

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

IN THE MATTER OF:

OSPI CAUSE NO. 2021-SE-0097

OAH DOCKET NO. 08-2021-OSPI-01388

ISSAQUAH SCHOOL DISTRICT

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

A due process hearing in the above-entitled matter was held before Administrative Law Judge ("ALJ") Courtney E. Beebe via video conference on October 27, 28, and 29, and November 1, 2021. The Parent of the Student whose education is at issue¹ was represented by Laura Hruska and Jessica Johanson-Kubin, attorneys at law. The Issaquah School District (District) was represented by Carlos Chavez, attorney at law. Sharine Carver, Director of Special Services, also attended. The following is hereby entered:

STATEMENT OF THE CASE

The Parent filed a due process hearing request on August 18, 2021. The District filed a response on August 27, 2021. On September 23, 2021, the parties appeared for a prehearing conference. The same day, the ALJ issued a First Prehearing Order and continued the decision due date to thirty (30) days after the close of the record. The parties appeared for the due process hearing on October 27, 28, 29, and November 1, 2021. The record closed on December 6, 2021. The decision in this matter is due on January 5, 2022.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: D1 & P1, D5 & P4, D8 & P25, and D17 & P3.

Parent Exhibits: P2, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22, P23, P24, P26, P27, P28, P29, P30, P31, P32, P33, P34 (p.1), P35, and P36.

District Exhibits: D2, D3, D4, D6, D7, D9, D10, D11, D12, D13, D14, D15, D16, D18, D19, D20, and D21.

The following exhibits were excluded: P34 (pp.2-39), P37, P38.

¹In 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/or "Student."

The following witnesses testified under oath. They are listed in order of appearance: Marla Veliz, Dr. Lionel Enns, the Father,² Katryn Kalmes, Lindsay Hiemstra, Vanessa Applehoff, Samantha McGinnis, Mishayla Takacs, Kim Morse, Chris Santos, Karen Fischer, Dr. Laura Engelbeck, and Julie Bamba.

ISSUES AND REMEDIES

The issue(s) for the due process hearing are:

a. Whether the District violated the Individuals with Disabilities Education Act (“IDEA”) beginning March 26, 2020, and denied the Student with a free, appropriate public education (“FAPE”), by:

- i. Failing to develop an Individualized Education Program (“IEP”) reasonably calculated to allow the Student to make meaningful educational progress since March 26, 2020;
- ii. Failing to conduct an appropriate re-evaluation of the Student since March 26, 2020;³

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

i. A declaratory order finding and concluding that the District violated the IDEA and denied the Student a FAPE by:

- a. Failing to develop an IEP reasonably calculated to allow Student to make meaningful educational progress since March 26, 2020;
- b. Failing to conduct an appropriate evaluation since March 26, 2020;

ii. Compensatory education and supplemental services for the Student to provide the educational benefit that he would have received beginning March 26, 2020, and thereafter, specifically consisting of 288 hours of compensatory education consisting of targeted and data-driven dyslexia intervention (such as Wired for Reading or Slingerland);

iii. Placement at New Horizons School, or a similar placement, that offers the Student FAPE in his least restrictive environment where he can access his education and specially designed instruction in all areas of the Student’s disability;

² Only the Father of the Student attended and offered testimony. The Mother of the Student did not participate at any stage of the due process proceeding.

³ In the Parent’s due process hearing request and at the September 23, 2021, prehearing conference, the Parent specifically identified the date of March 26, 2020, in relation to the Student’s Reevaluation. However, the Student’s Reevaluation reflects a date of March 19, 2021. Therefore, throughout this Final Order, the Student’s Reevaluation will be associated with the date of March 19, 2021.

- iv. Develop an IEP that is reasonably calculated to allow the Student to make meaningful educational progress;
- v. Reimbursement for the Parent's out of pocket expenses, including attendance at New Horizons School, and attorney's fees;
- vi. Or other equitable remedies, as appropriate.

(First Prehearing Order, September 23, 2021.)

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

Previous Evaluations and IEPs at [REDACTED]

1. On April 16, 2019, when the Student was in sixth grade, Dr. Beau Reilly, Ph.D, performed a neuropsychological examination of the Student. (P8, pp.1-18; Tr., pp.219-220 (Father).) Dr. Reilly diagnosed the Student with autism spectrum disorder (moderate without accompanying intellectual impairment; with accompanying social-pragmatic language impairment); ADHD (moderate combined presentation impacting academic performance and learning); and anxiety disorder (unspecified with features of performance and social anxiety impact). Dr. Reilly did not rule out specific learning disorder in reading, writing, and mathematics. (P8, p.12; Tr., pp.191-193 (Enns).)
2. During his sixth grade year, the Student was evaluated by the [REDACTED] on January 15, 2019, and continued to be eligible for special education services under the category of autism, as well as specific learning disabilities in the areas of math, reading, written language, social / emotional, behavioral, adaptive skills, and communication. (D1, p.21; P8, p.12; P9, pp.1-31; Tr., pp.220-221 (Father); 416 (Hiemstra).) The evaluation identified that the Student was "at-risk" on the Behavior Assessment System for Children Third Edition ("BASC-3") "scales of depression, school problems, withdrawal, study skills, functional communication, and adaptive skills." (D1, p.6.)
3. On September 26, 2019, the [REDACTED] finalized the Student's IEP for the Student's seventh grade year. (D1, pp.1-26.) The IEP provided that the Student would receive specially designed instruction ("SDI") and related services in the areas of math, reading, written language, social/emotional, adaptive skills, and communication. (D1, p.21.) When the Student attended [REDACTED], the Student resided with is mother and was placed in a self-contained classroom setting 83.33% of the time for delivery of SDI and related services. (D1, p.21; Tr., pp.220-221 (Father).)

Transfer to Issaquah School District

4. The Student changed residency to the Father's home and transferred to the Issaquah School District ("District") on November 25, 2019. (D2, pp.1-2; Tr., p.219 (Father).) The District placed the Student at Beaver Lake Middle School ("BLMS") and noted on the "Transfer Validation Report" that the District "agreed with the categorical designation of [autism]." (D2, p.1; Tr., pp.409-410 (Hiemstra).) The District recommended SDI in the areas of reading, writing, math, social/emotional, behavior, adaptive skills, and related speech and language services. (*Id.*) The District identified that "adjustments will be made to the service minutes so that they align with the [BLMS] schedule." (*Id.*) The District issued a Prior Written Notice ("PWN") on November 25, 2019, indicating that the Student's January 15, 2019, evaluation was "current and valid," and that "following review of the data . . . the [District's] Evaluation Group has recommended continuing eligibility for Special Education services under the autism disability category." (D2, p.3.)

5. On December 1, 2019, the Father emailed Lindsey Hiemstra,⁴ District school psychologist, and informed her the Student was struggling with "suicidal ideation." (P21, pp.1-2; Tr., pp.124-126; 148-150 (Enns); 223-226 (Father); 411-414 (Hiemstra).) According to the email, the Student expressed suicidal ideation when speaking with his primary care physician and that the suicidal ideation was "triggered in part by the overall transition and in part by the shifts in the types of classes he has been placed in at [BLMS]." (P21, p.1; Tr., pp.125-129 (Enns); 223-226 (Father); 411-414 (Hiemstra).) Between December 1, 2019 and December 31, 2019, the Student's teachers and the Father communicated via email about the Student's emotional difficulties with the transition and his ability to participate in general education classes. (P22, pp.1-4; Tr., pp.223-232 (Father); 411-414 (Hiemstra); 462-624 (Applehoff).)

6. The Father engaged Dr. Lionel Enns⁵ to provide therapy and other services to address the Student's social / emotional difficulties. (Tr., pp.187-188 (Enns).) The Student began attending weekly in-person therapy sessions with Dr. Enns and the Father, from November 2019 through March 2020, and weekly individual telehealth sessions with Dr. Enns from April 2020 to November 2020. (Tr., pp.184-187 (Enns).) Dr. Enns administered cognitive behavioral therapy for the Student's suicidal ideation, which in his opinion is common in children with similar complex autism, ADHD, and anxiety diagnoses. (Tr., pp.187-188 (Enns).) Dr. Enns did not observe the Student engaged in planning suicide or present a danger to others, and he did not recommend any medical treatment. (*Id.*)

⁴ Lindsey Hiemstra is a nationally certified school psychologist and received an undergraduate degree at Santa Clara University and two masters' degrees in school psychology and school counseling from Seattle University. (Tr., pp.407-410.) Ms. Hiemstra has over thirteen years of experience as a school psychologist working in Washington public schools. (*Id.*)

⁵ Dr. Lionel Enns received a bachelor's degree in history, and a PhD in school psychology. (P5, p.1; Tr., pp.120-123 (Enns).) Dr. Enns owns and operates "Under One Roof Psychological Services" in Seattle, Washington. (*Id.*) Dr. Enns is also a Licensed Clinical Child Psychologist, Board Certified Behavior Analyst, and a Nationally Certified School Psychologist. (*Id.*)

7. After attending therapy, getting to know his teachers, and adjusting to living with the Father, both District personnel and the Father observed the Student positively engage at school during January and February 2020. (D3, pp.1-4; D4, pp.1-3; Tr., pp.410-414 (Hiemstra); 459-468 (Applehoff); 613-620 (Fischer).) Between November 25, 2019, and March 19, 2020, the Student made use of a number of accommodations and supports in his general education and special education classes, as per the Student's [REDACTED] September 25, 2019, IEP. (Tr., pp. 459-468 (Applehoff).)

January 22, 2020, Reading Evaluation by Dr. Enns

8. The Father requested Dr. Enns evaluate the Student's "reading abilities" and on January 22, 2020, Dr. Enns completed a "Reading Evaluation" of the Student. (P6, pp.1-9; Tr., pp.123-124 (Enns).) Dr. Enns performed clinical interviews with the Parents and administered three assessments: Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2); Developmental Neuropsychological Assessment, Second Edition (DEPSY-II); and the Weschler Individual Achievement Test, Third Edition (WIAT-III). (*Id.*; Tr., pp.133-139 (Enns).) Dr. Enns did not obtain education information from the Student's teachers at either the District or the [REDACTED] (Tr., pp.199-202 (Enns).)

9. The Student scored in the 1st percentile in phonological processing on the DEPSY-II. (P6, p.8.) The Student's scores from the WIAT-III were as follows: 2nd percentile in word reading, 10th percentile in pseudoword decoding, 5th percentile in basic reading, 7th percentile in oral reading fluency, and 2nd percentile in oral reading accuracy, and 7^h percentile in oral reading rate. (P6, p.4; Tr., pp.133-139, 193-194 (Enns).) Dr. Enns did not assign a grade level equivalency to the Student's scores. (*Id.*) The Student's CTOPP scores were reported as below the 10th percentile in six areas, and below the 25th percentile in three areas, but in the 84th percentile in sound matching. (P6, p.9; Tr., pp.133-144; 193-194 (Enns).)

