

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Peninsula School District

Docket No. 04-2022-OSPI-01563

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2022-SE-0048

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Jenna Schuenemann by video conference on August 23 through 26 and September 7, 2022. The Parents of the Student<sup>1</sup> whose education is at issue were represented by Lara Hruska and Elicia Johnson, attorneys at law. The Peninsula School District (District) was represented by Carlos Chavez, attorney at law. Also present throughout the hearing were John Yellowlees, District Executive Director of Student Services, and Janna Rush, District Director of Special Education. The following is hereby entered:

**STATEMENT OF THE CASE**

***Procedural History***

The Parents filed a Due Process Hearing Request (Complaint) on April 8, 2022. The Complaint was assigned cause number 2022-SE-0048 and Office of Administrative Hearings (OAH) docket number 04-2022-OSPI-01563. A Scheduling Notice was entered on April 12, 2022, which assigned the matter to ALJ Jacqueline Becker.

A prehearing conference was held on May 2, 2022, before ALJ Becker. On June 28, 2022, the case was reassigned to the undersigned ALJ due to the unavailability of ALJ Becker for the hearing dates. The parties subsequently requested a continuance of the due process hearing, which was granted on July 1, 2022.

The hearing was held as scheduled on August 23 – 26, 2022, with an additional half-day of hearing added on September 7, 2022, to accommodate the schedule of the Parents' witness, Dr. Staci Bain.

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<sup>1</sup> To ensure the family's privacy, the names of the family members are not used.

### ***Due Date for Written Decision***

In a previous order, the due date for written decision was extended to thirty (30) days after the record of the hearing closes. By agreement of the parties, the record closed after receipt of the parties' closing briefs on October 21, 2022. Accordingly, the decision due date in this case is November 20, 2022.

### ***Evidence Relied Upon***

The following exhibits were admitted into evidence:

Parents' Exhibits: P1, P3, P6 – P14; P16 – P18, P20 – P26, P28, P29, P31, P33<sup>2</sup>

District's Exhibits: D1 – D59.

The following witnesses testified under oath:

- The Mother
- The Father
- Danelle Jaeger, Co-Owner, The Learning Place
- Joanne ("Joanna") Jaeger, Co-Owner, The Learning Place
- Cheryl Hall, retired, previous owner of The Learning Place
- Dr. Ken Wang, M.D. Ph.D., Psychiatrist, Mary Bridge Children's Hospital
- Barbara Pierce, Paraeducator, Peninsula School District
- Dr. Andrea Dorsch, Ph.D., Neuropsychologist, Mary Bridge Children's Hospital
- Kathy Pifer, Elementary School Teacher, Peninsula School District
- Nicole Holsather-Nelson, Elementary School Teacher, Peninsula School District
- Christina Roberts, Elementary Special Education Teacher, Peninsula School District
- Keri Aleshire, School Psychologist, Peninsula School District
- Melanie Upchurch, Speech Language Pathologist, Peninsula School District
- Lynne Truitt, Former Director of Special Education, Peninsula School District
- Laura Saxton, Elementary Special Education Teacher, Peninsula School District

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<sup>2</sup> At the conclusion of the hearing the Parents requested to admit excerpts from the deposition transcript of John Yellowlees, District Executive Director of Student Services, with their closing brief. The District did not object and proposed marking and admitting the excerpts as P33. The Parents did not mark the excerpts as P33. The undersigned has marked the 25 pages of deposition transcript excerpts as P33, pages 1 through 25. P33 is admitted.

- Brandy Reddinger, Secondary Special Education Coordinator, Peninsula School District
- Dawn Musgrove, Assistant Principal, Goodman Middle School, Peninsula School District
- Lynne Goodwin, Middle School Special Education Teacher, Peninsula School District
- Laura Brody, School Psychologist, Peninsula School District
- Dr. Staci Bain, Ed.D., Chief Executive Office and Founder, Educate America

### ISSUES

The issues for hearing were set forth in the First Prehearing Order dated May 3, 2022. On the first day of hearing, the Parents elected to withdraw issue c. T13.<sup>3</sup> The issues are as follows:

Whether the District violated its obligations under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations and denied the Student a free appropriate public education (FAPE) as follows:

- a. Failing to adequately implement the Student's Individualized Education Programs (IEPs) from March 2020 to June 2020 during the school closure;
- b. Failing to properly implement the Student's IEPs upon return from the school closure by not delivering the Student's specially designed instruction (SDI) minutes through a certified special education teacher at various times during the 2020-21 academic year;
- ~~c. Failing to draft and implement an appropriate IEP for the Student that allowed her to make sufficient academic progress in December 2020, specifically whether the District inappropriately found the Student to be ineligible for SDI minutes in social/emotional/ behavioral skills without sufficient evaluative data;~~
- d. Failing to properly consider the evaluative data and recommendations from the independent neuropsychological evaluation conducted in October 2020;

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<sup>3</sup> Citations to the hearing transcript are to T followed by the page number(s) on which the testimony appears. For example, a citation to T661-62 is to pages 661 and 662 of the transcript.

- e. Failing to properly consider the evaluative data and recommendations from the reports from The Learning Place that were written in September 2020 and April 2021;
- f. Failing to draft and implement an IEP in January 2021 that allowed the Student to make adequate academic progress, specifically by failing to offer sufficient SDI, and measurable and appropriate goals;
- g. Failing to draft and implement an IEP in May 2021 that allowed the Student to make adequate progress, specifically by failing to offer sufficient SDI, and measurable and appropriate goals; and
- h. Whether the private services and evaluations obtained by Parents from September 2020 to the present were appropriate for the Student.
- i. And whether the Parents are entitled to their requested remedies, including:
  - (1) Declaratory relief finding that the District violated the IDEA;
  - (2) Declaratory relief finding that the Student was denied FAPE by the District's actions;
  - (3) Compensatory special education and related services for the Student to allow her to obtain the educational benefit that she would have received but for the District's violations of the IDEA and denial of FAPE consistent with 20 U.S.C. sec. 1415 (i)(2)(c)(iii);
  - (4) Reimbursement for private evaluations and services for the Student from November 2020 to the present; and
  - (5) Whatever additional relief the court may find just and equitable.

*First Prehearing Order, May 3, 2022.*

### **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 reliable than the conflicting evidence. A more

detailed analysis of reliability and weight of the evidence may be discussed regarding specific facts at issue.

### ***Background***

1. The Student is [REDACTED] and resides with the Parents in the District. D1p14; T27. The Student is eager to learn, caring, and social. D1p3.

2. The Parents have lived in the District for most of their lives, attending public schools in the District themselves. The Parents' other children attend District schools and the Parents are avid supporters of the public school system and the District schools. [REDACTED]

[REDACTED] so the Parents felt a strong connection to the District and its schools, and really wanted all their children to be successful in the District schools. T414.

3. The Student was identified as not meeting academic standards in her Kindergarten year at Harbor Heights Elementary (Harbor Heights). She was placed on a Rehabilitation Action Section 504 plan during first grade, which included reading support. T28.

4. The Student was initially evaluated and found to be eligible for special education on May 23, 2018, at the end of the 2017-2018 school year (second grade). D1p1; T28.

5. The initial special education eligibility evaluation found that the Student met the criteria of a student with a Specific Learning Disability (SLD) in the area of reading and demonstrated the need for specially designed instruction (SDI) in the areas of basic reading skills and fluency. The Student's standard scores in basic reading skills and fluency were equal to or lower than the criterion standard score of 91, which indicated a severe discrepancy between intellectual ability and academic skills. D1p8.

6. Based on the Student's eligibility for SDI in reading, the Student began working with special education teacher Laura Saxton at the end of second grade. Ms. Saxton was the Student's IEP case manager. T685. Ms. Saxton is a certificated educator in

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<sup>4</sup> Citation to the exhibits of record are by the party ("P" for the Parent and "D" for the District) and page number. For example, a citation to P20p1 is to the Parent's Exhibit 20 at page 1.

Washington State, holding credentials in K-8 general education and K-12 special education. T686.

### ***Science of Reading***

7. The National Reading Panel has identified five components or pillars at the core of effective reading programs: phonemic awareness, phonics, fluency, vocabulary, and reading comprehension. T898.

8. Phonemic awareness is the ability to identify and manipulate individual sounds within spoken words. This skill allows a student to understand and be able to break down words into their individual sounds. Understanding phonology is related to the development of decoding skills. T897-98.

9. Phonics or phonological processing is how the sounds of language align with printed language, or stated another way, how the structure of written language and expression (print stimuli) aligns with sound. T898-99.

10. Fluency is a student's reading rate and accuracy. T899.

11. Vocabulary is the depth of a student's word knowledge. T901. The primary way to increase vocabulary is through reading T902.

12. Reading comprehension is the understanding and interpretation of what is read. A product of reading comprehension is being able to identify the main idea of what is read as well as details of what is read. Reading comprehension can also be thought of as a product of word recognition and language comprehension. T900-01.

### ***2019-2020 School Year, Fourth Grade***

13. The Student's IEP that was in place prior to the beginning of the 2019-2020 school year was dated June 5, 2019. D3p1. The first day of the 2019-2020 school year was August 28, 2019. The last day of the school year was June 19, 2020. D59p1.

14. The Student's fourth grade general education teacher was Kathleen Pifer. T474. Ms. Pifer is certificated in Washington State to teach general education. T475.

15. The Student had 23 classmates. T475. Ms. Pifer recalled that the Student was a "darling young gal" who always put forth her best effort. *Id.* Ms. Pifer recalled that the Student received special education services in reading and that she had some

struggles, but overall, did “really well” within the classroom setting. T476. Ms. Pifer believed that the Student was academically in the middle of her peers, not particularly low or high. *Id.* Other than Ms. Pifer’s testimony, there is no evidence in the record, such as report cards, to show the Student’s academic performance in relation to her peers during the 2019-2020 school year.

16. Ms. Pifer often had parent volunteers in the classroom, including the Mother. The Mother was a [REDACTED]. Ms. Pifer described the Mother as a “fabulous supportive mom.” T477.

17. Ms. Pifer and the Mother spoke often about the Student’s education. The Mother shared with Ms. Pifer that she was concerned about the Student’s academic progress and the Student’s mental health. The Student would get very upset at home because she felt like she was not doing well and was not able to keep up with her peers. *Id.* Ms. Pifer worked with the Mother and the Student to modify assignments or allow for the Mother to help the Student with assignments. The Mother and Ms. Pifer also spoke about their suspicions that the Student had dyslexia and that the Parents were taking the Student to a neurologist to determine whether the Student had dyslexia. T477-78.

