ability to receive a meaningful educational benefit from the services provided.

29. Likewise, the Adult Student failed to establish that her IEP required exclusive 1:1 SLP services in order to provide an educational benefit. The Adult Student argues Ms. Hoeflin's inclusion of the Adult Student's peers during the Adult Student's SLP services was inappropriate. This argument is flawed. The IEP appropriately called for 30 minutes of weekly SLP services. The Adult Student has not provided persuasive evidence that the Adult needed more than 30 minutes of weekly SLP or that Ms. Hoeflin should have provided exclusive 1:1 SLP therapy to the Adult Student.

30. The Adult Student's communication goals included increasing her ability to communicate with her peers. The goal was established because of the Mother's concern that the Adult Student was having difficulty forming friendships. The appropriate way to address the goal was by encouraging the Adult's Student's interaction with her peers. In Ms. Hoeflin's professional opinion, engaging the Adult Student and her peers in card games fostered conversation between them. This allowed Ms. Hoeflin to observe the Adult's Student's communication skills and to address the Adult Student's challenges. This occurred during the Adult Student's allotted 30 minutes of weekly SLP services. Using her professional judgment based upon her experience and training, when necessary Ms. Hoeflin worked alone with the Adult Student to address specific skills. The Adult Student has not carried her burden of proof on this issue.

iv. failure to provide a 1:1 ASL proficient paraeducator

31. The Adult Student's education was not impaired by the lack of an 1:1 ASL proficient paraeducator. The Adult Student is not deaf or hearing impaired. ASL is only one of her many ways of communicating. Although her spoken communication can be difficult to understand, the evidence indicates communication breakdowns were remedied and did not happen on a regular basis. Furthermore, although the Parents consistently requested an ASL proficient paraeducator, there no indication that the absence of an ASL proficient paraeducator negatively impacted the Adult Student's ability to obtain a meaningful educational benefit under her IEP. Indeed, Ms. Dobaj expressly stated the Adult Student is a good communicator using her signing vocabulary as well as her other communication modalities. The Adult Student has not carried her burden of proof on this issue.

vi. failure to include adequate benchmarks and short-term objectives and goals<sup>22</sup>

32. Transition services are a coordinated set of activities. They are designed as a results-oriented process with an emphasis on facilitating the student's movement from the general education to post-school activities. This can include vocational education, independent living, or community participation. It is based upon the individual student's needs. WAC 392-172-01190. If the student's IEP includes "measurable postsecondary goals based upon age appropriate transition assessments" the IEP is appropriate. 34 CFR §300.320 (b)(1). If this does not occur, the goals are not appropriate. For instance, in *Utica Comty. Schs*, 113 LRP 7453 (SEA MI 2013), the ALJ determined a student's postsecondary transition plan and IEP denied the student FAPE because the plan and goals were not based upon age-appropriate transition assessments, lacked measurable goals, and failed to identify necessary transition services.

33. The Adult Student's IEPs are distinguishable from *Utica*. The Adult Student's 2014-2015 IEPs include appropriate goals. As explained by Ms. Hoeflin, Mr. Butts, and the ATP Pathways Program staff, the Adult Student's annual measurable goals were tailored to address areas in which the Adult Student's disability presented challenges. The measurable annual goals were developed to assist the Adult Student in progressing towards her postsecondary goals. The Adult Student's IEP contained measureable goals based upon the Adult Student's current baseline. The annual measurable goals included the expected percentage by which the Adult Student would increase her skills based upon data collected by the ATP Pathways Program staff and the SLP, Ms. Hoeflin.

34. Likewise, the Adult Student's goals were appropriate. They included goals reflecting her interest in working with animals and the need to assist her with developing skills for obtaining employment and independent living. As such, the undersigned concludes the postsecondary and annual measurable goals within the 2014-2015 IEPs were appropriate. The Adult Student did not met her burden of proof of this issue.

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<sup>22</sup> The 2004 Amendments to the IDEA eliminated a generalized requirement that IEPs include a description of benchmarks and short-term objectives.