10. Dr. Enns diagnosed the Student with a "Specific Learning Disorder with impairment in reading (dyslexia – moderate to severe)." (P6, p.6; Tr., pp.140-146 (Enns).) Dr. Enns recommended the Student receive "evidence based reading methods (such as Slingerland, or related interventions, such as Orton-Gillingham or Wired for Reading)," "audio books," "structured support for reading assignments," "access to technology as needed," "multiple methods of instruction," and that educators should focus on the Student's strengths and interests. (P6, pp.6-7; Tr., pp.140-146 (Enns).) Dr. Enns had experience using the Wired for Reading evidence based reading method with one of his own children and was familiar with "evidence that shows that their - - their methods are effective." (Tr., pp.128-133, 183-184 (Enns).) The Parent provided the District with Dr. Enns' Reading Evaluation on February 12, 2020. (D5, p.2; P24, p.1; Tr., pp.234-235 (Father).) Father requested a reevaluation of the Student in the February 12, 2020, email to the District. (P23, pp.1-3; Tr., pp.223-232 (Father).) The District determined that reevaluation of the Student was appropriate. (D5, p.2; P24, p.1; Tr., p.415 (Hiemstra).)

March 19, 2020, Reevaluation

11. On January 30, 2020, the Parent consented to a reevaluation in the following areas: cognitive, social/emotional, health & development, adaptive, behavioral, written language, sensory, speech / language, reading, and math. (D5, p.2; Tr., pp.355 (Father); 416 (Hiemstra).)

12. Ms. Hiemstra performed a reevaluation (“March 19, 2020, Reevaluation”) in order:

to determine whether [the Student] continues to be eligible for special education services and any necessary related services, [the Student’s] present levels of performance and educational needs, and if any additions or modifications to the special education and any necessary related services are needed to enable the student to meet [his] individualized goals and participate as appropriate in the general education curriculum

(D5, p.5; Tr., p.415 (Hiemstra).) Members of the March 19, 2020, reevaluation team included: Kimberly Morse,⁶ special education teacher and case manager; Karen Fischer,⁷ District’s speech language pathologist (“SLP”); Divina Ramolete, District’s occupational therapist (“OT”); the Father, and Marilee Bosshart, District representative. (D5, p.1; Tr., pp.415-416 (Hiemstra).)

13. To inform the March 19, 2020, Reevaluation, Ms. Hiemstra obtained information from the Student’s general education teachers: Vanessa Applehoff,⁸ general education science teacher; Lael McDonald, general education social studies teacher; and the Student’s general education health teacher. (D5, p.6; Tr., pp.416-434 (Hiemstra).) All of the Student’s general education teachers noted that the Student was social, becoming more comfortable, had a great attitude, and was progressing academically. (D5, p.6; Tr., pp.456-457, 468-470 (Applehoff).)

14. Ms. Morse evaluated the Student’s academic ability using the Kaufman Test of Educational Achievement, Third Edition (“KTEA-3”). (D5, pp.6-8; Tr., pp.417-418 (Hiemstra); 536-537 (Morse).) The Student scored “Below Average” in reading, math, and written language, except for reading comprehension, where he received a score of average. (*Id.*) Ms. Morse did not report any grade level equivalency scores because “they are not accurate because grade levels can vary with what students are taught . . . they are not as accurate as looking at age equivalent or standard scores . . . [Grade level equivalencies] are not considered an ideal measure for reporting.” (Tr.,

⁶ Kimberly Morse is a certificated special education teacher with over twenty (20) years of experience. (Tr., pp.534-53 (Morse).) Ms. Morse earned a bachelor’s degree in elementary education with an emphasis in psychology and a master’s degree in special education from the University of Miami. (*Id.*) Ms. Morse also earned a master’s degree in school administration. (*Id.*) Ms. Morse was the Student’s special education teacher and math teacher during the 2019-2020 school year. (Tr., p.536 (Morse).)

⁷ Karen Fischer received a bachelor’s degree in communications from Washington State University and a master’s degree in speech language pathology from Eastern Washington University. (Tr., pp.611-612 (Fischer).) Ms. Fischer possesses an endorsement to practice as a speech language pathologist. (*Id.*)

⁸ Vanessa Applehoff has been a certificated teacher for twenty-six (26) years and earned a bachelor’s degree in science and a master’s degree in teaching. (Tr., pp.455-456 (Applehoff).)

p.418 (Hiemstra).) Ms. Hiemstra and Ms. Morse also reviewed Dr. Enns' January 22, 2020, Reading Evaluation and included the data in the March 19, 2020, Reevaluation. (D5, pp.6-8; Tr., pp.433-435 (Hiemstra); 539 (Morse).) Ms. Hiemstra recommended the Student continue to receive SDI the areas of reading, writing, and math, as well as updating the Student's goals. (D5, pp.8-12; Tr., pp.416; 433-435 (Hiemstra).)

15. Ms. Hiemstra administered the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) to assess the Student's cognitive functioning. (D5, p.12; Tr., pp.419-421 (Hiemstra).) The Student received a full-scale IQ score of 95, in the average range, with a verbal comprehension score of 89 (low average range), a visual spatial index score of 122 (very high range), fluid reasoning Index score of 109 (average range), working memory score of 76 (low range), and processing speed index score of 89 (low average range). (D5, p.13; Tr., pp.420-422 (Hiemstra).) Ms. Hiemstra recommended a number of strategies for assisting the Student with working memory. (D5, pp.14-15; Tr., pp.421-422 (Hiemstra).)

16. Ms. Hiemstra also administered the Behavior Assessment System for Children, Third Edition ("BASC-3") to assess the Student's overall behavioral functioning. (D5, p.15; Tr., pp.422-424 (Hiemstra).) The BASC-3 results showed that the Student presented in the average range "across all behaviors with the exception of withdrawal" when at school, but at home "where [the Student] feels more comfortable, he presents differently and with some more challenging behaviors." (D5, p.17; Tr., pp.422-425 (Hiemstra).) Ultimately, Ms. Hiemstra recommended that the Student receive SDI in the area of social / emotional to "further support [the Student's] academic independence and social skills." (D5, pp.17-18; Tr., pp.422-425 (Hiemstra).)

17. Ms. Hiemstra administered the Behavior Rating Inventory of Executive Functioning ("BRIEF-2"), to assess the Student's executive functioning behaviors in school and home environments. (D5, p.18; Tr., pp.425-426 (Hiemstra).) The BRIEF-2 revealed that the Student's teachers observed that he has trouble self-monitoring, shifting, initiating, and with working memory, and that the Student "requires support in managing and tracking assignments, staying organized, getting started on tasks, and following multi-step directions." (D5, p.20; Tr., pp.425-426 (Hiemstra).) The Father reported similar concerns. (*Id.*) As a result, Ms. Hiemstra recommended that Student receive SDI in the area of behavior. (D5, p.20; Tr., pp.424-426 (Hiemstra).)

18. Ms. Hiemstra used the Adaptive Behavior Assessment System – Third Edition ("ABAS-III") to assess the Student's adaptive skills based on "daily observation of [the Student's] behavior at home, school, and in the community." (D5, p.20; Tr., pp.426-427 (Hiemstra).) Ms. Hiemstra concluded that the Student was no longer eligible for special education services in the areas of adaptive skills. (D5, pp.20-22; Tr., pp.426-427(Hiemstra).) Specifically, Ms. Hiemstra concluded:

[a]lthough [the Student's] parents indicated areas of concern, the team does not see Adaptive Skills as an area of need within he academic setting. Analysis of all data indicates that [the Student's] needs can be met through academic, social/emotional and behavior/executive functioning goals. The team should continue to monitor [the Student's] progress at school, and can look at adding adaptive skills at a later time if needed.

(*Id.*)

19. Ms. Fischer, SLP, evaluated the Student's communication skills. (D5, p.22; Tr., p.615 (Fischer).) Ms. Fischer conducted an extensive review of the Student's records to determine the Student's previous services and diagnoses. (*Id.*) Ms. Fischer assessed the Student using the Oral and Written Language Scale II ("OWLS – II"), which included rating scales completed by the Parents and the Student's current teachers. (D5, p.24; Tr., pp.615-617 (Fischer).) Ms. Fischer also assessed the Student's pragmatic language skills using the Social Language Development Test – Adolescents. (D5, p.29; Tr., pp.617-618 (Fischer).) Ms. Fischer concluded that the Student remained eligible for special education services and recommended related services and supplementary aids and services from an SLP in the area of communication. (D5, p.32; Tr., pp.619-620 (Fischer).)

20. Similarly, Ms. Ramolete, OT, evaluated the Student in the area of occupational therapy and recommended that the Student receive accommodations to support his sensory processing skills. (D5, pp.38-40; Tr., pp. 427-428 (Hiemstra).)

21. Based on the Student's diagnosis of autism, the March 19, 2020, Reevaluation team recommended continuing the Student's eligibility for special education services under the category of "autism." (D5, pp.1-4; Tr., pp.433-437 (Hiemstra).)

22. The District issued a "Meeting Invitation" on March 19, 2020, inviting Ms. Hiemstra, Ms. Morse, Ms. McDonald, the Father, the Mother, Ms. Applehoff, Ms. Fischer, Ms. Ramolete, and Ms. Bosshart to an "Evaluation Meeting" on March 19, 2020, to review the March 19, 2020, Reevaluation. (D5, pp.1, 43; Tr., pp.429-433 (Hiemstra).) The meeting was held on March 19, 2020, via zoom and the Father and the Mother attended. (D5, p.43; Tr., pp.355-356. (Father); 429-433 (Hiemstra).) Neither the Father nor the Mother identified any concerns about the methodology, completeness, or results of the March 19, 2020, Reevaluation. (*Id.*) The District issued a PWN on April 23, 2020. (D5, p.45.) The District's PWN reflected that the Student remained eligible for special education services under the category of "autism." (D5, p.45.)

March 26, 2020 IEP

23. On March 18, 2020, the District issued a "Meeting Invitation" for a March 26, 2020, meeting with the following members of the Student's IEP team: Ms. Bosshart, Ms. Morse, Ms. Applehoff, the Father, the Mother, Ms. Hiemstra, Ms. Fischer, and Ms. Ramolete. (D6, p.1; P2, p.1.) Based on the March 19, 2020, Reevaluation, and the Student's September 25, 2019, [REDACTED] the Student's IEP team was to meet and consider a proposed March 26, 2020, IEP. (D6; P2; Tr., pp.471 (Applehoff); 483 (McGiniss); 541-544 (Morse).) The March 26, 2020, IEP draft included new, updated goals for the Student in each area of disability. (*Id.*)

24. The Student's previous reading fluency goal was:

By 02/13/2020, when given a reading passage [the Student] will read the passage out loud for 1 minute improving reading fluency from averaging reading 64 correct words on a 4.0 level passage to averaging reading 80 correct words or more on a 4.0 grade level passage as measured by Read Naturally reading program or other equivalent reading fluency program.

(D6, p.11; P2, p.9.) Based on the March 19, 2020, Reevaluation the District concluded that the Student had mastered this goal, and proposed a new reading fluency goal for the Student:

When given a reading passage [the Student] will read aloud, improving fluency skills from reading 84 words correctly per minute at the 5th grade level passage to reading 105 words correctly per minute at the 5th grade level as measured by teacher collected data.

(Id.)