18. During the 2019-2020 school year, the Student’s pediatrician referred her to Mary Bridge Children’s Hospital (Mary Bridge) to see a child psychologist to address anxiety that stemmed from the Student’s academic struggles and challenges with reading. T29-30. The Student was also having trouble sleeping. The Parents took the Student to a sleep clinic, where providers identified that the Student’s sleep issues were anxiety driven, rather than a physical issue such as sleep apnea. T31.

19. The Student saw Dr. Bob Beilke, a pediatric psychologist at Mary Bridge. T30. Dr. Beilke worked with the Student on anxiety reduction strategies and tools to be able to regulate her emotions in the classroom. T30.

20. The Parents’ health insurance paid for the Student’s treatment with Dr. Beilke. T326.

21. During the Student’s fourth grade year, Ms. Saxton continued as the Student’s IEP case manager and special education teacher. T685. Ms. Saxton worked with the Student in a small group, three to five students, within the Resource Room, a special education setting. T691. The Student received 30 minutes per day (150 minutes per week) of SDI in reading in the Resource Room. D5p1.

22. Ms. Saxton used a District-approved reading curriculum called Corrective Reading, as well as other supplemental materials that she believed would support the Student in making progress toward her IEP goals. T690. Corrective Reading is a reading instruction program that is designed to help students with learning disabilities close the gap in reading instruction. T624. Corrective Reading is a direct instruction program that is very scripted so that the educator, or person delivering the curriculum, should be giving the same instructions and the same direction in the same manner every day, so that a student can get used to the repetition and learn to read with repetition. T670.

23. While the June 5, 2019 IEP is not in the record, the Student's progress report for the 2019-2020 school year, dated March 12, 2020, indicates that the Student had two annual goals for reading. D2p1. The first goal is listed as follows: "By 5/29/2020, when given grade level reading passages [Student] will demonstrate increased decoding skills improving reading fluency and accuracy from an average of 57 wcpm [words correct per minute] with 94% accuracy on grade three passages to an average of 50 wcpm with 98% accuracy on grade four passages as measured by teacher collected data and district assessments." *Id.*

24. To monitor the Student's progress on her first reading goal noted above, the District used the Dynamic Indicator of Basic Early Literacy Skills (DIBELS). D2p1. The DIBELS tests for phonemic awareness, nonsense word fluency, fluency in reading passages, understanding vocabulary, and reading comprehension. T902-03.

25. The Student took the grade level four DIBELS test in September 2019 and she was able to read 57 words per minute with 94% accuracy. The Student took the DIBELS again in October 2019 and was able to read 73 words per minute with 94% accuracy. Ms. Saxton noted that in November 2019, based on the two DIBELS assessments that the Student was making sufficient progress toward her first reading goal. D2p1.

26. The Student took the DIBELS again on March 12, 2020, and she was able to read 72 words per minute with 95% accuracy. The Student's progress report again noted that on March 12, 2020, she was making sufficient progress toward the first reading goal. D2p1.

27. Dr. Staci Bain is the Founder and Chief Executive Officer of Educate America, a company that supports school districts and state departments of education to implement reading science programs. P1p2.



28. Dr. Bain has a Bachelor of Arts in psychology from the University of Washington, a master's degree in kindergarten through eighth grade teaching from City University, and a Doctorate in Educational Leadership from the University of Washington. P1p1. She has Washington State Teacher, Principal, and Superintendent Credentials. P1p1; T841; T845. Dr. Bain serves on the board of the International Dyslexia Association for Washington, Montana, Idaho, and parts of Canada, also known as the Washington Branch of the International Dyslexia Association (WABIDA). She is also the president of the Reading League Washington. T845-46.

29. In her capacity as CEO of Educate America, Dr. Bain has worked with the Wenatchee School District on transforming their reading program from a balanced literacy approach to a structured literacy approach. T849.

30. Balanced literacy is a traditional or conventional “whole language approach” to reading instruction that relies on the theory that if an individual is immersed in text or has enough exposure to reading, they will learn whole words and learn to read. T850. Structured literacy programs, by contrast, rely on science of reading principles and are explicit, sequential, multimodal, and diagnostic. T851.

31. Dr. Bain has worked as a first-grade classroom teacher. In that capacity she administered the DIBELS to her students. In Dr. Bain's experience, by the end of first grade, students were expected to be able to read 60 to 80 words per minute with 95 to 98 percent accuracy. T904-05.

32. Dr. Bain reviewed the Student's March 12, 2020 progress report, and was alarmed by the Student's scores given that she was in fourth grade at the time and was not meeting standards that would have been expected for a first grade student. T905.

33. According to Dr. Bain, there is also evidence to suggest that if an individual is not reading at 98 percent accuracy or above, they will not have full reading comprehension. This is because at that rate, a student will be guessing far too much to be able to understand what the text is about. *Id.*

34. The Student's second annual goal as noted in her March 12, 2020 progress report is as follows: “By 5/29/2020, when given words with vowel combinations (ea,ee,ie,oa,ai,oo,ou,oi) [Student] will read presented words improving phonemic awareness from 10% to 90% as measured by teacher collected data.” D2p1.

35. The District used the iReady assessment to monitor the Student's progress toward her second reading goal from the June 5, 2019 IEP. D2p1. The iReady is a computer-based assessment that tests for phonemic awareness and phonological awareness. T865-70.

36. The Student's progress report from March 12, 2020, indicates that in September 2019, the Student placed at Grade 1 level for phonics on the iReady. In November 2019, the Student tested out of phonemic awareness and phonics on the iReady. D2p1. "Testing out" means that the Student passed all of the grade levels that she was given on the iReady assessment T690. The progress report notes that as of November 22, 2019, the Student was making sufficient progress toward her second reading goal. D2p1.

37. There is no further evaluative data noted in the March 12, 2020 progress report to measure the Student's progress toward the second reading goal. The only additional information is a March 12, 2020 note from Ms. Saxton indicating that "[Student] continues to grow as a reader." D2p1.

38. Based on her experience in the Wenatchee School District, Dr. Bain opined that the iReady is a problematic assessment. When examining students' performance on the iReady in Wenatchee, Dr. Bain observed that the iReady assessment was indicating that students were testing out of phonics and phonemic awareness despite other measures and assessments indicating that students still needed assistance in these areas. Dr. Bain called iReady to inquire about the discrepancies and was told that the assessment tests students out after a certain grade level regardless of their actual capabilities. T865-70.

39. Dr. Bain's experience with the iReady is consistent with the Student's performance on the iReady as noted in the March 12, 2020 progress report. Despite the Student testing at a first-grade level in September 2019, the iReady indicated that she tested out of phonics and phonemic awareness only two months later in November 2019. D2p1; T866-67.

### ***COVID-19 School Closure***

40. The District schools closed on March 13, 2020, due to the COVID-19 public health emergency. D3p1. No educational instruction was provided to special education students in the District until April 20, 2020, when the District began providing Special Education Continuous Learning Plans (CLP) for students. D3p1. The

Student's CLP was effective April 20, 2020 (a Monday), through June 19, 2020 (a Friday) (the last day of school). *Id.*; D59p1.

41. The CLP indicates that the District would deliver special education and related services to the Student through weekly Zoom calls with Ms. Saxton and provide access to Ms. Saxton's Schoology page for reading materials and activities. D3p2; T34. The Student's attendance at the weekly Zoom meetings was at parental discretion. D3p2. Ms. Saxton could not recall how often the Student attended the weekly zoom sessions. T694.

42. Although the District provided the opportunity to attend weekly Zoom meetings with Ms. Saxton for support, the District did not otherwise provide any SDI to the Student from March 13, 2020, through the end of the school year. T33-34.

43. In addition to the CLP, Ms. Pifer's fourth grade class also began meeting on Zoom in the spring of 2020. T480-81. Ms. Pifer focused on providing opportunities for students to stay connected with each other and focus on their social and emotional well-being. These activities were offered through both synchronous and asynchronous learning. T480-82. The Student participated in the general education Zoom sessions, T482-83, and she also completed and returned work packets to Harbor Heights. T99-100.

44. With the Mother's assistance, the Student accessed Ms. Saxton's Schoology page and completed some of the activities provided by Ms. Saxton. T99-100. The Student also participated in the weekly check-ins with Ms. Saxton as needed to complete her general education assignments. T98.

### ***May 21, 2020 IEP***

45. On May 21, 2020, the Student's IEP team met and drafted a new IEP for the Student. Present at the meeting were David Bentler, Harbor Heights Principal, Ms. Pifer, the Mother, and Ms. Saxton. The Student's IEP provided for 120 minutes per week of SDI in reading, to be provided in the resource room by a special education teacher. D4p8. The IEP went into effect on May 25, 2020. D4p1.

46. The May 21, 2020, IEP had two annual goals for the Student in reading. The first goal was "By 05/20/2021, when given grade level reading passages [Student] will demonstrate decoding skills improving accuracy from an average of 93% accuracy to an average of 98% accuracy as measured by student work samples and provider collected data. D4p3.

47. The second annual goal was “By 5/20/2021, when given an informational paragraph/passage at a fifth-grade level [Student] will read the paragraph or passage and identify what the paragraph is mostly about improving understanding of main idea from identifying main idea on below grade-level passages to identifying main idea on grade-level passages as measured by student work and provider collected data.” D4p4.

### ***The Learning Place and Barton***

48. During the beginning of the 2020-2021 school year, the Student enrolled at The Learning Place (TLP), around September 9, 2020. T183. TLP is a Kindergarten through 12th grade tutoring center that was founded by Cheryl Hall and her husband in February 2019. T180-81. TLP provides tutoring in a variety of subjects as well as offering art classes, knitting club, and other enrichment activities. T120. TLP offers the Barton Reading and Spelling System (Barton), which is an Orton-Gillingham (OG) approved curriculum for students with dyslexia. T196. Ms. Hall sold TLP to Danelle Jaeger and her mother, Joanna Lee Jaeger in March 2021. T180-81.