C. Failing to Implement the IEP

i. failing to provide paraeducator support after March 24, 2014

35. The Adult Student has not met her burden of proof on this issue. The Adult Student's IEP required she receive 1:1 paraeducator support. Ms. Cox provided 1:1 paraeducator support to the Adult Student during Ms. Boyer's absence from March 24, 2015, until the first week of June. Additionally, Ms. McBain and other members of the ATP Pathways Program also supported the Adult Student during Ms. Boyer's leave of absence. Upon Ms. Boyer's return from her leave, she resumed providing the Adult Student 1:1 paraeducator support.

ii. not providing assistive technology

36. Unless specifically identified in a student's IEP, a school district need not provide a student with a specific assistive technology to satisfy FAPE. *Hillsboro Sch. Dist. 1J*, 114 LRP 20386 (SEA OR 2014). A District can meet a student's assistive technology needs through a range of methods, if a specific assistive technology is not identified in the IEP. See generally, *Victor Valley Union High Sch. Dist.*, 115 LRP 30624 (SEA CA 2015).

37. The Adult Student's IEP requires she had access to assistive technology. With the exception of time when the Adult Student intentionally removed Proloquo from her electronic device, she always had access to Proloquo as well as the text messaging on her cellphone. The Adult Student has always shown resistance to utilizing Proloquo but it has always been accessible to her on electronic devices. Ms. Hoeflin attempted to utilize Proloquo with the Adult Student but the Adult Student was not receptive to the idea. Instead, the Adult Student chose to rely on her other communication modalities, including using text messaging, which is a type of assistive technology.

38. The reevaluation team, based upon Ms. Hoeflin's recommendation, agreed to try other assistive technology applications with the Adult Student. The team wanted to determine if there was a better fit for her advanced communication skills. One of the options discussed was TouchChat. However, the Adult Student's IEP did not require implementation of TouchChat as an assistive technological device. As discussed in Findings of Fact, Adult Student's IEP does not require a specific assistive technology but only that assistive technology be available to assist the Adult Student with communicating. Throughout the 2014-2015 school year, the Adult Student had access Proloquo on both her iPad and iPhone. She also had access to the text message and email features on her cellphone. She was encouraged to use these features when needed to assist her with communicating. Therefore, the Adult Student has not met her burden of proof on this issue.

iii. not providing SLP services or providing those services inadequately

39. The Adult Student's arguments regarding Ms. Hoeflin's implementation of the SLP services relate to Ms. Hoeflin's chosen methodology. School districts are generally entitled to deference in deciding what methodology is appropriate for a student. *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1031 n.5 (9th Cir. 2010). For that reason, IEPs need not address the instructional method to be used unless a specific methodology is necessary for a student to receive an appropriate education. See *id.* at 1039.

40. Here, the Adult Student's IEP services matrix states the she is entitled to 30 minutes of Speed-language services per week for communication. Other than requiring that the SLP provide the services, the IEP does not dictate a specific methodology for delivery of the services.

41. As discussed in the Findings of Fact, Ms. Hoeflin is an experienced speech-language therapist. Therefore, absent credible evidence showing Ms. Hoeflin's professional opinions are not appropriate, the undersigned gives deference to her decisions on methodology. Ms. Hoeflin structured the Adult Student's speech-language services to address the Adult Student's measurable annual goals. During their therapy sessions, Ms. Hoeflin focused on assisting the Adult Student with appropriate communication with her peers. Ms. Hoeflin's professional decision to use games as a way addressing the Adult Student's communication goals was appropriate, and falls within her decision making authority for about methodology of an IEP.

42. Ms. Hoeflin also completed the Adult Student's assistive technology trial. Together, they tried different technological programs. During the assistive technology trial, Ms. Hoeflin considered the Adult Student's preference for using text type features. However, because the Student was resistant to using certain technology, the trial period took several months. In spite of the Adult Student's resistance assistive technology, Ms. Hoeflin continued investigating different methods for the Adult Student to utilize assistive technology to communicate. As such, the Adult Student has not demonstrated she was denied SLP services or that the SLP services were inadequately provided.