25. The Student's previous reading comprehension goal was:

When given reading passage comprehension test [the Student] will read passage silently or out loud and answer questions improving comprehension skills from averaging in answering 12 out of 16 correct (80% accuracy) on 4.0 level comprehension tests to averaging answering 16, out of 16 correct (100% accuracy) on 4.0 level comprehension test as measured by Read Naturally reading passages and tests or equivalent reading passages and tests.

(D6, p.13; P2, p.11.) Based on the March 19, 2020, Reevaluation the District concluded that the Student had mastered this goal and proposed a new reading fluency goal:

When given a 5th grade level reading passage and a set of multiple choice comprehension questions, [the Student] will read the passage and independently answer comprehension questions (main idea, details, drawing conclusions, inferences, vocabulary, etc.) improving reading comprehension from 85% on the 5th grade level to 100% accuracy at the 5th grade level text as measured by teacher collected data, curriculum based measures and classroom assessments.

(Id.)

26. The Student's previous math problem solving goal was:

By 02/13/2020, when given a 3rd grade level math assessment [the Student] will solve numbers and numeration and operation problems improving math problem solving skills from scoring 33 out of 207 (65% accuracy) to scoring 103 out of 207 (50% accuracy) as measured by Math Mammoth 3rd grade end of year assessment or other 3rd grade level math problem solving assessment.

(D6, p.8; P2, p.7; Tr., pp.538-540 (Morse).) Based on the March 19, 2020, Reevaluation the District concluded that the Student had mastered this goal and proposed a new math goal for the Student:

As [the Student] has met the goal of math reasoning assessments at the 3rd grade level, and he is currently going through the general education 6th grade curriculum, his new IEP goal will be math reasoning assessments at the 6th grade level. BASELINE: 50% accuracy on 6th grade reasoning assessments.

.....

When given math reasoning problems at the 6th grade level, [the Student] will answer math reasoning problems, showing all his work and explaining his thinking in words and numbers, improving math reasoning skills over three data days in one trimester.

(Id.)

27. The Student's previous written expression was:

By 02/13/2020, when given an opinion, narrative, or expository story to write [the Student] will accurately use a graphic organizer to plan before he writes improving his ability to get content onto paper during writing assignment from writing more than a sentence on 0 out of 7 opportunities to writing more than a sentence on 4 out of 7 opportunities as measured by teacher observation, student work, and curriculum based measurement.

(D6, p.15; P2, p.13.) Based on the baseline data from the March 19, 2020, Reevaluation, that the Student "can write 2 complete sentences with correct sentence structure as measured by teacher observation, student work and curriculum based measures," the District proposed a new written expression goal:

When given a writing prompt and asked to type and / or write 1 paragraph, [the Student] will type and / or write 5 complete sentences, with correct punctuation, capitalization and sentence structure improving from 2/5 sentences in one paragraph, to 5/5 sentences in 1 paragraph measured by work samples in 3 trials over one trimester.

(Id.)

28. The Student's previous behavior goal was:

When given an opportunity to work in a group [the Student] will work cooperatively with peers in small group settings (i.e. share materials, allow peers to share different thoughts and [the Student] share his own thoughts) improving his interpersonal skills from working cooperatively with peers in small group settings 0

out of 5 opportunities to 3 out of 5 opportunities as measured by teacher reports and direct observations.

(D6, p.17; P2, p.15.) The District determined that the Student had mastered this goal and proposed a new behavior goal:

When given daily assignments in a general education or special education class, [the Student] will use a daily planner (traditional or electronic), complete assignments in a timely manner, turn in assignments, and keep his binder organized for a consecutive 5 out of 5 days as measured by teacher collected observation data.

(*Id.*)

29. The Student's previous social / emotional goal was:

When given an opportunity in a classroom setting [the Student] will identify and express feelings / strengths about self-improving his use of positive self-talk in school from making positive statements about the qualities and accomplishments of self 0 out of 5 to 4 out of 5 opportunities as measured by teacher reports and direct observations.

(D6, p.19; P2, p.16.) The District concluded that the Student had not met this goal and as a baseline, "[the Student] has improved his interpersonal skills to 2/5 opportunities and the team will increase the target to 4/5 opportunities." (*Id.*) The District proposed to continue the Student's social / emotional goal. (D6, p.21; P2, p.18.)

30. The March 26, 2020, IEP from the District also contained a recitation of the Student's strengths, and the adverse educational impact from the Student's diagnoses of autism and dyslexia. (D6, pp.23-43; P2, pp.19-38.)

31. The March 26, 2020, IEP included a number of proposed accommodations, including:

Allow frequent breaks when needed.

Give adequate amount of time to respond.

Seating near teacher to increase focus with capable peer for direction and support.

Multimodal instruction to support [the Student's] strengths and challenges

Hands-on activities. [The Student] learns well using hands-on and team approaches.

Use visual aides/physical clues. Include written and verbal direction when giving cues/prompts.

Allow for cooperative learning opportunities. [The Student] benefits from team and partner activities.

Access to sensory tools in classroom as needed (noise reducing headphones, headphones to access for laptop, fidgets, etc.)

Access to structured sensory breaks with supervision as needed.

(D6, p.44-45; P2, pp.40-41.)

32. The March 26, 2020, IEP included a proposal for occupational therapy consultation for school personnel:

Occupational therapy as a support for school personnel is recommended at this time to consult with [the Student's] teachers and staff to ensure that [the Student's] sensory needs are being met to support his self-regulation in his educational setting. These services will be provided through observation and consultation with [the Student's] educational team and providing sensory strategies for [the Student] (1x per trimester or as needed) to access within his academic environment to support his overall learning.

(D6, p.45; P.2, pp.41-42.)

33. The March 26, 2020, IEP proposed the following SDI and related service minutes and placed the Student in the general education environment 62% of the time:

*Math 230 minutes per week in special education;
Reading 115 minutes per week in special education;
Written Language 115 minutes per week in special education;
Social / Emotional 115 minutes per week in special education; and
Behavior 115 minutes per week in special education.*

(D6, p.49; P2, p.45; Tr., pp. 542-543 (Morse).) The March 26, 2020, IEP also proposed 120 minutes per month of speech / language therapy as a related service to be delivered by an SLP concurrently with the social / emotional and behavior SDI in the special education environment.

(*Id.*)

34. The March 26, 2020, IEP did not specify a specific teaching methodology or curriculum, such as Orton-Gillingham, Slingerland, or Wired for Reading, to address the Student's dyslexia diagnosis. (D6, p.49; Tr., pp.500-504 (McGiniss); 563-566 (Morse); 639-644 (Fischer).) Instead, the Student's special education and general education teachers used various methods of delivering SDI and related services, as well as accommodations and assistive technology. (Tr., pp.460-480 (Applehoff); 489-499 (McGiniss); 538-561 (Morse); 600-608 (Santos); 613-638 (Fischer).) District personnel also monitored the Student's progress by regularly gathering data using curriculum based measures, classroom observations, and classroom assignments. (*Id.*)

35. On March 26, 2020, the District issued a PWN stating that the IEP Team met and reviewed the Student's new IEP, the March 19, 2020, Reevaluation, and Dr. Enns' January 22, 2020, Reading Evaluation. (D6, pp.1-6; P2, p.2.) The PWN reflected that the Student's IEP Team considered increasing "services in general education classes," but rejected the option because

the Student required SDI delivered in the special education environment. (*Id.*) All members of the Student’s IEP Team, including the Parents, signed the March 26, 2020, IEP. (D6, pp.1-6; P2, p.2.)

March 15, 2020, through June 17, 2020

36. As a result of the Covid-19 public health emergency, the District closed its buildings and ceased in-person learning between March 15, 2020, through the end of the academic year on June 17, 2020. (Tr., pp.547-548 (Morse); 624 (Fischer).) On April 21, 2020, Ms. Morse, Michaud Jeune, special education teacher, the Father, and the Mother met on-line to review a “Continuous Learning Plan” (“CLP”). (P10, p.1; Tr., pp.257-258, 382 (Father); 547-548 (Morse); 619-620 (Fischer).) The purpose of the CLP was to establish a plan to provide the Student with SDI and related services via remote learning. (*Id.*) The CLP reflected that between March 13, 2020, and April 10, 2020, no students at the District received education or services for eighteen (18) school days. (*Id.*) The CLP had an effective date of April 20, 2020, and included the following SDI and related service minutes for the Student:

Special Education and Related Services to be provided through Continuous Learning Instruction

Service Area	Initiation Date	Frequency	Duration	Service Provider	Concurrent
Reading	4.24.20	Weekly	75 min	Special Ed. Teacher	No
Writing	4.24.20	Weekly	75 min	Special Ed. Teacher	No
Math	4.24.20	Weekly	150 min	Special Ed. Teacher	No
Social-Emotional	4.24.20	Weekly	15 min	Special Ed. Teacher	No
Behavior	4.24.20	Weekly	15 min	Special Ed. Teacher	No
Related Service	Initiation Date	Frequency	Duration	Service Provider	Concurrent
Speech Language	4.24.20	Monthly	120 min	SLP	No

(*Id.*) The District provided the Student with a laptop and assistive technology, and noted that the family did not need training or consultation to implement the CLP. (*Id.*) The CLP did not contain any changes to the Student’s March 26, 2020, IEP goals but it did reduce the SDI and related service minutes offered in the special education environment in the areas of reading, writing, math, social / emotional, and behavior due staff availability and remote learning restrictions. (P10, pp.1-2; Tr., pp.547-548 (Morse).)

37. The Father met with Mr. Jeune via video chat the week of April 24, 2020, to receive instruction on assisting the Student with reading assignments. (D7, p.1; Tr., pp.258-259 (Father).) The Father and Ms. Morse communicated with each other via email regarding the Student’s overall instruction and assignments. (D8, p.3; Tr., pp.258-259 (Father).) The Father and Ms. Applehoff also communicated regarding the Student’s work in science class. (D9, p.5; Tr., pp.258-259 (Father); 471-475 (Applehoff).)

38. On April 29, 2020, the Father emailed Ms. Applehoff and expressed that, due to the difficulties of transitioning to remote learning, the Father and the Student were behind in performing work for Ms. Applehoff's science class. (P26, p.2; Tr., pp.471-473 (Applehoff).) Ms. Applehoff provided a "modified assignments accommodation" and instructions, and confirmed that giving the Student answer keys for assessments was appropriate due to the terms of the Student's IEP accommodations. (P26, p.1; Tr., pp.471-475 (Applehoff).) Ms. Applehoff also provided information about using the on-line textbook zoom features. (*Id.*) Ms. Applehoff noted that the Father was spending more time assisting the Student with the transition to on-line learning than other parents were reporting. (Tr., pp.478-479 (Applehoff).)

39. Between April 20, 2020, and April 29, 2020, Ms. Fischer also emailed SLP instruction information and asked the Father if she could address any issues with remote learning. (P27, pp.1-3; Tr., pp.623-625 (Fischer).) The Father responded that they had established a routine and that he was supporting the Student's organization challenges. (P27, pp.1-3; Tr., pp.153-155 (Enns); 257-270 (Father); pp. 623-627 (Fischer).) The week of May 5, 2020, Ms. Fischer consulted with the Parent via email regarding the Student's SLP services and received feedback that the Parent found the collaboration with Ms. Fischer to be positive. (D11, p.1; Tr., pp.623-629 (Fischer).) The Father, however, believed that he was performing a lot of the work for the Student and did not understand the educational benefit of the educational programming. (Tr., pp.2257-269 (Father).)