49. Barton falls under the OG curriculum umbrella, meaning it is a multisensory, structured, sequential, diagnostic and prescriptive curriculum for those who struggle with reading, writing, and spelling. P10p1; P14p30; T204. Barton is a highly scripted program that builds on itself, so the instructors or tutors who were using the program at TLP were required to follow the script and teach the program with fidelity. T188-90. Barton meets the National Institutes of Health best practices for students with dyslexia and learning disabilities. P10p1.

50. As with other OG approaches, Barton relies on multimodal or multisensory means of instruction, meaning students rely not only on visual or oral stimuli or input, but on their other senses as well, including movement such as clapping. T131. The Barton program is broken into 10 levels, starting with basic phonemic awareness, and progressing through Latin Roots and Greek Combining Forms. P29.

51. Each lesson in the Barton program builds on itself and follows a structured curriculum. T123. The system involves working through each procedure within a book. All students start at the very beginning of the program with Book 1. As students work through each book, Barton utilizes colored tiles that represent different sounds or letter. For examples, vowels are on yellow tiles and consonants are on blue tiles. T127. Because students learn at different speeds, one-on-one tutoring is considered best within the Barton system. P31p10.

52. OG approaches, like Barton, are evidence-based approaches to reading and have been approved by the boards of education in California, Colorado, and Arkansas. P31.

53. Ms. Hall is a certificated educator in Washington State. Prior to opening TLP, Ms. Hall was a paraeducator at the American School for the Deaf in Connecticut, as well as a paraeducator in North Carolina and Washington State. Ms. Hall was also a lead teacher at a private school in Washington State. Ms. Hall also served as a paraeducator for the District just prior to opening TLP. T181-82.

54. Ms. Hall was trained in using Barton when she worked at the Hands-on Learning Center. She observed that the students there were very successful in improving their reading and spelling using Barton. Ms. Hall has dyslexia herself, so she also understood why it worked from her personal experience. For these reasons, Ms. Hall used Barton as the primary reading intervention at TLP. T186.

55. After speaking with the Parents in September 2020, Ms. Hall had an initial meeting with the Student on September 9, 2020. Ms. Hall observed that the Student had symptoms of dyslexia and dysgraphia. Ms. Hall believed that Barton might be an appropriate system for the Student, so she gave the Student the Barton screening test. The Barton screening test indicates whether a student can handle the Barton program. T182-84. If a student did not pass the Barton screening test, Ms. Hall would “step them back into the Lindamood-Bell program, which really isolates the letter sound correlation.” T185.

56. The Student passed the screening test for Barton. *Id.*

57. During their initial meeting, Ms. Hall asked the Student to provide a writing sample. The Student’s writing sample indicated that she struggled with plural versus possessive as well as consistently and accurately using capitalization and punctuation. P9. The Student also did not use the right words on occasion, and she consistently confused Es and As. T202.

58. During their meeting, Ms. Hall observed that the Student was not able to read at the fourth-grade level, so she had to drop down to third grade reading material. T201.

59. Shortly after their initial meeting, Ms. Hall started working with the Student using the Barton program. T189.

60. When Ms. Hall first met the Student, the Student had a lot of anxiety about reading and writing. As Ms. Hall worked with the Student, she began to see the Student's confidence and self-esteem grow. T204-05. The Mother also observed that the Student "loved going" to TLP because she felt like the Barton program was really helping her learn to read. T62.

61. Ms. Hall eventually sold TLP to Joanna and Danelle Jaeger, who both worked at TLP for Ms. Hall prior to purchasing the business in March 2021. Ms. Hall trained everyone at TLP on how to deliver the Barton program. They used training DVDs provided by Barton as well as role playing with each other to make sure they were comfortable with the scripts. T188. Barton does not require that individuals be certified in the program to use it. T123; T189.

62. While at TLP, the Student worked with Ms. Hall, a teacher named Kim Flores, and Natalie Jaeger, the sister of Danelle and daughter of Joanna Jaeger. The Student started working with Danelle Jaeger in January 2022. T122-23.

63. Joanna Jaeger is a certificated educator in Washington State. T169. Her daughters, Natalie and Danelle are not certificated educators in Washington State. T123. Danelle Jaeger had no prior teaching experience before purchasing TLP. T121.

64. In April 2021, Natalie and Danelle Jaeger issued a progress report outlining what the Student had been working on at TLP and the progress made since her initial assessment in September 2020. T138-39. They noted that in September 2020, the Student struggled to read out loud. As of April 2021, the Student had the capability and confidence to read out loud from passages within the Barton program and chapters from *The Boxcar Children* book series. The Boxcar Children book that the Student was reading from in April 2021 had a Lexile rating of 620. This was an increase from the book she was reading in September 2020, *Magic Treehouse*, which had a Lexile rating of 550 (grade three equivalent). P10p1; P9p1.

65. The Lexile Measurement Chart is a way of indicating the equivalent grade level of reading materials. T231.

66. As of April 2021, the Student was reading stories within the Barton program at 97% accuracy (79-80 words read correctly out of 81 words). P10p1. The Student was also showing progress in writing complete sentences with proper punctuation and capitalization. The TLP progress report notes: "She is able to hear a sentence orally, dictate it back, and then write it correctly, a skill which was emerging during her initial

evaluation. She does well in identifying incorrectly spelled words and the improper use or lack of capitalization.” *Id.*

67. By April 2021, the Student had also solidified her understanding of contractions: “which letters must be replaced by an apostrophe and which two words create the contraction.” For example, she had learned that “will not” becomes “won’t and she could differentiate between unconventional and standard contractions. *Id.*

68. The April 2021 TLP progress report also notes that the Student no longer had trouble deciphering between similar nonsense words such as “UNT” and “UST” and that she had “greatly improved her ability to decode words.” *Id.*

69. Danelle Jaeger drafted another progress report for the Student on January 10, 2022. In her report, Ms. Jaeger noted that the Student demonstrated a high level of understanding of multi-syllable words and vowel teams. She also noted that the Student was reading independently for enjoyment at a much higher level (just shy of grade level) than she was nine months prior. Ms. Jaeger noted that the Student was reading *Fire and Ice*, which measures at a 5.2 grade level or 810 on the Lexile Measurement Chart. P11p1.

70. The Student attended tutoring sessions at TLP twice per week with regularity, generally on Mondays and Wednesdays. T421; T540. There were some sessions that the Student missed due to family travel or holidays, but the Parents would try to schedule make-up sessions the following week. TLP also remained open on holidays when schools were closed, such as Martin Luther King Jr. Day or Veterans Day, so the Student still attended on those days as well. T540.

71. The Student missed the following sessions at TLP:

- a. November 25, 2020 (Wednesday before Thanksgiving). T540-41; D59p2.
- b. Week of December 21-25, 2020 (Christmas). T540-41; D59p2.
- c. Week of February 15-19, 2021 (midwinter break); D31p1; D59p2.
- d. Two weeks during summer of 2021; T541.
- e. November 24, 2021 (Wednesday before Thanksgiving); T540-41; D59p3.
- f. Week of December 20-24, 2021 (Christmas); T540-41; D50p3.
- g. One week in August 2022; T541.

72. Each session was one-hour and cost \$50. T421. The Parents estimate that they have spent \$10,000.00 at TLP since September 9, 2020, through the date of the due process hearing. *Id.* The Parents have invoices, but these are not in the record. T540.

***Student's Treatment with Dr. Wang***

73. As discussed above, in the fourth grade, the Student started seeing Dr. Bob Beilke to address her anxiety. Dr. Beilke ultimately referred the Student to Dr. Ken Wang a child and adolescent psychiatrist at Mary Bridge, because Dr. Beilke was not seeing the type of improvement he would hope for with psychology alone. T31; T249-51.

74. Dr. Wang received a Bachelor of Science degree in biology from Brown University. He then went to the University of Pennsylvania for a combined M.D. / Ph.D. program. He received his Ph.D. in cell and molecular biology in 2005 and his medical degree in 2006. Dr. Wang completed his general psychiatry training at the University of Washington and then did a child and adolescent psychiatry fellowship through the University of Washington and Seattle Children's Hospital, which he completed in 2011. Dr. Wang has worked at Mary Bridge since 2011. T249-50.

75. Dr. Wang began treating the Student in September 2020. Dr. Wang did an initial evaluation where he reassessed and did diagnostic clarification and then treatment from that point on. T250. Dr. Wang saw the Student every one to three months depending on symptom severity and whether he and the Student were working on any medication adjustments. He continued to treat the Student as of the date of the due process hearing. T252.

76. Dr. Wang diagnosed the Student with:

- generalized anxiety disorder;
- separation anxiety disorder;
- [REDACTED];
- [REDACTED];
- [REDACTED];

P7p1; T251.



77. Dr. Wang clarified that during high-stress situations, the Student would have a [REDACTED] T251.

78. When Dr. Wang first started working with the Student, the Student was very fearful of school. "School was a high-stress, emotionally overwhelming environment for her." T256. Dr. Wang first prescribed Sertraline (Zoloft) for the Student's anxiety in September 2020. He then added Trazadone to help with sleep in December 2020. Dr. Wang prescribed hydroxyzine in July 2022 to use on an as needed basis for anxiety with medical procedures. T253.

### ***2020-2021 School Year, Fifth Grade***

79. The Student was in fifth grade during the 2020-2021 school year. The first day of school for District schools was September 8, 2020, and the last day of school was June 23, 2020. D59p2.

80. Before the beginning of the school year, on August 12, 2020, the Mother emailed Mr. Bentler and Ms. Saxton to inquire about the details of a new evaluation of the Student as well as how the District planned to deliver the Student's IEP services. D5p1-2. In an email to Ms. Saxton on August 18, 2020, the Mother also inquired about the reduction SDI minute from 150 to 120 in the May 21, 2020 IEP.

81. Ms. Saxton responded by email on August 18, 2020, indicating that she reduced the minutes in the IEP to allow for times when the Student would miss her SDI reading group due to school-wide and fifth grade activities (i.e. assemblies, class parties, field trips, et cetera). Ms. Saxton indicated that she recalled discussing this at the May 2020 IEP meeting. Ms. Saxton also clarified that 120 minutes per week would be the minimum. The Student would be scheduled to attend SDI reading group daily, but if she had to miss one day, it would not impact the required weekly minutes in the IEP. D5p1.

82. Due to the COVID-19 public health emergency, District schools started the school year using remote learning on Zoom. On September 11, 2020, Ms. Saxton emailed parents with a schedule and Zoom link for special education reading groups. The groups were scheduled for Monday, Tuesday, Thursday, and Friday from 2:00pm to 2:30pm. D9p1.