43. To the extent that Ms. Hoeflin or the Adult Student's absence led to a few missed service dates, the undersigned finds the Adult Student failed to establish the missed instruction time was material thereby precluding her from receiving an educational benefit. The Adult Student failed to meet the burden of proof on this issue.

iv. not providing an ASL proficient 1:1 paraeducator

44. The Adult Student has not established that the District failed to implement her IEP by not providing a 1:1 ASL proficient paraeducator. Adult Student's IEP does not require an ASL proficient 1:1 paraeducator. The Adult Student's IEP requires 1:1 paraeducator support. The Adult Student received 1:1 paraeducator support throughout the 2014-2015 school year.

45. Also, it must be noted, Ms. Lamken, who the Parents argue was ASL proficient, is not classified by the District as an ASL proficient paraeducator. Thus, the Adult Student's argument that she would have been appropriate to meet this requirement, if the District had allowed her work with the Adult Student during Ms. Boyer's absence, is misguided.

46. The Adult Student failed to meet the burden of proof.

v. not providing instruction on any of the goals

47. The undersigned is unpersuaded by the Adult Student's arguments that the District failed to provide the Adult Student instruction in any her goal areas. As discussed in the Findings of Fact, the District provided the Adult Student instruction in both her postsecondary goals and her measurable annual goals.

vi. not using the augmentative assistive device in the community

48. The Adult Student failed to establish she did not have access to her iPhone and iPad when working in the community. As discussed in the Findings of Fact, the Adult Student had access to her devices whenever she needed them to assist her with communication. There is no indication she was unable to communicate with others when in the community. Emailing, texting and Proloquo were all accessible on the Adult Student's electronic devices. However, she mostly chose to communicate using her other modalities.

49. The one time she was instructed to put her cellphone away was appropriate and did not negatively impact her educational opportunities. The Adult Student is a multi-modality communicator and as such had other ways of communicating. Additionally, the evidence demonstrates that if needed, staff allowed her to retrieve her device to appropriately communicate. The Adult Student has not carried her burden of proof on this issue.

vii. failure to provide adequate transition services and goals

50. The Adult Student failed to establish that her IEP transition services and goals were not provided. The Adult Student's IEP included age and interest appropriate transition services and measureable annual goals related to the Adult Student's interest in working with animals; need to develop independence building life; and communication skills. The ATP Pathways Program Staff and Ms. Hoeflin worked with the Adult Student to meet her measureable annual goals by creating educational programs targeted at enhancing the Adult Student's performance goals in the goal areas. The Adult Student's transition services and goals, as implemented by the District, were adequate. The Adult Student has not carried her burden of proof on this issue.

viii. failure to allow the Adult Student to access tools designed to aid her ability to communicate with others during the school day

51. The Adult Student failed to establish she was denied access to tools designed to aid her ability to communicate with others during the school day other than the one time she inappropriately used her electronic device. Under the facts in this record, the undersigned cannot find this was a material failure to implement the IEP and denied the Adult Student FAPE. Yes, the Adult Student was told to put her electronic device away but the iPhone was not the Adult Student's only means of communicating. Furthermore, if the Adult Student requested access to her device, the staff would have granted her access to the device, for appropriate communications.

ix. failure to collect meaningful data regarding the Adult Student's progress toward benchmarks, short term goals, and annual goals

52. As stated above, an IEP must contain measureable goals and the progress on them must be measured. *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013) ("IEPs must contain 'measurable annual goals' and progress on them must be measured. 20 USC §1414(d)(1)(A)(i)(II); WAC 392-172A-03090(1)(b)(i)").

53. The Adult Student has not met her burden of proof on this issue. The Findings of Fact discuss how meaningful was data collected by the District. The District relied on the data to

track the Adult Student's progress towards her measureable goals. Therefore, the Adult Student failed to establish that the District did not collect meaningful data to measure her annual goals.

**D. Failure to provide PWN before changing the Adult Student's program**

**i. removing the Adult Student from 1:1 SLP instruction**

54. The Adult Student has not proven the District changed the IEP language regarding SLP services. The record indicates the Adult Student's IEP required 30 minutes of weekly SLP instruction. The IEP does not say nor is there any credible evidence the prior IEPs stated "1:1 SLP instruction." Additionally, the Adult Student received at least 30 minutes of SLP instruction per week. In consideration of the record, the undersigned concludes the Adult Student has not met her burden of demonstrating the 1:1 SLP instruction was removed from Adult Student's IEP. The written requirement for 1:1 SLP instruction was never expressly written in the IEP. Additionally, as explained above, the Adult Student's argument is also flawed because the District continued providing her 30 minutes of weekly services through the completion of the 2014-2015 school year. Thus, the Adult's Student's SLP instruction was not removed from the IEP. As such, the Adult Student has not met her burden of proof on this issue.