40. On May 20, 2020, the District held an on-line meeting regarding the Student's CLP. (D12, p.1; Tr., pp.547-549 (Morse).) The attendees included: the Father, the Mother, Mr. Jeune, Ms. Morse, Ms. Fischer, and Ms. Ramolette. (*Id.*) The attendees discussed the Student's remote learning difficulties, and noted that it was difficult for the Student to work independently and that he needed adult support to transition from task to task and remain organized. (*Id.*) The group strategized ways to assist the Student, including developing check lists, taking breaks, and typing skills games. (*Id.*)

41. In preparation for the Student's eighth grade year in 2020-2021, on June 1, 2020, Ms. Morse asked the Parents to consider placing the Student in a co-taught language arts general education class taught by a general education teacher and a special education teacher. (P28, pp.2-3; Tr., pp.548-549 (Morse).) Ms. Morse also offered a seventh grade level pull-out special education class for language arts. (*Id.*) The Parents and Ms. Morse all initially believed that the pull-out seventh grade option would be best for the Student. (P30, pp.1-2; P2, p.1; Tr. pp.548-549 (Morse).)

June 20, 2020 Progress Report

42. On June 20, 2020, Ms. Morse produced a "Goal Progress Report" setting forth the Student's progress towards the March 26, 2020, IEP goals. (D13, pp.1-3; Tr., pp.538-540 (Morse).) Ms. Morse used a curriculum based measures evaluation tool called easyCBM.com to measure the Student's progress by posing "16 questions at that grade level." (Tr., pp.539, 544 (Morse).)

43. Regarding the Student's math problem solving goal, Ms. Morse collected data about the Student's progress through "work samples and online assessments." (*Id.*) According to the data, the Student was at 72% accuracy with math reasoning problems at the 6th grade level, but Ms. Morse noted that the Student's scores were based on:

limited data and specially designed instruction due to the Covid-19 mandated statewide school closure. Assessments were done at home via distance learning, so may (sic) have supports from home or other sources that may invalidate the reliability of the assessments. Additional data collection will occur when school resumes to determine the student's present levels of performance.

(*Id.*) Ms. Morse noted that the Student's progress was "sufficient" towards the math problem solving goal. (*Id.*)

44. The Student also made sufficient progress towards his reading fluency goal and Ms. Morse anticipated that the Student would meet his goal by March 26, 2021. (*Id.*) According to the data available, the Student was "reading 84 words per minute at the [5th grade] level as measured by teacher collected data and classroom assessments." (*Id.*) The Student's progress score was noted as 85WPM. (*Id.*)

45. Similarly, the Student made sufficient progress towards his reading comprehension goal and Ms. Morse anticipated the Student would also meet this goal. (*Id.*) Ms. Morse reported that the Student answered reading comprehension questions at 85% accuracy at the 5^h grade level as measured by easyCBM based assignments." (*Id.*) The Student's progress score was noted as 85% at the 5th grade level. (*Id.*)

46. Ms. Morse reported the Student's progress towards his written expression goal as "sufficient" because he was able to "write 2 complete sentences with correct sentence structure as measured by teacher observation, student work, and curriculum-based measures." (*Id.*) Ms. Morse reported that she anticipated the Student would meet his written expression goal. (*Id.*)

47. The Student also successfully turned in all his assignments and therefore Ms. Morse concluded that the Student was making sufficient progress towards his behavior goal which required him to "complete assignments in a timely manner, turn in assignments, and keep his binder organized for a consecutive 5 out of 5 days as measured by teacher collected observation data." (*Id.*)

48. Lastly, Ms. Fischer reported that the Student had made sufficient progress towards his social / emotional goal because

[d]uring remote learning, [the Student] frequently completed specific communication activities offered by the SLP. Lessons included the following topics to support [the Student's] thinking skills and goal progress: emotional regulation, conversation drivers and stoppers, compromise and social inferencing. Additionally, [the Student] had the opportunity to engage in social interactions via

an online platform. Due to the remote learning platform additional data collection will occur when school resumes to determine [the Student's] present levels of performance. Also, the SLP provided the family with academic language supports for home use.

(D13, pp.1-3.) Ms. Fischer assigned a progress score of 2 and specifically stated that the Student “has improved his interpersonal skills to 2/5 opportunities. [The Student] has worked very hard toward his goal this year. Due to the school closure, teachers were not able to track and measure this goal.” (*Id.*)

2020-2021 Academic Year

49. For the 2020-2021 academic year, the Student attended eighth grade at the District through remote learning due to the Covid-19 public health emergency. (D14, pp.1-4.)

50. Instead of the pull-out seventh grade special education language arts class the Father and Mother originally preferred, the Student attended the co-taught eighth grade language arts class where he received reading and writing SDI from Samantha McGinnis,⁹ special education teacher, and instruction from general education teacher Evan Griswold. (D15, p.1; Tr., pp.484-499 (McGinnis); 548-550 (Morse).) The Father became aware of the Student’s attendance in this class in September 2020, and the Student continued to attend the co-taught eighth grade language arts class. (Tr., pp.682-683 (Father).)

51. The Student also attended SLP related services with Ms. Fischer in the special education environment, as well as social / emotional and behavior SDI. (D15, p.1; Tr., pp.550-551 (Morse); 631-639 (Fischer).) The Student also participated in the general education classes of science, health, and social studies. (D15, p.1; Tr., pp.601-602.) The Student attended a social / emotional learning (“SEL”) pull-out special education class and “Math 8” in the special education environment. (D15, p.1; (Tr., pp.484 (McGinnis); 536 (Morse).)

52. Instead of attending a “learning strategies” class to receive social / emotional and behavior SDI, the Father, with input from the Student, elected to place the Student in the elective class “tech rotation” because “[the Student] will have enough support at home” for organization and behavior. (D14, p.3; D15, p.1; Tr., pp.687-690 (Father); 550-551 (Morse); 631-633 (Fischer).) Ms. Fischer also offered the Student an opportunity to attend the lunch social to allow the Student time to engage socially with other students. (P31, pp.1-4; Tr., pp.550-551 (Morse); 631-632 (Fischer).) During the 2020-2021 school year, the Student attended a special education pull-out class on Wednesdays with Kris Burke, paraeducator and received support to finish his homework assignments. (Tr., pp.553-554 (Morse); 632-633 (Fischer).) Ms. Fischer also attended the Student’s general education classes and offered supplementary services and supports as directed in the Student’s IEP. (Tr., pp.630-634 (Fischer).)

⁹ Samantha McGinnis is a special education teacher at the District and has worked at the District for eight (8) years. (Tr., pp.482-483 (McGinnis).)

53. In October 2020, the Father informed the District that on Mondays the Student would be attending Applied Behavior Analysis (“ABA”) sessions at a private provider to address the Student’s autism and dyslexia, and therefore the Student would miss one of the weekly 2-hour co-taught language arts classes with accompanying reading and writing SDI. (P32, p.2; Tr., pp.551-552 (Morse); 685-687 (Father).) On October 21, 2020, Ms. Fischer expressed in an email that she was concerned about this schedule because the Student would miss receiving SDI minutes in reading and writing. (*Id.*) The Father could not resolve the scheduling conflict and chose to continue the Student’s ABA therapy. (P32, p.1; Tr., pp.551-552 (Morse); 685-687 (Father).)

54. On October 28, 2020, Ms. Morse requested that the Student’s IEP team meet and address how the Student would receive SDI in the areas of reading and writing if he was going to miss two hours of language arts class per week to attend ABA therapy, and also to address how the Student would receive social / emotional and behavior SDI minutes because he was not attending the learning strategies class due to enrollment in the tech rotation elective. (P33, pp.1-3; Tr., pp.551-553 (Morse); 342-345 (Father).) On October 30, 2020, the Father suggested via an email to Ms. Morse that the Student’s ABA therapist attend the Monday language arts class with the Student. (*Id.*)¹⁰

55. The District’s personnel conducted progress monitoring of the Student in December 2020. Ms. Fischer contributed a progress report regarding the Student’s SLP goal and social / emotional behavior goal. (D17, pp.10-11.) Ms. Fischer reported that:

[d]uring his first trimester of [the Student’s] 8th grade year, related services from the SLP have included observations during [the Student’s] co-taught LA and SEL classes and communication with [the Student’s] teaching team. The SLP provided access to visual supports while he was waiting to obtain a hard copy of the text for LA. Based on observations and paraprofessional supports, [the Student] is actively participating in classes by following directions, asking clarifying questions as needed, and working independently. [The Student] reads aloud when called on, and provides on-topic responses during group discussions. During 3 Wednesday check in’s for additional learning support with a paraprofessional, [the Student] finished a quiz and reviewed a missing assignment. In the two most recent sessions, [the student] reported he was doing well and didn’t need any help or assistance. When compared to his general education peers, [the Student] is shining in regards to his ability to sustain attention and focus during remote learning while participating in his co-taught LA class. [The Student] most often keeps his camera on and appears focused and engaged in work tasks. He appears to easily shift between writing, reading and listening tasks. Though [the Student] hasn’t attended lunch group this trimester, the offer stands open. [The Student] is welcome to join Monday’s lunch / social group whenever he is able. During classroom observations and staff consultations, there have been no reports or

¹⁰ The record is incomplete regarding whether the Student’s IEP team convened as requested by Ms. Morse on October 28, 2020.

signs of negative self-talk. It's wonderful to know that family members are also observing improvements in this area!

(D17, pp.10-11; Tr., pp.634-638 (Fischer).)

56. Ms. McGinnis and Ms. Morse used curriculum based measures to collect data about the Student's progress in academic areas. (Tr., pp.487-499 (McGinnis).) Ms. McGinnis reported that the Student has "surpassed his goal of reading 105 correct words per minute ("cwpm") at the 5th grade level," and therefore he had mastered his reading fluency goal. (D17, p.7; Tr., pp.487-499 (McGinnis).) Ms. McGinnis also reported that the Student "continues to answer reading comprehension questions with 85% accuracy at the 5th grade level." (D17, p.9; Tr., pp.487-499 (McGinnis).) Also, regarding written expression, the Student's writing improved "using correct punctuation and capitalization . . . but overall his work is organized and interesting to read." (D17, p.14; Tr., pp.487-499 (McGinnis).) Regarding the Student's math goal, Ms. Morse reported in December 2020, that the Student was progressing from mastering 51 topics to 63 topics. (D17, p.21; Tr., pp.545-547 (Morse).)

57. Ms. McGinnis reported that even though the Student was receiving straight A's and had no missing assignments during the 1st trimester of the 2020 school year, she was not able to track the Student's use of his planner in relation to meeting his behavior goal. (D17, p.16.)