83. Ms. Saxton was on medical leave for most of the period from September through October 2020. She often had substitute teachers oversee the Zoom reading groups. T697.

84. On the days that Ms. Saxton did oversee the Zoom reading groups, she would put activities on the screen and ask the students to participate. She used flashcards and other materials for phonics and fluency. T696-97.

85. The Student required significant support from the Mother to access her education using Zoom. The Mother would often sit with the Student doing schoolwork for most of the day. T37-38. The Mother was able to observe both the Student's general education and reading SDI Zoom sessions. The Mother observed that most of the time spent during the reading SDI Zoom sessions was a "read and repeat" style of learning. T42.

86. Remote learning, combined with the Student's difficulties with reading, was also taking a toll on the Student's mental health. She was having frequent emotional outbursts and was not enjoying school. The Student's anxiety was "through the roof." T61. Remote learning was almost impossible for the Student to follow without someone sitting with her and assisting her. Attending school online felt like more of a punishment to the Student than something that could support her needs. T38.

87. On one occasion, the Student "had a complete meltdown" over a writing assignment and the Mother had to help her exit Zoom to try to calm her down. The Student cried for over thirty minutes. The Mother emailed the Student's general education teacher, Nicole Holsather-Nelson expressing frustration with Zoom and asking for Ms. Holsather-Nelson's input to try to come up with a plan to help the Student. D11; D12.

88. On September 15, 2020, the Student's IEP team met via Zoom and revised the Student's May 21, 2020 IEP. The SDI minutes were increased back to 150 per week, to be delivered by a special education teacher. D10p12. At the meeting, the Mother expressed concerns about the Student's delays in reading, writing, and spelling as well as the challenges the Student was facing with the remote learning platform. The Mother also requested that the District provide the Student's SDI in reading using Orton-Gillingham or similar curriculum which directly supports dyslexia. *Id.*

89. The Mother was requesting that the District use an OG based curriculum for the Student because, at that point in time, she suspected that the Student had dyslexia. Dr. Bielke also suspected that the Student had dyslexia and referred the Student for a neuropsychological evaluation with Dr. Andrea Dorsch. T40.

90. While the Mother was researching dyslexia, she found the Washington State Dyslexia Resource Guide (Resource Guide), a publication by the Office of Superintendent of Public Instruction (OSPI) and the Washington State Branch of the International Dyslexia Association (WABIDA). P14p1. It was through the Resource Guide that the Mother first learned about OG curriculum. T53.

91. The Resource Guide informs readers that students with dyslexia learn best with instruction that is simultaneous and multisensory, systematic and cumulative, direct, synthetic and analytic. P14p29. The Resource Guide notes the importance of simultaneous and multisensory instruction, stating:

Multisensory teaching links listening (ear), speaking (voice), reading (eye), and writing (hand) to reinforce learning of language structure. It is the **simultaneous** and **alternative** involvement of visual (seeing text or pictures), auditory (hearing lecture, discussion, or technology), and kinesthetic/tactile (feeling and moving) sensory modalities. It supports the connection of oral language with visual language symbols. When all three sensory pathways are used at the same time, the material is presented in a simultaneous, multisensory way with strong channels reinforcing the weak.

*Id.* (emphasis in original).

92. The Resource Guide also discusses the importance of systematic and cumulative instruction, noting:

Multisensory language instruction follows the logical order of language. It begins with the easiest, most basic elements of language and progresses to more difficult material. Each step builds on those already learned. Concepts are reviewed systematically to strengthen memory. Struggling learners benefit when the structure of spoken and written language, beginning with phonemes, is represented for them **explicitly, sequentially, directly** and **systematically** in the context of a comprehensive reading program...Orton Gillingham based programs combine multisensory teaching of handwriting, spelling, decoding, and reading.

P14p30. (emphasis in original).

93. The Resource Guide also notes: “Consistent and persistent struggles in school can lead to significant concerns in a student's social and emotional development. These students have often experienced repeated failure in the classroom while watching their peers develop skills more quickly and easily.” P14p13.

94. The District did not directly respond to the Mother’s request to use an OG approved curriculum. The Prior Written Notice (PWN) from the September 15, 2020 IEP states: “The district decoding curriculum is Corrective Reading, a direct instruction program. We will also be accessing iReady Reading online curriculum and IXL online activities this school year.” D10p12.

95. The Mother also requested that the Student’s in-person special education services begin as soon as possible. The District was scheduled to have special education students receive services in-person starting on September 21, 2020, but this start date was delayed due to air quality issues. *Id.*

96. On September 22, 2020, the Student met with the District’s Assistive Technology (AT) team, comprised of Melanie Upchurch, Speech Language Pathologist (SLP) and Julie Rodenberg, Occupational Therapist (OT). D13; T607. The AT team met with the Student to test different technology and tools to assist her with her learning. The Student seemed happy to work with the AT team and she seemed to catch on quickly to new technology and was willing to practice with the AT team. D13p1; T611.

97. On October 5, 2020, Ms. Saxton emailed the Parents a copy of the September 15, 2020 IEP and PWN. On October 6, 2020, the Mother responded by email to Ms. Saxton with a copy to Lynne Truitt, former District Director of Special Education, John Yellowlees, District Executive Director of Student Services, and Mr. Bentler. The Parent again requested that the District provide SDI for the Student using an OG approved curriculum. The Mother cited the Resource Guide to support her request. She also explicitly asked the District for a response to the request for OG curriculum, whether the request would be approved or denied. D16p2-3.

98. In her October 6, 2020 email, the Mother also requested clarification about the start date for in-person SDI. *Id.* Mr. Bentler did not address the Mother’s request for OG curriculum, but responded that in-person services would start on October 12, 2020. D16p2. Ms. Truitt spoke with the Mother by phone on October 6, 2020, to address the in-person services concerns. The District did not respond to or otherwise address the Mother’s request for OG curriculum. D16.

99. The Student's in-person SDI started the second week of October 2020. D18p1-2. The Student worked one-on-one with Michelle Brooks, a paraeducator, who was supervised by Ms. Saxton. *Id.* T700-02. Ultimately, the Student's SDI in reading was delivered in two 75-minute sessions per week. D19.

100. Ms. Brooks worked with the Student in-person in the resource room at Harbor Heights using the Corrective Reading curriculum in combination with other materials. T71; T529; T701-02. Because Ms. Saxton was working remotely, she did not personally observe the Student working with Ms. Brooks. However, Ms. Saxton was responsible for selecting the curriculum that Ms. Brooks used with the Student. T701-02. Ms. Saxton and Ms. Brooks spoke about the materials that Ms. Brooks would be using with the Student and they would touch base to talk about "how things were going" with the Student. T701.

101. Ms. Saxton did not know if Ms. Brooks had ever received training in the Corrective Reading curriculum. Ms. Saxton did not train Ms. Brooks, but she "went through it with her." When asked to clarify what she meant by reviewing Corrective Reading, Ms. Saxton stated that Ms. Brooks "had the material and we were going through it." T735.

102. Cristina Roberts, a part-time special education teacher at Harbor Heights, worked in the building and had the opportunity to observe the Student working with Ms. Brooks. Ms. Roberts observed that they had a good rapport and often engaged in conversations outside of the curriculum. T523; T529.

103. Ms. Brooks worked with the Student from October 2020 to January 2021. T71. There are no progress reports in the record for the Student from this time. T71.

### ***Dr. Dorsch Evaluation***

104. Due to the Parents' and Dr. Bielke's suspicions that the Student had dyslexia, and the Mother's concern that the Student appeared to have a significantly slower rate of processing information than other children, Dr. Bielke referred the Student to Dr. Andrea Dorsch a pediatric neuropsychologist at Mary Bridge. P6p1. Dr. Dorsch met with and evaluated the Student on October 19, 2020, and October 26, 2020. *Id.* The Parents' health insurance paid for the evaluation by Dr. Dorsch. T326.

105. Dr. Dorsch completed her undergraduate degree at Duke University in 1987 and her master's degree in clinical psychology and Ph.D. from the University of North Carolina Greensboro in 1995. She completed a postdoctoral fellowship at the

University of Washington and Seattle Children's Hospital from 1995 to 1997. She worked as a pediatric neuropsychologist in rehabilitation psychology at Seattle Children's Hospital from 1997 to 2006. From 2006 to present, Dr. Dorsch has worked as a pediatric neuropsychologist at Mary Bridge Children's Hospital. T353.

106. Dr. Dorsch used the following assessment tools in her evaluation of the Student:

- Weschler Intelligence Scale for Children – Fifth Edition (WISC-V)
- Weschler Individual Achievement Test – Third Edition (WIAT-III)
- Wide Range Assessment of Memory and Learning – Second Edition (WRAML2)
- California Verbal Learning Test – Children’s Version (CVLT-C)
- Rey Complex Figure Test
- NEPSY-II: A Developmental Neuropsychological Assessment, Second Edition
- Delis-Kaplan Executive Function System (D-KEFS)
- Behavior Rating Inventory of Executive Functioning, Second Edition (BRIEF2)
- Behavior Assessment System for Children, Third Edition (BASC3)
- Children’s Depression Inventory – Second Edition (CDI2)
- Revised Children’s Manifest Anxiety Scale – Second Edition (RCMAS-2)
- Adaptive Behavior Assessment System – Third Edition (ABAS3)

P6p2.

107. Based on her assessment of the Student, Dr. Dorsch found that the Student’s overall reasoning abilities fell within the average range, based on a General Ability Index of 107 on the WISC-V. Processing speed, the rapidity of mentally processing simple or routine visual information without making errors, was an area of weakness for the Student. The Student’s processing challenges were not related to a slow rate of cognitive processing, but to a very slow motor speed. P6p3.

108. Regarding the Student’s academic achievement, Dr. Dorsch noted that “[d]espite specially designed instruction and tutorial support outside of school, [Student’s] basic reading and writing skills remain well below grade level, more consistent with a first to beginning third grade level. She often omitted words, inserted words, read words incorrectly, and replaced words with semantically or phonetically

similar words...[Student] demonstrated deficits in word recognition, phonetic decoding, and spelling.” *Id.*

109. Dr. Dorsch administered the WIAT-III as part of her October 2020 evaluation. She also reviewed the Student’s scores on the WIAT-III that was administered as part of the Student’s initial eligibility evaluation in 2018. Dr. Dorsch noted that between 2018 and 2020, the Student’s reading and writing scores on the WIAT-III either had no significant change, moderate decline, or substantive decline. T362-366.