**ii. removing the dedicated ASL proficient 1:1 paraeducator**

55. It is concluded the Adult Student has not met her burden of the proof on this issue. The record does not support her assertion that the prior IEPs required an ASL *proficient* 1:1 paraeducator and that the language was removed from either of the IEPs developed during the 2014-2015 school.

56. The evidence shows that prior to 2013, the Adult Student's IEP language reflected "1:1 sign support" but this is entirely different than requiring an ASL *proficient* 1:1 paraeducator.

57. To the extent the Adult Student argues that the District changed the Adult Student's IEP from requiring "1:1 sign support" to "1:1 paraeducator support" the record is clear that this change did not occur during 2014-2015 school year, which is the only time period before the undersigned. Furthermore, even if the change occurred during the school year, requiring the District to issue a PWN, the Adult has not established that the lack of notice prevented her or her Parents from participating in her education. Likewise, she has failed to demonstrate the District's failure to issue a PWN prevented her from receiving a benefit from the education she received or constitutes a denial of FAPE. The Adult Student has not carried her burden of proof on this issue.

**iii. changing the Adult Student's present level of performance**

58. The District changed the characterization of the Adult Student's level of signing skills from "much" to "some" in the descriptive portion of her IEP. However, WAC 392-172A-05010 only requires a school district issue a PWN before proposing to initiate or change to a student's program or if the school district is refusing to make a change in the identification, evaluation, or educational placement of the student. See, WAC 392-172A-05010 (a)(b). The Adult Student has provided no legal authority that a change in a description portion of the IEP requires the District to issue a PWN. As such, it is concluded the Adult Student has not proven the change in the description constitutes a denial of FAPE.

iv. removing communication from an area of SDI to a related service

59. Communication was moved from a SDI to a related service in the Adult Student's September 10, 2014 IEP. The District did not provide a PWN. This is a procedural violation of the IDEA. However, not all procedural violations amount to a denial of FAPE. For a denial of FAPE to occur one of the three factors, as outlined in Conclusion of Law number 8, must be proven.

60. Here, although the District changed the category of the communication service, the District continued providing the Adult Student services to assist with her communication needs. The amount 30 minutes of speech-language per week, did not change. The speech-language services were appropriate and related to the Adult Student's need for communication assistance.

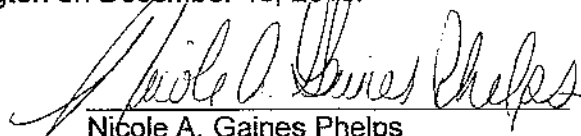
61. On this basis, the Adult Student failed to demonstrate that the change in the characterization, without receipt of a PWN, prevented her from receiving a meaningful educational benefit or denied her FAPE. Likewise, the lack of a PWN did not deny the Parents or the Adult Student an opportunity to participate in the decision making process. Therefore, it is concluded the violation was de-minimus and does not constitute a denial of FAPE.

62. All arguments raised by the parties have been carefully considered. Any arguments not expressly discussed or addressed herein were determined to be without legal merit.

**ORDER**

1. The District has not violated the Individuals with Disabilities Education Act by failing to reevaluate the Adult Student in December 2014. As such, the District has not denied the Adult Student a free and appropriate education.
2. The District has not violated the Individuals with Disabilities Education Act by failing to develop appropriate IEPs. As such, the District has not denied the Adult Student a free and appropriate education.
3. The District did violate the Individuals with Disabilities Education Act by failing issue prior written notice. The District's violation was de-minus and did not constitute a denial of a free and appropriate education to the Adult Student.
4. Therefore, the Adult Student's requested remedies are denied.

Signed at Seattle, Washington on December 16, 2015.



Nicole A. Gaines Phelps  
Administrative Law Judge  
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

CERTIFICATE OF SERVICE

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

Adult Student



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Parents



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