March 15, 2021 IEP

58. On March 3, 2021, the District issued a "Meeting Invitation" for an IEP meeting scheduled for March 10, 2021. (D17, p.1; Tr., p.555 (Morse).) The following members of the Student's IEP team were invited: Ms. Bosshart, District representative; Ms. Morse; Chris Santos,¹¹ general education teacher; the Student; the Father; the Mother; Ms. Fischer; and Joy Sakai, District's occupational therapist. (*Id.*) On March 8, 2021, Ms. Morse began collecting information from the Student's general education teachers about the Student's strengths, performance, grades, accommodations, and social / emotional observations. (D17, p.2; Tr., pp.555-557 (Morse).) The Student's IEP Team reviewed the Student's progress on March 10, 2021, and proposed new IEP goals. (D17, pp.7-23; Tr., pp.555-558 (Morse).)

59. Ms. Morse reported that even in the remote setting, the Student:

was engaged and excited and loved the classes, loved the . . . working with other kids and breakout rooms. He was the one kid that had his – camera screen on in Zoom. He is such a – he has such a great smile and was always like involved. And everyone was saying that in their teacher reports in the IEP that the Student is engaged, he is answering questions, he is raising his hand, he is using the Zoom

¹¹ Chris Santos has 26 years of experience as a certificated teacher and teaches eighth grade social studies at BLMS. (Tr., pp.601-602 (Santos).) Mr. Santos graduated from Washington State University, and received a degree in education from the University of Washington before earning a master's degree from Penn State University. (*Id.*)

tools, . . . He didn't miss class . . . He turned in all his assignments. He was really presented like a kid who was organized, wasn't stressed out . . . I recall him being really, really positively impacted by the COVID closures because I feel like with other kids on the autism spectrum, . . . the remote setting was good . . . because they weren't stressed about all the social pressures about being in school navigating their environment, and all that . . . [H]e was really having a great year last year.

(Tr., pp.556-557 (Morse).)

60. Mr. Santos reported that the Student was engaged, kept his camera on during on-line learning sessions, and asked clarification questions during class (Tr., pp.604-606 (Santos).)

61. Ms. McGinnis reported that the Student had met his reading fluency goal, and she proposed a new goal for the Student's annual March 15, 2021, IEP:

When given a reading passage, [the Student] will read aloud improving reading fluency skills from reading 84 words per minute at the 7th grade level passage to reading 105 words correctly per minute at the 7th grade level as measured by teacher collected data.

(D17, pp.7-8; Tr., pp.487-499 (McGinnis).)

62. Regarding the Student's reading comprehension goal, the Student was "very close to mastering this goal. He is consistently comprehending reading material at the 5th grade level with 85% accuracy." (D17, p.9; Tr., pp.487-499 (McGinnis).) The District proposed changing the Student's goal to "answering reading comprehension questions at 85% accuracy at the 7th grade level as measured by easyCBM based assessments" for the March 15, 2021, IEP. (D19, p.2; Tr., pp.487-499 (McGinnis).)

63. The Student also mastered his written expression goal by "writing 2 complete sentences with correct sentence structure as measured by teacher observation, student work, and curriculum based measures." (D17, p.14; Tr. pp.487-499 (McGinnis).) The District proposed the following new goal for the March 15, 2021, IEP:

When given a writing prompt and asked to type and or (sic) write 3 paragraphs, [the Student] will organize his writing by having an introduction paragraph, body paragraph, and conclusion paragraph, making sure to separate each by an indent and tab improving from 1 lengthy paragraph to 3 separated paragraphs.

(Id.)

64. Ms. McGinnis reported that it was difficult to track whether the Student was meeting his behavior goal of using his planner 5 out of 5 days per week, and recommended that this goal be continued in the March 15, 2021, IEP. (D17, p.16.)

65. Regarding the Student's social / emotional behavioral goals, Ms. Fischer reported that the Student had not met this goal, but he had "continued to show improvement in the area of interpersonal skills during the remote setting. The team would like to continue this goal because we want to make sure that [the Student] is able to transfer these skills to the classroom environment." (D17, p.19; Tr., pp.487-499 (McGiniss).) The District proposed the following goal for the March 15, 2021, IEP:

When given an opportunity in a classroom setting [the Student] will identify and express feelings / strengths about self-improving his use of positive self-talk in school from making positive statements about the qualities and accomplishments of self 2 out of 5 opportunities to 4 out of 5 opportunities as measured by teacher reports and direct observations.

(Id.)

66. The District also proposed a new math goal for the Student because he had "met the last goal of 80% accuracy on 6th grade math reasoning assessments." (D17, p.22; Tr., pp.544-545, 558-559 (Morse).) The District proposed the following math goal for the March 15, 2021, IEP:

When given math reasoning problems at the 8th grade level with 2 or more steps, [the Student] will show his work and explain all his thinking, from 79% accuracy at the 8th grade level to 80% accuracy at the 9th grade level, with three data days across one trimester / semester.

(Id.)

67. Ms. Fischer summarized the Student's progress as demonstrating "great growth in his academic engagement and performance during this time. He has appeared regulated and engaged . . . joined classes on time, accessed and completed online learning materials . . . [The Student] is earning A's and A's in his general education and special education classes." (D17, p.11.) Ms. Fischer recommended that the Student continue to receive SLP related services and supplementary aids and services to "support his progress on his literacy and social / emotional goals." (Id.) Ms. Fischer noted that it "will be important to reassess social goal progress and needs upon the return to the more dynamic, 'in-person' learning environment" because the Student did not participate in the weekly lunch social group. (Id.)

68. Ms. Fischer proposed another reading goal targeting literacy:

When given a 7th grade level reading passage and set of multiple choice comprehension questions, [the Student] will read the passage and independently answer comprehension questions (main idea, details, drawing conclusions, inferences, vocabulary, etc.) improving reading comprehension from 0% on the 7th grade to 75% accuracy at the 7th grade level text as measured by teacher collected data, curriculum based measures, and classroom assessments.

(D17, pp.11-12.)

69. The District proposed continuing the accommodations and supports in the Student's IEP and recommended continuing SDI for the Student in all previously identified areas of disability. (D17, p.33.)

70. The District's March 15, 2021, IEP proposed the following service minutes and placed the Student in the general education environment 78% of the time:

Math 240 minutes per week in special education;
Reading 120 minutes per week in special education;
Written Language 120 minutes per week in special education;
Social / emotional 20 minutes per week in special education; and
Behavior 20 minutes per day in special education.

(*Id.*) The March 15, 2021, IEP also proposed 120 minutes per month of speech / language therapy as a related service to be delivered by an SLP concurrently with the social / emotional and literacy SDI in the special education environment. (*Id.*) The IEP team also proposed 30 minutes per month of SLP consultation as a supplemental aid and service for the Student. (D17, p.34.)

71. The IEP team considered placing the Student in the general education environment more than 78% of the time, but rejected the consideration because of the need to deliver the Student's SDI in the special education environment. (D17, p.34.)

72. To support the Student's transition to high school for the 2021-2022 academic year, the District proposed the following SDI and related services:

Math 250 minutes per week in special education;
Reading 125 minutes per week in special education;
Written Language 125 minutes per week in special education;
Social / emotional behavioral 125 minutes per week in special education; and
Behavior 125 minutes per week in special education.

(D17, p.36.) The March 15, 2021, IEP also proposed 120 minutes per month of speech / language therapy as a related service to be delivered by an SLP concurrently with the social / emotional behavioral and literacy SDI in the special education environment. (*Id.*) The IEP team also proposed 30 minutes per month of SLP consultation as a supplemental aid and service for the Student. (D17, p.37.) The Student's placement, then, was reduced to attending the general education environment 57% of the time once he entered high school for the 2021-2022 academic year. (D17, p.36.)

73. On March 10, 2021, the District issued a PWN after the IEP team met to discuss the March 15, 2021, proposed IEP. (D17, pp.2-3.) According to the PWN:

The team met and considered the following points with regard to [the Student's] programming:

**All of [the Student's] teachers report that he is working hard, attending class daily, and getting assignments turned in on time, and with an adequate level of engagement and self-advocacy. He struggles with editing his writing work, and coming up with concise writing matter in a format that is intro, body, and conclusion type of writing style.*

**The team discussed that [the Student] is relationship driven, and performs better when the connections with instructors is made.*

**It is important to know that [the Student's] reading and writing skills are significantly below grade level. Accommodations are necessary for him to be successful in his reading and writing tasks.*

**Also important to note that [the Student] struggles with inference based reflections, and that he needs additional supports to find the why and the how of a situation.*

**It was discussed that [the Student] does especially well when given a procedure to follow when learning a concept, like a formula card, a procedure from start to finish, or a list of words to use for an assignment*

**[The Student] is working on using tools in office 365 such as dictation, text to speech, and grammar and spell check to improve his reading and writing skills.*

**[The Student] loves the technology rotation he has had in electives this year, and is considering attending Gibson Ek High School*

**[The Student's] regulation looks good while in school, but the team discussed how he is working double time to keep up with the rigors and demands of school each day. He has negative self-talk at home when his medications are wearing off.*

**[The Student's family is considering working on keyboarding in outside ABA therapy, to improve his overall written expression.*

(D17, p.2; Tr., p.556 (Morse).)

June 2021 Progress Reporting

74. The Student completed the 2020-2021 school year with a grade of "A" in Math 8, PE 8, Language Arts 8, Social Studies 8, and automation & Robotics. (D18, p.1.) The Student earned a B+ in Physical Science. (D18, p.1.)

75. As of June 11, 2021, the Student had made "sufficient progress towards his reading fluency goal by reading between 115 and 140 correct words per minute at the 7th grade level." (D17, p.14; D19, p.2.) Ms. McGinnis reported the Student's progress regarding the written expression goal was "sufficient progress" and his writing "continues to improve." (D17, p.15; D19, pp.2-3.) Ms. McGinnis also reported that it remained too difficult to track the Student's progress towards the behavior goal due to remote learning. (D17, p.17; D19, p.3.)

76. Ms. Fischer reported that the Student was making sufficient progress towards his social / emotional behavior goal: "[the Student] brings a positive attitude to class every day. He asks

clarifying questions when he does not understand. [The Student] has done a great job advocating for himself this year.” (D17, p.20; D19, p.3.) On June 11, 2021, Ms. Fischer reported that the Student was making “sufficient progress towards this goal and achieving 70% or 75% accuracy.” (*Id.*) Ms. Fischer also reported that the Student “demonstrated active engagement in his language learning and strong self-advocacy skills to repair communication breakdowns . . .,” but the Student declined to join the social language lunch group. (D17, p.13; D19, p.3.)

77. On June 6, 2021, Ms. Morse reported that the Student was making sufficient progress towards his math goal because he had “mastered 92% of the eighth grade curriculum” in math. (D17, p.23; D19, pp.3-4; Tr., pp.555-558 (Morse).)