110. On the WIAT-III, the standard scores have a mean of 100 with a standard deviation of 15, so the average range is 85-115. D1p6.

111. The Student’s reading and writing scores on the WIAT-III in 2018 and 2020 are noted in the table below. Dr. Dorsch’s clinical impressions after assessing the Student and comparing her test scores are also noted in the table below.

	May 2018 WIAT-III District	October 2020 WIAT-III Mary Bridge	Dr. Dorsch’s Clinical Impressions
	Standard Score (Percentile)	Standard Score (Percentile)	
Single Word Reading	78 (7)	78 (7)	No Change
Decoding of Nonsense or Pseudowords	91 (27)	89 (23)	No Significant Change
Reading Comprehension	96 (39)	91 (27)	Moderate Decline
Reading Fluency	Oral Reading Fluency 78 (8)	Oral Reading Fluency 81 (10)	No Significant Change
	Oral Reading Accuracy 89 (23)	Oral Reading Accuracy 83 (13)	Moderate Decline
	Oral Reading Rate 83 (13)	Oral Reading Rate 78 (7)	Moderate Decline
Spelling	83 (13)	83 (13)	No Change
Written Expression / Composition	Sentence Composition 98 (45)	Sentence Composition 83 (13)	Substantive Decline
	Sentence Building 90 (25)	Sentence Building 90 (25)	No Change
	Sentence Combining 107 (68)	Sentence Combining 79 (8)	Substantive Decline

D1p6; P6p13-14; T362-66.

112. Dr. Dorsch's hypothesis about the efficacy of the interventions that the Student was receiving between 2018 and 2020 was that they "were not successful in addressing [the Student's] underlying reading and writing difficulties. T366. Dr. Dorsch explained that although she noted there was "no change" in some of the Student's scores on the WIAT-III, meaning that the gap with other Student's remained the same over time, this "suggests that there is not the anticipated improvement in those basic academic skills." T364.

113. Dr. Dorsch further explained that with receiving 150 minutes per week of targeted instruction in reading, "one would hope that one would make improvement in the most basic academic skills, which are single-word reading." *Id.*

114. Dr. Dorsch acknowledged, however, that obtaining the same standard scores over time was a valid psychometric measure of progress by indicating the Student's growth at the same rate as the normative population. T393-94. Dr. Dorsch's qualitative, clinical observation of "no change", for example, does not mean that she's stating there have been no improvement whatsoever in the Student's reading skills. T405. However, her overall clinical impression and professional opinion is that the interventions that the Student was receiving were not successful in addressing the Student's reading and writing deficiencies. T366. Given Dr. Dorsch's credentials, experience, and that her evaluation and testimony was unrebutted, I give significant weight to Dr. Dorsch's testimony.

115. Dr. Dorsch's diagnostic impressions were that the Student has dyslexia, dysgraphia, some executive functioning impairment, and anxiety. Although not a diagnosis, Dr. Dorsch also described the Student as having a language-based learning disability. Dr. Dorsch uses this descriptor to suggest that the Student's learning challenges are "broader than just with reading and writing alone, but have to do more with verbal learning difficulties in general." T358. Dr. Dorsch further explains the term "language-based learning disability" noting:

Children "with language-based learning disabilities typically encounter challenges with all aspects of oral and written language as well as with the learning, consolidation, and retrieval of verbally based knowledge. In addition, Student's with language-based learning disabilities experience difficulties learning math concepts and completing math assignments that are presented in a language-based contest. Similarly,



difficulties in other subject areas are likely again given that the learning modality in school is typically language-based. Because accessing a language-based curriculum is so labor-intensive, there are insufficient remaining resources to allocate attending, processing, comprehending, and learning new information.

P6p4.

116. Dyslexia refers to a developmental disorder in acquiring the ability to read the printed word. P6p4. Dr. Dorsch notes the definition of dyslexia as developed by the International Dyslexia Association in 2002 as:

A specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

P6p4.

117. Regarding students with dyslexia, Dr. Dorsch noted:

Given how laborious reading is for these students, they often deplete their cognitive resources more quickly than their peers and, thus, demonstrate limited mental endurance, more frequent lapses in concentration, and reduced capacity for new learning...Over the course of elementary school, children are expected to transition from “learning to read” to “reading to learn.” Like most students with dyslexia, [Student] has not been able to make this transition as she nears the end of elementary school.

P6p4-5.

118. Based on her evaluation of the Student, Dr. Dorsch opined: “In order to address dyslexia, both an intensive evidence-based approach to reading and writing

instruction, as well as modifications of instructional materials/environment are required to access an appropriate education.” P6p6.

119. Dr. Dorsch explained further in her evaluation: “Evidence-based approaches to dyslexia emphasize both phonemic awareness and orthographic aspects of reading and writing. This includes more explicit instruction in the phonological aspects of oral and written language, sound-symbol associations, and phonemic and orthographic pattern recognition. This also involves frequent repetition and review of phonological principles and high frequency words, or “sight words.” *Id.*

120. According to Dr. Dorsch:

The current state of dyslexia research indicates that for children who are having difficulties learning to read, they require a comprehensive evidence-based approach that emphasizes both the phonological aspects of the sounds of language and the orthographic aspects, which is the appearance of words. That instruction has to be explicit, multisensory, so you have to be hearing it and reading it and seeing it and even demonstrating it.

So using all those modalities together because clearly reading is – acquiring reading skills has been difficult, there is – generally a sequential approach is recommended. Simultaneous is the part about organizing senses together. The sequential part is that there is stepwise progression. The direct instruction piece is that we are not expecting a child to merely having written material in front of them and to learn to read fairly spontaneously.

T358.

121. Dr. Dorsch distinguished direct instruction from the “whole word approach to reading.” The whole word approach is the idea that just exposing children to text and having printed material in front of them would allow children to organically learn to read. This is not a method espoused by Dr. Dorsch because it does not work for children with dyslexia. T359-60.

122. Dr. Dorsch opined that the Student is expected to learn best through listening, demonstration, and participation rather than through reading and writing. Dr. Dorsch recommended multi-modal or multi-sensory instruction, particularly visual support for verbal material, and experiential or “hands on” learning. P6p8.

123. Orton-Gillingham and its offshoot programs are the gold standard for teaching children to read within the dyslexia community because they are the most thoroughly researched and developed. OG programs have all of the features recommended by Dr. Dorsch for the Student in that they are multi-sensory, simultaneous, sequential, and direct. T361.

### ***Homeschooling***

124. As of October 27, 2020, the Parents decided to homeschool the Student for her general education curriculum while continuing to access special education services through the District. D20; T107.

125. The Parent's chose to homeschool the Student because her anxiety was "through the roof" and she was having daily meltdowns and crying. The Student would close her computer screen and cry for half an hour because she was so frustrated with learning by Zoom. According to the Mother, "[a] lot of it stemmed from the fact that, you know, here you have a child who can barely read who is expected to learn off of a screen. Additionally, is being asked to, you know, copy notes, or follow along, or...write the same chart as what is...being shown on the screen at home. And it was just impossible for her to do, and so that put her into a tailspin almost every day, and it became unbearable for everyone." T61-62.

126. The Student continued to access her SDI in-person through the District, which continued to be a source of frustration for both the Student and the Parents. The Father works from home and would constantly hear the Student and the Mother arguing about going to Harbor Heights for SDI. The Father would typically drive the Student to Harbor Heights for her SDI sessions to take some of the load off the Mother. T412. The Student would constantly state "I learn nothing" or "they are not teaching me there." The Father often found himself bribing the Student to get her to attend her SDI sessions or, alternatively, threatening consequences like taking away the Student's birthday party or other fun events. The Student's resistance escalated to the point where the Father would almost have to pull the Student out of their car when they arrived at Harbor Heights. T413.

### ***December 3, 2020 Evaluation***

127. On October 5, 2020, the Parents requested that the Student be reevaluated for special education services. The Student's triennial evaluation was set to be completed

on May 23, 2021. The Parents requested an early evaluation to reassess the Student's reading needs, as well her needs in math, writing, and social/emotional needs. D22p8.

128. On October 7, 2020, Kari Aleshire was assigned to conduct the reevaluation. D22p7. Ms. Aleshire is a nationally certified school psychologist and holds an Educational Staff Associate (ESA) credential as a school psychologist in Washington State. T565.

129. The Mother and Ms. Aleshire corresponded about scheduling and exchanging information during the remainder of October 2020, and the Student's evaluation was scheduled for November 3 and 5, 2020, in-person with Ms. Aleshire. D22p5-8.

130. On November 19, 2020, the Mother emailed Ms. Aleshire and attached a copy of Dr. Dorsch's evaluation and other materials from Mary Bridge, including information from Dr. Wang. The Mother asked Ms. Aleshire to consider the Mary Bridge documents and evaluations in the District evaluation. D22p3.

131. For her evaluation of the Student, Ms. Aleshire collected information from the Student's existing school records, reviewed the outside reports and evaluations provided by the Parents, completed in-person, direct assessments with the Student, and collected teacher, parent, and self-report ratings of social/emotional behavioral skills. T568.

132. For the academic achievement portion of the evaluation, Ms. Aleshire administered the Kaufman Test of Educational Achievement – Third Edition (KTEA-3) in reading, writing, and math. D21p16; T571. The Parents suggested this as a tool to use in the Student's reevaluation, and it is also one of Ms. Aleshire's preferred assessment tools. Ms. Aleshire has received training on administering the KTEA-3 T571.

133. The KTEA-3 is a nationally normed, individually administered test for measuring achievement. Age-based achievement scores are represented by standard scores with a mean of 100 and standard deviation of 15, meaning scores between 85-115 are within the average range for the Student's age. A composite score of 90 and above is considered a strength. A composite score of 85 and below is considered a weakness. D21p15.

134. The Student's composite score for math was 97, and all of her math subtests were also in the average range (Math Fluency – 91, Math Computation – 93, Math Concepts and Applications – 102). D21p16. The Student was not eligible for SDI in

math. However, the evaluation report suggests that the Student would benefit from a number of accommodations with regard to her math assignments. D21p2.

135. Ms. Aleshire did not complete any cognitive assessments of the Student because of the recent cognitive testing performed by Dr. Dorsch. T572. For the Cognitive portion of the evaluation report, Ms. Aleshire compared cognitive testing performed in 2018 during the Student's initial evaluation to testing performed by Dr. Dorsch in October 2020. D21p13-15. Elizabeth Shanshala was the school psychologist who performed the 2018 initial evaluation. D21p13. Both Ms. Shanshala and Dr. Dorsch used the WISC-V. D21p13-15.

136. The Student's 2018 WISC-V scores are as follows:

- Verbal Comprehension: 118
- Visual Spatial: 111
- Fluid Reasoning: 115
- Working Memory: 115
- Processing Speed: 98
- Full Scale IQ: 113

D21p14.

137. The Student's 2020 WISC-V scores are as follows:

- Verbal Comprehension: 106
- Visual Spatial: 108
- Fluid Reasoning: 115
- Working Memory: 115
- Processing Speed: 83
- Full Scale IQ: 100

138. Ms. Aleshire was not concerned with the 13-point drop in the Student's Full-Scale IQ (FSIQ) from 2018 to 2020 because she attributed this to a much lower score on the coding subtest in the 2020 WISC-V assessment. Ms. Aleshire noted that the coding subtest is a two-minute performance task and if a student gets distracted or they are fatigued, their performance can be lower. However, Ms. Aleshire did not administer the 2020 WISC-V and cannot speak to the administration of this subtest. T573.

139. The Student's reading scores on the KTEA-3 indicated that she continued to present with a specific learning disability and that her reading disability aligns with dyslexia. Ms. Aleshire noted that the Student should continue to receive SDI in reading with a focus on automaticity and fluency skills, as well as continued support with assistive technology and accommodations to address reading automaticity. D21p2.

140. The Student's IEP team met on December 3, 2020, by Zoom video call. Present at the meeting was the Mother, Ms. Aleshire, Ms. Saxton, Mr. Bentler, Ms. Truitt, and Laura Rollins, Occupational Therapist. The Student continued to be homeschooled for general education, so a general education teacher was not present. D21p5.

141. Ms. Aleshire recommended that the IEP team consider adding SDI for the Student in the area of written language, with a focus on writing fluency, writing for a variety of demands, and using writing tools such as graphic organizers/planners, editing checklists, and assistive technology (including speech to text, spell check and word prediction). *Id.* Ms. Aleshire noted that based on her KTEA-3 results, the Student's "written language skills were her weakest academic area overall." D21p21.

142. With regard to social/emotional/behavioral skills, although the Student was evaluated in these areas and found to be eligible for SDI, the IEP team determined that the Student was not in need of SDI in these areas but would benefit from accommodations instead. *Id.*

143. Under the "Areas of Evaluation: Other" section of her evaluation report, Ms. Aleshire included a paragraph that summarized the September 9, 2020, assessment from Cheryl Hall at TLP. D21p23. Ms. Aleshire also copied a large section of Dr. Dorsch's evaluation report, including an abbreviated summary of Dr. Dorsch's recommendations. Ms. Aleshire stated: "An abbreviated summary of recommendations from Dr. Dorsch for the school team to consider is below. Please see the full report located in [Student's] confidential special education file for the complete summary, which includes recommendations for consideration beyond elementary and middle school as well as examples. These are not school district adopted recommendations but are for IEP team consideration, in addition to the team being given copies of the full report..." D21p26.

144. The PWN for the evaluation is dated December 3, 2020 and proposed to continue the Student's eligibility for special education services under the category of Specific Learning Disability, with SDI recommended in reading and writing. D21p28.

145. Dr. Dorsch met with the Student in July 2022, during which time she was able to review the District's November 2020 District assessments that formed the basis for the December 3, 2020 Reevaluation. T366. Dr. Dorsch found that there were not any clinically significant differences between her October 2020 evaluation and the November 2020 evaluation completed by the District. T368.

146. On the November 2020 KTEA-3 assessment, there are several reading subtests in which the Student's standard scores put her in the average range (85-115), which resulted in a Reading Composite score of 89 (23rd percentile). Dr. Dorsch still found this to be in line with her clinical judgment that the Student had significant academic deficits and needed academic interventions. Dr. Dorsch explained: "The problem is that in the schools, if you are thinking about functioning at the 16th percentile, which is where an 85 lands, then if you were in a classroom with 30 kids, you could be in the bottom few. And that would make it very difficult to maintain pace with grade level standards." T371. Dr. Dorsch further explained that part of her clinical observations was taking into account how effortful it is to arrive at a correct answer. Dr. Dorsch noted: "So the lack of fluency, the lack of mastery is an issue. So, if I am sitting in a classroom and I have to think about decoding a word, sounding this out and my same-grade peers are able to read the whole paragraph and just focus on comprehension, that puts me at a distinct disadvantage." *Id.*

### ***January 2021 IEP***

147. The IEP team met on January 6, 2021, to finalize a new IEP for the Student based on the results of the December 3, 2020 evaluation. D23; D24p1. Present at the meeting were Ms. Truitt, Ms. Saxton, Mr. Bentler, Ms. Upchurch (SLP), Ms. Rodenberg (OT), Lauren Rollins, District OT, Teasha Buckland, General Education Teacher,<sup>5</sup> and the Mother. D24p1.

### **Present Levels of Performance**

148. Under the Present Levels of Performance section for reading, the January 2021 IEP notes that the Student was in the 4th grade level on the iReady, ranking in the 54th percentile. It is noted, however, that the Student took the iReady assessment at home and the Mother assisted with reading aloud as needed. The IEP also notes that on the 5th grade fall DIEBLS assessment, the Student read 44 correct words per minute with 83% accuracy. D24p5.

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<sup>5</sup> It is unclear from the record who Teasha Buckland is. The Student was still homeschooled at this time and did not have a general education teacher. See D24p5.

149. For present levels of performance in writing, the IEP contains the assessment summary in writing from the December 3, 2020 evaluation as well as a comparison of the Student's WIAT-III written expression scores, noting that the Student dropped from the 55th percentile in 2018 to the 10th percentile in 2020. D24p7.

Progress on Goals from May 21, 2020 IEP

150. The Student's first reading goal from the May 21, 2020 IEP was "demonstrate increased decoding skills improving accuracy from an average of 93% accuracy to an average of 98% accuracy. D24p6.

151. It is then noted that the Student was "making satisfactory progress with an average of 66 wpm [words per minute] with 91% accuracy." *Id.*

152. The Student's second goal from May 21, 2020, was "given an informational paragraph/passage at a fifth-grade level [Student] will read the paragraph or passage and identify what the paragraph is mostly about improving understanding of main idea from identifying main idea on below grade-level passages to identifying main idea on grade-level passages as measured by student work and provider collected data." *Id.*

153. There are no progress reports or measures noted for the second goal. Rather, the Student's reading composite and reading comprehension/fluency scores from the WIAT-III in 2018 and 2020 are listed:

Basic Reading Composite – 14th percentile (2018) & 13th percentile (2020)  
Reading Comprehension/Fluency – 13th percentile (2018) & 12th percentile (2020).

D24p6.

154. Standardized test scores on academic achievement assessments used in special education eligibility evaluations are not appropriate tests for measuring student progress because they are norm referenced assessments rather than criterion referenced assessments. According to Ms. Aleshire: "You can look at and compare the scores...to see if they have increased or decreased, but I wouldn't say that would be the most accurate measure of obtaining individual skills...towards IEP goals or that kind of progress." T579-80.



## Annual Goals

155. The Student's first annual goal for reading was: "By 01/06/2022, when given grade level reading passages [Student] will demonstrate increased decoding skills improving accuracy from an average of 91% accuracy to an average of 99% accuracy as measured by student work samples and provider collected data." D24p7.

156. The second annual goal was: "By 01/06/2022, when given 20 instructional level multi-syllabic words, [Student] will decode each word improving decoding skills from 58% on the Core Phonics Survey to 95% as measured by provider collected data." *Id.*

157. The January 6, 2021, IEP also added two annual goals for writing. The first goal was: "By 01/06/2022, when given a writing assignment [Student] will develop ideas for main idea and three to five details using a provided or self-generated graphic organizer improving writing organization from writing paragraphs with no organization to writing a minimum of 5 sentence well-organized, sequential paragraph as measure by student work samples and provider collected data." D24p8.

158. The second writing goal was: "By 01/06/2022, when given assignments that require sentence writing [Student] will use correct capitalization and punctuation improving paragraph writing from 22% accuracy to 90% on 10 randomly selected sentences as measures by student work samples and provider collected data." *Id.*

## Special Education and Related Services

159. The Student's January 6, 2021, IEP provided for 150 minutes per week of SDI in reading and 90 minutes per week of SDI in written language. The IEP also provided for 15 minutes per month of SDI with an OT to address fine motor issues. D24p14. The IEP start date was January 7, 2021. D24p1. The Student's SDI minutes were not concurrent, and they were to be delivered by a special education teacher or a paraeducator under the guidance of a special education teacher. D24p14.

## Prior Written Notice

160. The PWN for the January 6, 2021, IEP notes several parent concerns. The Parents expressed concern that the District was not using an "intensive, evidence-based approach to reading and writing instruction to include a dyslexia approved multi-sensory approach for remediation such as Orton-Gillingham." The District's response is noted as "The district uses evidence-based curriculum that addresses individual

needs of students with Specific Learning Disabilities, which includes Specific Reading Disabilities/dyslexia. The district has monitored [Student's] progress and she continues to make progress toward goals." D24p17.

161. On January 19, 2021, the Parents requested a response from the District regarding the Parents request to use OG reading curriculum for the Student. The District responded via PWN on January 20, 2021, indicating that it was refusing to implement OG curriculum. The District noted as its reasoning in refusing to implement the Parent's request:

[Student] continues to make progress toward reading goals as documented and discussed at her most recent IEP meeting on 1/6/2021. Orton-Gillingham is not a District-adopted reading curriculum. As discussed at the IEP meeting on 1/6/21 and documented in the associated PWN, the District utilizes research-based curriculum and instructional strategies when providing specially designed instruction for students with Specific Learning Disabilities in the area of reading.

D25p1.

### ***SDI Continues through the District***

162. In January 2021, the District changed the paraeducator responsible for delivering the Student's SDI. The District moved Ms. Brooks to another role in January 2021 because all students were coming back for in-person learning for general education classes. T428.