78. The Student’s general education and special education teachers did not observe that the Student was struggling either emotionally or behaviorally while attending school on-line. (Tr., pp.556-557 (Morse); 615-644 (Fischer).) The Parents did not report to the District’s personnel that the Student was exhibiting any behavioral or social / emotional difficulties. (*Id.*)

79. The Student applied to attend ninth grade at Gibson Ek High School for the 2021-2022 school year and was accepted. (D17 p.3; P35, p.1; Tr., pp.691-693 (Father); 560-562 (Morse).) The Father spoke with Julie Bamba, principal at Gibson Ek High School, in the spring of 2021, and she provided him with information about the school (Tr., pp.670-671 (Bamba).) Ms. Bamba informed the Father that the school had approximately 185 students and about 20% of the population have an IEP, and another 20% of the population have a Rehabilitation Act 504 health plan. (*Id.*) Gibson Ek High School used an “advisory model,” where one advisor assists 20 students throughout the day and most classes contain 20 or fewer students. (Tr., pp.674-675 (Bamba).) Also, the Gibson Ek High School model is a “personalized, project-based” driven education based on a student’s interests and learning ability. (*Id.*)

Dr. Enns August 27, 2021, Evaluation

80. The Father brought the Student to Dr. Enns for a full evaluation between July 3, 2021, and August 27, 2021, because the Student “struggled with social difficulties, perspective taking, and learning challenges.” (P7, p.1; Tr., pp.158-175 (Enns).) Specifically, the Father was “concerned about [the Student’s] capacity to engage in group activities in a way that would not amplify [the Student’s] negative feelings about his academic abilities. His father was also concerned that [the Student] would not be receiving a level of individualized support to support [the Student] appropriately in regard to reading and writing in particular.” (P7, p.6.)

81. In his August 27, 2021, Evaluation, Dr. Enns noted that there is tension between the Father and the Mother in regards to the Student’s upbringing and that the Student is often in conflict with his sister. (P7, p.2; Tr., pp.128-133, 168-175, 211-212 (Enns).) It was reported to Dr. Enns that during the summer of 2021 the Student shared time between his Father and his Mother’s homes as per a custody agreement, and that the Student’s home life is a current “subject of therapy.” (P7, pp.2, 7; Tr., pp.128-133, 168-175, 211-212 (Enns).)

82. Dr. Enns reviewed the Student's March 19, 2020, Reevaluation by the District, interviewed the Parents and Student, and performed the following assessments: WIAT-4 (academic achievement), NEPSY-II (neuropsychological ability), and BASC-3 (social / emotional functioning). (P7, pp.8-14; Tr., pp.158-175 (Enns).) Dr. Enns did not obtain information from the Student's teachers or use curriculum based measures, but reviewed the March 26, 2020, and March 15, 2021, IEPs, as well as the April 20, 2020, CLP. (Tr., pp.199-204 (Enns).) Dr. Enns also reviewed the Student's progress reports from June 2020, December 2020, and June 2021, but did not find the curriculum based measures very useful because these measures track "progress within a specific program, but it doesn't give . . . a standardized score so it's impossible to make sense of it." (P7, p.15; Tr., pp.203-204 (Enns).)

83. Dr. Enns did not account for the impact of the Covid-19 public health emergency or the Student's participation in remote learning in the August 27, 2021, Evaluation. (P7, pp.1-15.)

84. On the WIAT-4 in the area of reading, the Student scored in the 9th percentile in word reading, the 30th percentile in pseudoword decoding, the 16th percentile in decoding, the 2nd percentile in oral reading fluency, the 15th percentile in oral reading accuracy, the 4th percentile in orthographic fluency, the 4^h percentile in orthographic processing, and the 5^h percentile in oral reading rate. (P7, pp.8-9; Tr., pp.160-161 (Enns).) In Dr. Enns, opinion, these results compared to the January 22, 2020, Reading Evaluation reflected that the Student was not progressing in the area of reading. (P7, pp.8-9; Tr., pp.160-163 (Enns).) In the areas of writing, the Student scored in the 5th percentile in spelling and the 3rd percentile in essay composition. (*Id.*) In the area of math, the Student scored in the 14th percentile in numerical operations. (*Id.*) Dr. Enns placed the Student's grade equivalency in reading and writing at the 3rd-4th grade, and 5th grade in math. (*Id.*) Dr. Enns did not complete the sub tests required to obtain a composite score in reading, writing, or math. (Tr., p.652 (Engelbeck).)

85. The NEPSY-II showed that the Student:

struggled to attend on an entry level complex auditory attention tasks, yet was not prone to impulsive errors. [The Student] struggled most when asked to recall verbal information in narrative form. Abilities appeared highly impaired. [The Student] struggled on the comprehension of instructions subtest, and was unable to maintain focus for the duration of the task. Verbal processing seemed very challenging to [the Student]. [The Student's] phonological processing skills appear highly impaired, and also prone to mental fatigue.

(P7, p.10; Tr., pp.164-165 (Enns).) The results of the NEPSY-II lead Dr. Enns to conclude that the Student was not making progress in the area of auditory attention. (*Id.*)

86. The BASC-3 questionnaire was completed by the Father, the Mother, and the Student, but not the Students teachers at the District. (P7, pp.10-13; Tr., pp.167-169 (Enns).) The BASC-3 assessment revealed an:

enormous divergence between adult reports, with [the Student's mother finding no significant challenges, and his father reporting a wide range of internalizing, externalizing, social and adaptive challenges. As has been consistent in the past, [the Father] noted significant symptoms related to [Autism Spectrum Disorder], while his mother reported typical social behaviors. [The Student] reported very high levels of depression, social stress, atypical feelings and suppressed self-esteem. [The Student] also reported an aversion to school.

(P7, p.14; Tr., pp.167-169 (Enns).)

87. Dr. Enns concluded that the Student continued to meet the full criteria for Autism Spectrum Disorder, ADHD (Combined Type), and Anxiety Disorder, and that the Student continued to demonstrate specific learning disorders in reading, written expression, and math. (P7, pp.15-18; Tr., pp.168-175 (Enns).)

88. Dr. Enns also diagnosed the Student with major depressive disorder because of his "sense of isolation, highly diminished self-esteem and depressive thoughts" and concluded that "recent placement in the Issaquah School District has not improved functioning, and [the Students] academic skills have stagnated." (P7, p.17; Tr., pp.128-133, 168-175 (Enns).) In relation to the Student's struggle with depression, Dr. Enns included the following in his report:

Depression is an emerging and focal concern. In therapy and during testing, [the Student] has appeared dysphoric, which aligns with formal self-report in the form of the BASC-3 and negative self-talk during therapy. [The Student] has been consumed by a lack of clarity in regard to his parents' divorce and a feeling that he does not have control over his own life. While he has denied suicidal ideation, it is critical that the adults in [the Student's] life pay attention to verbal and nonverbal behaviors that might reflect a worsening condition.

.....

With the above in mind, [Dr. Enns] strongly urges parents to align and provide [the Student] with a low conflict co-parenting relationship that not only gives [the Student] needed stability and structure, but also teachers (sic) [the Student] that adults can improve and move past prior challenges. [The Student] desperately wants to know why his parents have divorced, and this tension is only exacerbated by ongoing conflict. When parents are truly working toward helping [the Student] they will be engaging in peaceful and appropriate, collaborative parenting. Veering too far away from this idea will predictably result in poor outcomes.

Beyond parent support, [the Student] clearly needs more support than what has been provided to him both in [REDACTED] and Issaquah. In many ways, [the Student's] own assessment of himself holds some truth: educators are often underestimating his intellectual abilities. [Dr. Enns] can only imagine the frustration [the Student] feels in not being able to exist in an educational setting that does not

elicit feelings of helplessness and separation from his fellow students. Beyond not providing [the Student] with a nuanced, individualized learning program, he has not been provided with appropriate, intensive supports needed to improve academic skills.

Despite a rather placid exterior and many positive social and academic strengths, in the opinion of [Dr. Enns] [the Student] is quietly in a state of crisis. While [the Student] might be able to endure a lack of support at school he would not be able to show his true abilities without appropriate support. [The Student] therefore requires substantial support from the adults in his life. With a patient and thoughtful approach, he will be able to experience life with less frustration and live a more contented life.

(P7, pp.17-18; Tr., pp.128-133, 168-175, 211-212 (Enns).)

89. Dr. Enns recommended that the Student enroll in New Horizons School, a private school, because of the “community piece . . . They work really hard at getting quirky kids to be part of a community.” (Tr., p.173.) Dr. Enns also made his recommendation based on the information from the administrator, Marla Veliz, that New Horizons School “explicitly teach phonological awareness.” (Tr., pp.213-214.) Dr. Enns, however, was not familiar with the specific kinds of reading programs or methodology that New Horizons School used or the training of the staff to deliver the curriculum, and therefore this information did not inform his recommendations. (*Id.*)

Dr. Laurie Engelbeck’s Review of Dr. Enns’ August 27, 2021, Evaluation

90. The District received Dr. Enns’ August 27, 2021, Evaluation and Dr. Laurie Engelbeck,¹² the District’s School Psychologist, reviewed its contents. (Tr., pp.647-652 (Engelbeck).) Dr. Engelbeck concluded that:

the Student has stayed in the same range of standard scores through multiple evaluations . . . The standard scores are all pretty consistent . . . A standard score is the measure of where that person’s score is relative to the whole distribution. And then distribution for these academic assessments are based on the Student’s age . . . So the whole distribution - - the mean score of the distribution would be higher at a higher age. So . . . to keep the same standard scores, if you only have the same standard scores, that would represent progress.

¹² Dr. Laura Engelbeck received a bachelor’s degree in psychology from the University of California, Davis, and a master’s degree in clinical psychology from the University of Colorado, Boulder. (D20, p.1; Tr., pp.647-648 (Engelbeck).) Dr. Engelbeck also earned a Ph.D in clinical psychology and a school psychology certification. (*Id.*) Dr. Engelbeck is a nationally certified school psychologist, president of the Washington State Association of School Psychologists, and has over thirty (30) years of experience. (*Id.*)

(Tr., pp.650-651 (Engelbeck).) As a result, according to Dr. Engelbeck, the grade level equivalents as reported by Dr. Enns are merely estimates and “could be very different depending on the curriculum that is used . . . They are not meaningful.” (Tr., p.652 (Engelbeck).)

91. Dr. Engelbeck noted that Dr. Enns’ August 27, 2020, Evaluation did not use curriculum-based measures that could be repeated overtime to judge progress and employed assessments that were different than those used by the District in the Student’s March 19, 2020, Reevaluation, March 26, 2020, IEP, March 15, 2021, IEP, and District progress reports. (Tr., pp.653-654 (Engelbeck).)

92. The Parent did not request that the District perform a reevaluation of the Student after March 19, 2020.

93. On August 11, 2021, the Father emailed the District and stated that the Student would enroll at New Horizons School for the 2021-2022, school year and that he would be seeking reimbursement from the District. (P36, p.1; Tr., pp.692-693 (Father).)

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

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 burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case, the Parents. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

3. 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 206-07 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Id.* at 200-01.

4. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

Andrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Andrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can “make progress in the general education curriculum,” 137 S. Ct. at 994 (citation omitted), taking into account the progress of his non-disabled peers, and the child’s potential.

M.C. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 583 U.S. ___, 138 S. Ct. 556 (2017).

5. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated:

Among the most important procedural safeguards are those that protect the parents’ right to be involved in the development of their child’s educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

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

Clarification of Issues Officially Noticed

6. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the due process hearing request, unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). This is consistent with Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130. The federal district court in *L.C. v. Issaquah School District* recently held that: “[a]dministrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise.” 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019) (upholding ALJ’s refusal to address claims raised for first time in post-

hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing). Thus, the tribunal is not required to wade through the record to find evidence to support claims or identify claims that were not raised in the pleadings. *E.M. v Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, (9th Cir 2011), citing *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); see *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs hunting for truffles buried in briefs”).

7. An exception to this rule is when an issue was actually tried by the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *15-16 (E.D. Cal. Mar. 7, 2019), *aff’d* 810 Fed. Appx. 588 (9th Cir. 2020); see also *Issaquah Sch. Dist.*, at *37 (holding that parents failed to show any of claims not considered by ALJ were tried by consent, contrasting with *Antelope Valley*: “[b]oth sides in *Antelope Valley* ‘presented extensive evidence,’ including witness testimony, regarding the omitted claim”).

8. The first issue presented by the Father’s due process hearing is a substantive challenge to the Student’s IEPs “since March 26, 2020.” (*Emphasis added.*) The term “since” used as a conjunction in the issue statement means “from a time in the past until the time under consideration, typically the present.” (Simpson, J. A., Weiner, E. S. C., & Oxford University Press. (1989), *The Oxford English Dictionary*. Oxford: Clarendon Press.) Thus use of the conjunction “since” means that the Student is challenging IEPs that were created after March 26, 2020. The record reflects that the Student received two IEPs, one dated March 26, 2020 and one dated March 15, 2021. Therefore, the issue officially noticed is a challenge to only the March 15, 2021, IEP because it is the only IEP the Student received “since” March 26, 2020.

9. However, the parties both presented extensive evidence regarding a substantive challenge to the March 26, 2020, IEP. Also, both parties address whether the March 26, 2020, IEP is reasonably calculated and appropriate in their closing briefs. Given these circumstances, it appears that the parties consented to a substantive challenge of both the March 26, 2020, and March 15, 2021, IEPs. Therefore, the issue presented for resolution is a substantive challenge of: *whether the March 26, 2020, IEP and March 15, 2021, IEP were reasonably calculated to allow the Student to make appropriate progress in light of his circumstances.*

10. Regarding the next issue presented by the Father in the due process hearing request, it specifically states that the District was obligated to reevaluate the Student “since March 26, 2020,” and did not fulfill this obligation. (*Emphasis added.*) By its plain language, then, this issue is not an assertion that the March 19, 2020, Reevaluation¹³ was inappropriate, incomplete, or otherwise a violation of the IDEA. Instead, the issue statement reflects that at some point after March 26, 2020, the District was obligated to reevaluate the Student and did not fulfill that obligation.

¹³ As noted above, while the Parent’s due process hearing request and the First Prehearing Order identify the date of March 26, 2020, the actual date of the Reevaluation at issue is March 19, 2020.

11. However, again, both parties presented evidence regarding the appropriateness of the March 19, 2020, Reevaluation, and both parties identify that whether the March 19, 2020, is sufficiently comprehensive to identify all of the student's special education and related services needs is an issue for resolution. Because both parties have presented evidence and argument on this issue, then, it is concluded that they consented to the trial of the following: 1) *whether the March 19, 2020, Reevaluation was appropriate and 2) whether the District was obligated to reevaluate the Student since the March 19, 2020, Reevaluation.*

The District's March 19, 2020, Reevaluation Was Appropriate and Sufficiently Comprehensive to Identify all of the Student's Special Education and Related Services Needs

Applicable Law

12. When conducting an initial special education evaluation of a student, a district is required to "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student..." WAC 392-172A-03020(2)(a). The district must "[n]ot use any single measure of assessment as the sole criterion" to determine if a student is eligible for special education. WAC 392-172A-03020(2)(b). The district must also ensure "[t]he student is assessed in all areas related to the suspected disability..." WAC 392-172A-03020(2)(e). An evaluation must be completed by a qualified individual and "sufficiently comprehensive to identify all of the student's special education and related services needs." WAC 392-172A-03020(3)(g). "The IDEA does not prescribe substantive goals for an evaluation, but provides only that it be 'reasonably calculated to enable the child to receive educational benefits'." *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp.2d 1175, 115 (W.D. Wash. 2002) (citing *Rowley*, 458 U.S. at 205-07).

13. Further, under WAC 392-172A-03025:

As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate must:

- 1. Review existing evaluation data on the student, including:*
 - a. Evaluations and information provided by the parents of the student;*
 - b. Current classroom-based, local, or state assessments, and classroom-based observations; and*
 - c. Observations by teachers and related services providers.*

14. The IDEA does not give parents the right to dictate the areas in which a school district must assess a student as part of a special education evaluation. See *Letter to Unnerstall*, 68 IDELR 22 (OSEP 2016); *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834, 2019 WL 2023567 (citing *Avila v. Spokane Sch. Dist.* 81, 686 F. App'x 384, 385 (9th Cir. 2017)). A district need not evaluate in areas in which it does not suspect a disability. See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (2008).

15. Concerning eligibility determinations, WAC 392-172A-03040 provides that upon completing the evaluation assessments, a group of qualified professions and the parent must determine whether the student is eligible for special education. A student must not be determined eligible “[i]f the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.” *Id.* In interpreting evaluation data to determine eligibility, the district must draw upon information from a variety of sources, including parent and teacher input. *Id.* The district must also ensure that information obtained from all of these sources is documented and carefully considered. *Id.*

16. A student is eligible for special education if the student has been evaluated and determined to need special education because of having an “emotional / behavioral disability” or autism. WAC 392-172A-01035(1)(a). Autism “means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely impacts a student’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.” WAC 392-172A-01035(2)(a)(i).

17. Further, an evaluation team can also determine that a student qualifies for special education services because of a “specific learning disability” if:

(1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:

- (a) Oral expression.*
- (b) Listening comprehension.*
- (c) Written expression.*
- (d) Basic reading skill.*
- (e) Reading fluency skills.*
- (f) Reading comprehension.*
- (g) Mathematics calculation.*
- (h) Mathematics problem solving*

WAC 392-172A-03055.

18. Finally, WAC 392-172A-03035 concerns evaluation reports. It requires that the report include: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the disability affects the student’s progress in the general education curriculum; and the recommended special education and related services the student needs. *Id.*; see also 34 CFR §300.304-.306.

19. Like IEPs, the appropriateness of an evaluation must be determined in light of what was known, or should have been known, at the time the evaluation was conducted. Also, whether an evaluation is appropriate should not be judged in hindsight. This is the so-called snapshot rule. See *Adams v. Oregon*, 195 F.3d 1141, 31 IDELR 130 (9th Cir. 2001).

Analysis

20. The Father asserts that the March 19, 2020, Reevaluation was “inadequate . . . because it did not assess the Student for dyslexia, despite knowing that Dr. Enns had diagnosed him with the condition.” (Parent’s Post-hearing Brief, p.26.) The District argues that Dr. Enns’ January 22, 2020, Reading Evaluation and diagnosis of dyslexia not only informed the March 19, 2020, Reevaluation, but was repeated in the March 19, 2020, Reevaluation. Further the District reevaluated the Student in all academic areas, including reading, writing, and math.

21. The Father has failed to demonstrate that the District had any obligation under the law to evaluate the Student for dyslexia given that the District accepted Dr. Enns’ January 22, 2020, dyslexia diagnosis. Further, the Parents have not identified a specific area of concern related to the Student’s dyslexia diagnosis that the District failed to evaluate. Even so, the Father has not presented any evidence that the Student’s eligibility determination would have changed. Given the record before this tribunal, it is concluded that the District’s March 19, 2020, Reevaluation was appropriate and sufficiently identified the Student’s special education and related service needs related resulting from the Student’s dyslexia diagnosis.

22. The Father next argues that the “Student was not evaluated in social / emotional, adaptive, or sensory areas, despite the IEP team’s acknowledgement that these areas required further assessment.” (Parent’s Post-hearing Brief, p.27.) The Father also asserts that the Father’s and Mother’s input about the Student’s “dysregulated behaviors outside of school” should be the controlling data in making determinations about the Student’s social / emotional and adaptive skill needs. (*Id.*) The District’s brief does not address this argument.

23. The Father’s argument is, again, contrary to the evidence presented. As found above, Ms. Heimstra, Ms. Morse, and Ms. Fischer all evaluated the Student in the areas of social / emotional and adaptive skills. The March 19, 2020, Reevaluation specifically reflects the administering of multiple assessments to evaluate the Student in these areas. Further, the March 19, 2020, Reevaluation reflects that the Father’s and the Mother’s input was relied upon when making eligibility determinations in the areas of social / emotional and adaptive skills. In fact, the District found the Student eligible for special education services in the area of social / emotional. While the District did exit the Student from adaptive skills, there is no evidence presented that the Student had a disability in the area of adaptive skills at the time of the March 19, 2020, Reevaluation. As a result, the District’s March 19, 2020, Reevaluation is appropriate.

24. The Parent also argues that the “District’s evaluation was improperly done because it failed to contemplate using speech language SDI as a dyslexia intervention.” (Parent’s Post-hearing Brief, p.27.) The District’s brief does not address this argument.

25. There is no logical connection regarding “the use of speech language SDI to address the Student’s dyslexia disability,” and the purpose of the March 19, 2020, Reevaluation. The purpose of the March 19, 2020, Reevaluation is to identify suspected areas of disability and make a determination regarding the eligibility for special education services. The District evaluated the Student and determined that he was eligible for speech language special education services and that he was diagnosed with dyslexia. Any “use of speech language SDI” as an intervention for the Student’s dyslexia diagnosis is addressed in the Student’s IEP. The Father, then, has not shown that the District’s March 19, 2020, Reevaluation was inappropriate.

26. Given the record available and the arguments presented by the Father, it is concluded the District’s March 19, 2020, Reevaluation is appropriate or sufficiently comprehensive to assess the Student in all areas of disability.

The District was Not Obligated to Reevaluate the Student after the March 19, 2020, Reevaluation and before August 11, 2021

Applicable Law

27. 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 services 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).

28. After a District completes an initial evaluation of a student, a parent who disagrees with the evaluation process or results may: 1) “file a due process hearing request on any of the matters relating to the . . . evaluation . . . , within two years of . . . the date the parent . . . knew or should have known about the action.” (WAC 392-172A-05080); or 2) request an independent educational evaluation at public expense (WAC 392-172A-05005).

29. When a district determines that a student should be reevaluated, it must provide prior written notice to the parents that describes all of the evaluation procedures that the district intends to conduct. WAC 392-172A-03020. The district must obtain the parent’s consent to conduct the reevaluation. WAC 392-172A-03015(3). The district must convene a group of qualified professionals and this reevaluation team determines whether the student continues to be eligible for special education and the content of the Student’s IEP. WAC 392-172A-03020 and 03040. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student’s special education needs and any necessary related services. WAC 392-172A-03020. The reevaluation must also include a review of existing data. WAC 392-172A-03025.