163. The Student worked with Barbara Pierce for two sessions, one on January 25, 2021, and the second on February 2, 2021. T310. Ms. Pierce has been a paraeducator in the District for over twenty years, approximately 10 of which have been working with students receiving special education services. T303; T314.

164. Ms. Pierce was given materials to use with the Student. She did not remember what the program or curriculum was called, and she had not received any training in that particular curriculum. T311-12.

165. Ms. Pierce eventually asked Mr. Bentler to not work with the Student because the Student wore a face shield instead of a face mask as a COVID-19 mitigation

protocol. Ms. Pierce was not comfortable working with the Student if she was wearing a shield and not a mask. T310-11.

166. The Student was permitted to wear a face shield instead of a mask due to her anxiety around wearing a mask for significant periods of time. P7p1.

167. Ms. Roberts, the part-time special education teacher at Harbor Heights, observed Ms. Pierce working with the Student and noted that Ms. Pierce was less conversational and more focused on delivering the curriculum and following COVID-19 distancing guidelines. T531-32.

168. The Student was aware that Ms. Pierce did not want to, or was uncomfortable, working with her and reported this to the Parents. The Student told the Father that she would sit across from Ms. Pierce at a long table and that Ms. Pierce would toss papers to the Student and tell her to read. T413; D29.

169. In February 2021, Heather Yancey took over IEP case management for the Student. Ms. Saxton's request to continue working remotely was denied, so she requested a leave of absence for "personal family health concerns." Ms. Yancey was a special education teacher hired as Ms. Saxton's replacement. T718; D30. There is no information in the record regarding Ms. Yancey's qualifications or credentials.

170. After Ms. Pierce requested to not work with the Student, the District intended to bring Ms. Brooks back to work with the Student for her SDI sessions. T316. However, the Student did not attend her SDI sessions at Harbor Heights for the remainder of February 2021. The Student missed the week of February 8 - 12, 2021 due to the Parents dissatisfaction with the District's curriculum and how it was being delivered and the situation with Ms. Pierce. T343; D31p1; D59p2. Due to Harbor Heights COVID-19 protocols, the Student was required to quarantine for 14 days after the family's out of state travel for mid-winter break, which caused additional missed SDI sessions. In summary, the Student missed one week due to Parent dissatisfaction with the District's curriculum and the situation with Ms. Pierce, one week due to midwinter break, and two weeks due to required COVID-19 quarantine after out of state travel for midwinter break. D31p1; T343.

171. The Student returned to Harbor Heights for in-person SDI in early March 2021. When the Student returned to Harbor Heights, the Parent emailed Ms. Yancey on March 11, 2021, and asked to change the Student's schedule because of a conflict with the Student's sessions at TLP. D33; T343-44.

172. Ms. Yancey emailed the Parent with a new proposed schedule on March 17, 2021. D34. However, the Student had a fever on March 16, 2021, which required her to quarantine for another 10 days due to the District's COVID-19 protocols. D37p1.

173. There is no information in the record regarding whether the District offered remote SDI sessions for the Student during the required quarantine periods in February and March.

174. Prior to the March 19, 2021, IEP progress reporting period, Ms. Yancey only had two opportunities to work with the Student. D35.

175. In the comments section of the Student's March 19, 2021, Progress Report, reporting on goals set in the January 6, 2021 IEP, Ms. Yancey noted:

When [Student] attends, she engages in her work and gives her best effort. District and parent communication continues around finding times to serve [Student]. Parent has shared that she has multiple outside services that she needs to attend and they appear to conflict with the school schedule. Due to the pandemic and hybrid scheduling there are specific time slots available for resource. We look forward to working with [Student] soon. Based on her last 2 in person sessions since February 1, she is demonstrating an emerging skill level on all goal areas.

D35.

### ***Spring 2021 IEP Meetings***

176. The Student's IEP team convened twice at the end of March 2021. D36; D40.

177. On March 22, 2021, the IEP team met and reviewed several Parent requests that were emailed to the District on March 12, 2021. Present at the meeting were Mr. Yellowlees, Ms. Truitt, Mr. Bentler, Ms. Yancey, the Parents, and the Parents special education advocate, Helen Caldart. D36p1.

178. During the March 22, 2021 meeting, the Parents requested that the District provide a description of the evidence-based curriculum that was currently being used to address dyslexia. Mr. Yellowlees shared that Corrective Reading is an evidence-based curriculum designed to address decoding, fluency, and comprehension skills.

Mr. Yellowlees also indicated that the District could provide another Curriculum called Seeing Stars, which is an OG based curriculum developed by Lindamood-Bell. D36p1.

179. The IEP team agreed to trial Seeing Stars for 8-10 weeks and collect data to determine the Student's progress toward her goal of decoding multi-syllabic words. *Id.*

180. The Parents also requested that the Student receive services in social/emotional/behavioral skills. The District agreed to reevaluate the Student in this area and revise the Student's IEP after review of the evaluation results. *Id.*

181. At the end of the meeting, the IEP team agreed to meet again on March 26, 2021 to review the evaluation results and revise the Student's IEP. *Id.*

182. The District documented the meeting discussion and actions taken in a PWN dated March 22, 2021. D36.

183. The IEP team convened again on March 26, 2021, to consider amendments to the January 6, 2021 IEP. Present at the meeting were the Parents, Ms. Caldart, Ms. Truitt, Ms. Yancey, Ms. Aleshire, and Mr. Bentler. D40p1.

184. Based on an assessment revision completed on March 26, 2021, that found the Student eligible for SDI in the area of social/emotional/behavior, the team added one new goal for this area. D39p5; D40p8. The March 26, 2021 IEP amendment also added 30 minutes per week of SDI in the area of social/emotional/behavior. D40p17. The IEP team also identified additional accommodations for the Student's use in the general education setting if she were to return to that setting. D40p14-15. The team discussed meeting again to plan for the Student's transition to middle school for the 2021-2022 school year. D40p20.

185. The March 26, 2021 IEP amendment made no other changes to the January 6, 2021 IEP. See D24; D40.

186. On April 4, 2022, the District issued a PWN addressing several Parent requests that were made via email on March 25, 2021. D41; P24.

187. The Mother emailed Ms. Truitt on March 25, 2021, expressing a concern with the Seeing Stars program. The Mother informed Ms. Truitt that she had spoken with the director of the Lindamood-Bell organization. The director of Lindamood-Bell informed the Mother that it is essential to use all the foundations of the Seeing Stars program, rather than pull-out pieces, because the program, as a whole, provides

neurological changes to how the brain processes language. She also informed the Mother that extensive training is needed to be able to administer the curriculum. P24p1.

188. The Parents requested that the District contract with TLP to provide the Student's SDI in reading and writing. In the alternative, the Parents requested that the District contract with Lindamood-Bell to provide training to any teachers or staff who were going to deliver the Seeing Stars program to the Student. *Id.*

189. In the April 4, 2021 PWN, the District notified the Parents that it was declining to contract with TLP or Lindamood-Bell. The District agreed to consider any information from TLP that the Parents provided. D41p1.

190. Based on the discussions and agreements made at the March 2021 meetings, the District provided Ms. Yancey with the Seeing Stars curriculum. It is unclear what training, if any, Ms. Yancey received on Seeing Stars, other than Ms. Truitt recalling that someone, or possibly a variety of people, "went over it with her." T659.

191. The District used Seeing Stars in another school building, so Ms. Truitt recalled using "trained staff to go over it, people that had used the curriculum." *Id.*

192. The Mother and Ms. Upchurch, SLP on the AT team, exchanged several emails in April 2021, trying to find a time for the Student to work with the AT team. The Mother expressed that the Student was extremely frustrated by the activities being done during her SDI time and that the Student was "adamant" about not going to Harbor Heights for SDI. The only way the Parents were able to convince the Student to go was because she was able to work with the AT team, which she enjoyed. The Mother explained to Ms. Upchurch "I can't make her go kicking and screaming." D43p1.

193. The Mother again expressed concern about the Student's refusal to attend SDI sessions at Harbor Heights in an email to the AT team, with a copy to Ms. Truitt and Ms. Yancey. The Mother stated in her May 11, 2021 email:

[Student] won't be attending today. When my husband brought her, she refused to get out of the car, and had a complete meltdown. I'm not sure where to go from here. As I emailed previously, I would appreciate feedback on what is going on and ideas to encourage her to be willing to attend. It got to the point today where he was trying to use her upcoming birthday party as leverage, and that is not the kind of

experience we want to have every week. It's brutal, and I cannot [sic] and will not force to her attend something she dislikes so much.

D46p1.

194. The Student's IEP team met again on May 13, 2021, and agreed to add additional accommodations around the use of AT, including an electronic reader pen. D44p18. The May 13, 2021 IEP did not alter the Student's reading and writing goals or SDI that were originally set forth in the January 6, 2021 IEP. D24p5-8; D44p6-8.

195. During the May 13, 2021 IEP meeting, the team also discussed the Parents' report that the Student disliked going to the resource room "because [the Student] feels like the students in her group during her resource time are working on different things from her and this creates a feeling of 'chaos' for [the Student]." D44p18.

196. The Parents requested that the Student receive one-on-one SDI or work in a small group with other students who have the same goals and materials. The District asked to have time to consider this request to see what scheduling options were available. *Id.*

197. On May 20, 2021, Ms. Truitt emailed the Mother with a new proposed schedule for the Student's SDI "when the building and classroom are quieter," to which the Parents agreed. D46p1.

198. The Student did not attend her SDI sessions the week of May 25, 2021, because the family was out of town. T443. The Student missed a number of SDI sessions in June 2021 due to a doctor's appointment, and having to attend another appointment with the Mother. D48; D51.

199. In a June 10, 2021 progress report, Ms. Yancy continued to note that the Student's progress was "Emerging Skill" for all of her IEP goals. Emerging Skill (ES) means "Emerging Skill demonstrated but may not achieve annual goal within duration of IEP." D49p1.

200. Between March 19, 2021, and June 10, 2021, there were 12 weeks, 11 school weeks and one week for Spring break. D59p2. The was scheduled to attend 22 SDI sessions (twice per week for 11 weeks); however, the Student only attended nine SDI sessions in person during this period. D49p1. During those nine sessions, Ms. Yancey did not use the Seeing Stars curriculum. T635.

201. The Student's first goal from the January 6, 2021 IEP was:

By 01/06/2022, when given grade level reading passages [Student] will demonstrate increased decoding skills improving accuracy from an average of 91% accuracy to an average of 99% accuracy as measured by student work samples and provider collected data.