Analysis

30. The Father specifically stated the following issue in the due process hearing request: *whether the District was obligated to reevaluate the Student since the March 19, 2020, Reevaluation.* In the Father's post-hearing brief, the Father did not offer any argument and appears to abandon this issue. The District, however, addressed this issue and argues that 1) there is no evidence that the Father requested a reevaluation since March 19, 2020, and 2) there is no showing of any circumstances that would trigger the District's obligation to reevaluate the Student.

31. The District is correct that the District did not have an obligation to reevaluate the Student until March 19, 2023. Given that three years have not passed since March 19, 2020, as required by WAC 392-172A-03015(2)(b), it is concluded that the District was not obligated to reevaluate the Student as alleged by the Father. The District is also correct that neither the Father, the Mother, nor the Student's teachers requested reevaluation of the Student after March 19, 2020. Therefore, the District did not have an obligation to reevaluate the Student under WAC 392-172A-03015(1). Finally, the District is also correct that the Father, the Mother, and the District did not mutually agree to any reevaluation of the Student, or that the District believed that the Student's educational and services required reevaluation as per WAC 392-172A-03015(2)(a). Therefore, the District did not have an obligation to reevaluate the Student under WAC 392-172A-03015(1).

32. Arguably, the information from Dr. Enns' August 27, 2021, Evaluation presented information that could have triggered the District's obligation to review the Student's educational services and consider whether reevaluation of the Student was warranted. However, there is no evidence that the Father and the Mother provided Dr. Enns' August 27, 2021, Evaluation to the District prior to removing the Student and placing him at New Horizons on August 11, 2021.

33. Based on the record and the arguments, and lack thereof, from the parties, it is concluded that the District was not obligated to reevaluate the Student after March 19, 2020.

The District Offered the Student IEPs on March 26, 2020, and March 15, 2021, that were Reasonably Calculated to Allow the Student to Make Appropriate Progress in Light of the Student's Circumstances

Applicable Law

34. In developing a Student's IEP, WAC 392-172A-03110(1) requires the IEP team to consider:

- (a) The strengths of the student;*
- (b) The concerns of the parents for enhancing the education of their student;*
- (c) The results of the initial or most recent evaluation of the student; and*
- (d) The academic, developmental, and functional needs of the student.*

35. Subsection (2)(a) of the rule requires the IEP team to consider special factors unique to the Student:

(i) Consider the use of positive behavioral interventions and supports, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and

....

(v) Consider whether the student needs assistive technology devices and services.

(Id.)

36. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(c)-(d); 34 CFR 300.320(a)(4)(ii).

37. An IEP must also contain a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum and meet each of a student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2). There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001). Goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals. *(Id.)*

38. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. *See, e.g., Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student's deficits in attending to group instruction); *Flagstaff Arts and Leadership Academy*, 113 LRP 27180 (SEA AZ 2013) (IEP deficient because it failed to provide goals to properly address basic reading, reading fluency, life skills, and other areas of need). An IEP need not contain every goal requested by a parent or recommended by the parent's experts. *See G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student's significant needs while excluding those it deemed unnecessary or not age appropriate).

39. An IEP must contain a statement of a student's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1). Present levels must include baseline measurements for goals. *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013)

40. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d); 34 CFR §300.320.

41. “Specially designed instruction” means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the student’s unique needs that result from the student’s disability and to ensure the student’s access to the general education curriculum. WAC 392-172A-01175; 34 CFR §300.39(b)(3).

42. “Related services” are transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, including SLP and OT services and parent counseling and training. WAC 392-172A-01155(1).

43. School districts are generally entitled to deference in deciding what programming is appropriate for a student. *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1031 n.5 (9th Cir. 2009). 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; see also *Department of Education, Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46665 (2006) (nothing in IDEA requires IEP to include specific methodology; methods may be addressed in IEP if necessary for child to receive FAPE).

44. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.* (“Instead of asking whether the [IEP] was adequate in light of [the student’s] progress . . . the more pertinent question [is] whether the [IEP] was appropriately designed and implemented so as to convey a meaningful benefit [to the student].”)

45. “Actual educational progress can (and sometimes will) demonstrate that an IEP provides a FAPE . . . But the inverse of this rule is not always true, because an inquiring court ought not to condemn [an IEP] ex post merely because the disabled child’s progress does not meet the parents’ or the educators’ expectations.” *Morrison v. Perry School Dep’t.* 119 LRP 26408 U.S. Dist. Ct., Maine (July 11, 2019). A Court must examine the IEP prospectively, rather than retrospectively. *Adams by & through Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

Analysis

46. The Father argues the following: “The [March 26, 2020, and March 15, 2021, IEPs] offered by the District . . . [were] not appropriately ambitious . . . one would expect that [sic] Student could reasonably be expected to achieve grade level reading ability if his disabilities were remediated and accommodated as appropriate.” (Parent’s Post-hearing Brief, p.12.) More specifically, the Father argues that the March 26, 2020, and March 15, 2021, IEPs were not reasonably calculated to allow the Student to make appropriate progress because they did not require that teachers use

a specific teaching methodology: “evidenced-based, targeted dyslexia interventions such as Orton-Gillingham, Slingerland, or Wired for Reading, as recommended by Dr. Enns.” (Parent’s Post-hearing Brief, pp.12-13.) The Father also argues that the Student did not make progress and therefore he did not receive a FAPE. (Parent’s Post-hearing Brief, pp.21-22.)

47. The Father believes 1) the District should have used an evidence-based targeted dyslexia intervention to deliver SDI; 2) Dr. Enns’ assessments using grade level equivalencies were a better reflection of the Student’s progress (or lack of progress) than the District’s curriculum based measures; and 3) the Student’s mental health decline shows that he struggled to access his education and did not receive a meaningful benefit. Notably, the Father relies primarily on Dr. Enns’ testimony and evaluations and such evidence is retrospective.

48. The District asserts that 1) the Father only challenges the methodology and curriculum used by the District to deliver the Student’s SDI; 2) Dr. Enns’ assessment results are not reflective of the Student’s progress at his current age; 3) Dr. Enns’ assessment scores and results cannot be meaningfully compared to the District’s data or support a measurable IEP goal; and 4) the Student, the Father, the Mother, and District personnel did not inform the IEP team that the Student’s mental health was declining such that he was not able to access his education or receive a meaningful educational benefit.

49. Keeping in mind the application of the “snapshot” rule and that a court should examine an IEP prospectively, the record reflects that the District’s March 26, 2020, and March 15, 2021, IEPs were appropriate at the time they were developed. First, the District was not required to designate in the March 26, 2020, IEP and March 15, 2021, IEP that teachers use a teaching methodology like Orton-Gillingham, Slingerland, or Wired for Reading. As stated above, IEPs need not designate the instructional method and the District is entitled to deference in selecting the programming for the Student. Further, while the methodologies recommended by Dr. Enns may confer an educational benefit, the question of whether a teaching methodology is appropriate is a question of IEP implementation, not a question of IEP appropriateness. Because there is no requirement that the March 26, 2020, and March 15, 2021, IEPs include specific methodology or curriculum, the Father’s claim that the March 26, 2020, IEP and March 15, 2021, IEP are inappropriate fail.

50. Regarding the Father’s argument that the Student failed to progress and therefore the March 26, 2020, and March 15, 2021, IEPs were inappropriate, it is noted that this argument is based on retrospective evidence. The record includes assessments and progress reporting that informed the development of goals in each IEP at issue. As explained by Ms. Morse and Dr. Engelbeck, the March 26, 2020, and March 15, 2021, IEPs established goals that relied on curriculum based measures for monitoring progress. The curriculum based measures used to monitor the Student’s progress were consistent and based on a present level of performance. The District’s personnel each testified that the Student progressed towards mastering his IEP goals according to his age group. Given that the IEPs contained goals that were measurable, and the District measured the Student’s progress using consistent curriculum based measures, and these measures showed progress, it cannot be said that the Student failed to progress with is age group.

51. In contrast, in the August 27, 2021, Evaluation Dr. Enns used multiple assessments that measured academic and non-academic areas and did not produce combined scores or standard scores that can be compared to the District's curriculum based measures. Dr. Engelbeck is correct that the data from Dr. Enns' August 27, 2021, Evaluation cannot be compared to the data from Dr. Enns January 22, 2020, Reading Evaluation or the District's curriculum based progress reporting because the assessments and resulting data produce results that are not similar measures of the Student's progress. This is because Dr. Enns used grade level equivalencies instead of curriculum based measures. As testified by Dr. Engelbeck, grade level equivalencies from Dr. Enns' August 27, 2021, Evaluation cannot support IEP goals because the assessments do not use curriculum applied consistently overtime. Because it is impossible to compare Dr. Enns' August 27, 2021, Evaluation data to the District's curriculum based measures or Dr. Enns January 22, 2020, Reading Evaluation, it is concluded that the Father has not shown the Student failed to progress or that the March 26, 2020, and March 15, 2021, IEPs were therefore inappropriate.

52. The Father, relying on Dr. Enns testimony as well as his experience with the Student during remote learning, argues that the Student's mental health decline and struggles in the general education environment show that the March 26, 2020, and March 15, 2021, IEPs were inappropriate. The Student certainly struggled when he transitioned to his Father's home and into the District between November 25, 2019, and February 2020. Unquestioningly, Dr. Enns' August 27, 2021, Evaluation shows that the Student suffered a significant decline in his mental health during the 2021 summer break.

53. However, the record presented shows that at no time between March 19, 2020, and August 11, 2021, did District personnel, the Student, the Mother, Dr. Enns, or the Father report that the Student's mental health was declining or that the Student was struggling to access his education or was not receiving a meaningful educational benefit. Instead, the evidence presented shows that at the time the March 26, 2021, and March 15, 2021, IEPs were developed, the Student's IEP team only had information that the Student was attending class regularly, completing all assignments, receiving assistance at home and from teacher, and was attentive, participatory, capable, working hard, engaged, and achieving academic progress.

54. Given the lack of any information from District personnel, the Father, the Mother, Dr. Enns, or the Student that the Student's mental health was declining between March 19, 2020, and August 11, 2021, it cannot be said that the March 26, 2020, and March 15, 2021, IEPs were inappropriate. As a result, the evidentiary record, the arguments of the parties, and the applicable law, support a conclusion that the District's March 26, 2020, IEP and March 15, 2021, IEP were reasonably calculated at the time they were developed to allow the Student to make appropriate progress in light of his circumstances.

Remedies

55. Because the Father did not prevail on any of the issues raised in the due process hearing request, he is not entitled to any of the remedies requested.

ORDER

The District did not violate the IDEA and did not deny the Student FAPE beginning March 19, 2020, through August 11, 2021, because:

1. The District's March 19, 2020, Reevaluation was appropriate and sufficiently comprehensive to identify all of the Student's special education and related services needs;
2. The District did not have an obligation to reevaluate the Student after March 19, 2020; and
3. The District offered the Student IEPs on March 26, 2020, and March 15, 2021, that were reasonably calculated for the Student to make appropriate progress in light of his circumstances.

Served on the Date of Mailing.



COURTNEY E. BEEBE
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.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

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Dated January 5, 2022, at Seattle, Washington.

Representative
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