D49p1.

202. On the progress report for this goal, Ms. Yancey noted: "When [Student] attends, she engages in her sessions. [Student] seems to prefer smaller group settings. She has attended resource services approximately nine times this spring. During these sessions, she demonstrates an abilities to accurately read between 86 and 92%." *Id.*

203. The second annual goal was:

By 01/06/2022, when given 20 instructional level multi-syllabic words, [Student] will decode each word improving decoding skills from 58% on the Core Phonics Survey to 95% as measured by provider collected data.

*Id.*

204. Ms. Yancey noted on the progress report: "When [Student] attends, she engages in her sessions. [Student] seems to prefer smaller group settings. She has attended resource services approximately nine times this spring. In these sessions, she demonstrates an ability to decode between 82 and 88%." *Id.*

205. The Student's first goal in writing was:

By 01/06/2022, when given a writing assignment [Student] will develop ideas for main idea and three to five details using a provided or self-generated graphic organizer improving writing organization from writing paragraphs with no organization to writing a minimum of 5 sentence well-organized, sequential paragraph as measure by student work samples and provider collected data.

D49p2.



206. Ms. Yancey noted in the progress report: “When [Student] attends, she engages in her sessions. [Student] seems to prefer smaller group settings. She has attended resource services approximately nine times this spring. In these sessions, she demonstrates an ability to write while including 3 details. She is creative and has ideas about what to write. Her mechanics of writing will continue [sic] to be practiced in middle school. We wish her all the best.” *Id.*

207. The second writing goal was:

By 01/06/2022, when given assignments that require sentence writing [Student] will use correct capitalization and punctuation improving paragraph writing from 22% accuracy to 90% on 10 randomly selected sentences as measures by student work samples and provider collected data.

*Id.*

208. Ms. Yancey noted in the progress report: “June 2021: [Student] is currently scoring 70% when using correct capitalization and punctuation.” *Id.*

### ***2021-2022 School Year, Sixth Grade***

209. The Student was in sixth grade during the 2021-2022 school year. The first day of school for District schools was September 7, 2021, and the last day of school was June 22, 2022. D59p3. The Student reenrolled full-time and attended Goodman Middle School (Goodman). D52p1.

210. The Student’s new IEP case manager at Goodman was special education teacher Lynne Goodwin. T787-88. She is endorsed to teach elementary education Kindergarten through Eighth Grade, reading Kindergarten through twelfth grade, and special education Kindergarten through twelfth grade in Washington State. T786.

211. Ms. Goodwin observed the Student in her art class at the beginning of the school year. She observed that the Student was really engaged, asking and answering questions. T789.

212. Ms. Goodwin did not have an opportunity to work with the Student on her IEP goals because of the Parents’ decision to place the Student at St. Nicholas Catholic School (St. Nicholas) early in the school year. T789. Ms. Goodwin’s plan in working with the Student was to do pull-out services in the resource room using a curriculum

program called LANGUAGE! Live as well as other resources like reading practice using the Student's general education materials and vocabulary. T795. LANGUAGE! Live is a structured literacy program designed for students with reading and writing difficulties. T792-93.

213. At the time that Ms. Goodwin was preparing to work with the Student in September 2021, she was not aware that the District had previously agreed to trial the Seeing Stars curriculum with the Student at the end of the 2020-2021 school year. T801-02.

214. The Student had a difficult start to the school year because she was told that her SDI would be delivered during the time that she was scheduled for art class. The Student was very upset about having to miss art class for her SDI time when she felt like the District's curriculum or approach to her reading SDI was not working. T77-78.

215. The Student was refusing to go to school, and the Parents felt like the Student needed a change, academically and emotionally. The Parents felt like the District's programming was not working for the Student as evidenced by her school refusal. The Student is very social and wanted to have the social connections that school could provide. T78.

216. On September 20, 2021, the Parents informed the District that they would be removing her from the District and unilaterally enrolling her at St. Nicholas. The Parents sent the notice by email to Ms. Truitt, Dawn Musgrove, Assistant Principal at Goodman, Ms. Goodwin, and Tyrone Robuck, Principal at Goodman. The Parents requested dual enrollment where the Student would attend St. Nicolas for general education and access her SDI through the District, to be provided by TLP. D56p1.

217. The date of the Student's enrollment at St. Nicholas is not in the record. St. Nicholas is a private religious (Catholic) school. T433. The Student participates in religious instruction at the school. T454.

218. The Student does not receive any SDI or other special education services at St. Nicholas. T541-42. When the Parents enrolled the Student, they met with the principal and the Student's teachers and reviewed her IEP. St. Nicholas staff agreed to implement some of the accommodations noted in the Student's last District IEP, such as modifying assignments or allowing her to take tests by giving oral answers rather than written answers. T542-44.

219. The Student continued to attend TLP twice per week for reading and writing support using Barton, and she attended St. Nicholas for her general education curriculum. T541-42.

220. When the Student enrolled at St. Nicholas, she was given the STAR diagnostic assessment. On November 22, 2021, the Student's scores indicated that she was in the range of needing intervention for reading. Her scaled score for reading was 1012 and her percentile rank was 18, meaning she scored higher than 18 percent of students nationally in the same grade. Her grade equivalent (GE) was 4.4, meaning her test performance compared with the average grade four month four student in the national norms group. Her instructional reading level (IRL) was 4.2, meaning she would best be served by instructional materials prepared at the fourth-grade level. P12p1.

221. The Student took the STAR diagnostic assessment again on March 7, 2022. Her scores indicated that she was at or above benchmark for the sixth grade. Her scaled score was 1094. Her percentile rank was 57, meaning she scored higher than 57 percent of students nationally in the same grade. Her GE was 7.0, meaning her test performance compared with the average grade seven month zero student in the national norms group. Her IRL was 7.2, meaning she would best be served by instructional materials prepared at the seventh-grade level. P12p3.

222. The Student took the STAR diagnostic assessment again on June 15, 2022. Her scores indicated that she was at or above benchmark for the sixth grade. Her scaled score was 1085. Her percentile rank was 48, meaning she scored higher than 48 percent of students nationally in the same grade. Her GE was 6.6, meaning her test performance compared with the average grade six month six student in the national norms group. Her IRL was 6.7, meaning she would best be served by instructional materials prepared at the sixth-grade level. P12p2.

223. No one from St. Nicholas testified and there is no other information in the record to guide the analysis of the STAR assessments other than the Mother's testimony that she believed the Student was improving in her reading based on the support she was receiving from St. Nicolas and TLP. T551.

224. The tuition at St. Nicolas is \$6,700 per year plus a yearly family requirement of \$225.00, called a "procurement cost." T541.

### ***January 2022 Assessment Revision***

225. In January 2022, the Parents and District, in consultation with their legal teams, agreed to an assessment revision to the most current reevaluation to get updated

standardized testing scores for the Student in the areas of reading and writing. D57p1. School psychologist Laura Boyer performed the assessment revision. T815.

226. Ms. Boyer is a licensed school psychologist in Washington State and she is a nationally certified school psychologist. T813.

227. Ms. Boyer's scope in testing was narrow. She was just asked to update the Student's reading and writing scores using a standardized tool. T815. Ms. Boyer used the Woodcock-Johnson Fourth Edition (WJ-IV). T817.

228. Ms. Boyer met with the Student on January 7, 2022 and administered the WJ-IV. D57p1.

229. The Student's standard scores for reading are noted below. SS means standard score, followed by a 95% confidence interval<sup>6</sup> in parentheses. T821-22. A 95% confidence interval suggests that if the Student were to take the test 100 times, there's a 95% likelihood that the Student's scores would be within that range. T820.

**SCORES**

**BASIC READING SKILLS: SS 95 (89-101), 38th %ile**  
Letter-Word Identification: SS 94 (87-100), 33rd %ile  
Word Attack: SS 98 (89-108), 46th %ile

**READING COMPREHENSION: SS 96 (88-103), 39th %ile**  
Passage Comprehension: SS 94 (84-104), 35th %ile  
Reading Recall: SS 99 (92-106), 47th %ile

**READING FLUENCY: SS 94 (87-102), 36th %ile**  
Oral Reading: SS 96 (87-105), 40th %ile  
Sentence Reading Fluency: SS 94 (86-103), 36th %ile

**READING RATE: SS 93 (85-101), 32nd %ile**  
Sentence Reading Fluency: SS 94 (86-103), 36th %ile

D57p1.

230. The Student's standard scores for writing are noted below.

**SCORES**

**BASIC WRITING: SS 83 (77-89), 13th %ile**  
Spelling: SS 82 (76-89), 12th %ile  
Editing: SS 86 (76-96), 17th %ile

**WRITTEN EXPRESSION: SS 92 (84-99), 29th %ile**  
Writing Samples: SS 96 (89-104), 41st %ile  
Sentence Writing Fluency: SS 87 (75-100), 20th %ile

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<sup>6</sup> The transcript repeats the phrase "competence interval" multiple times during the course of Ms. Boyer's testimony. However, based on review of the digital audio recording as well as the phrase used on D57p1, the transcript should read "confidence interval."

D57p3.

***Dr. Dorsch and Dr. Wang Note Student's Progress in 2022***

231. Dr. Dorsch met with the Student in July 2022, during which time she was able to review the November 2020 District assessments that formed the basis for the December 3, 2020 Reevaluation. Dr. Dorsch was also able to review the January 2022 assessment revision performed by Ms. Boyer. T366.

232. Based on her review of the January 2022 assessment revision, Dr. Dorsch noted that the Student had made significant gains in single word reading, pseudo word reading, oral reading fluency, and sentence composition. All her scores in these areas improved to the average range. The Student's reading comprehension scores remained in the average range. The Student also showed improvement in writing fluency, although her performance in this area was still low-average. T373-74. Dr. Dorsch was aware that the Student had received private tutoring at TLP using the Barton program as well as attending St. Nicholas. Dr. Dorsch stated: "I can't speak to specifics in terms of this intervention yielded this result, but clearly, whatever has happened for the Student, she has derived significant benefit in a number of areas." T375.

233. Dr. Wang also saw a tremendous improvement in the Student's anxiety levels and her desire to go to school. T257. Dr. Wang credits the improvement to the Student's attendance at the St. Nicholas and tutoring at TLP using Barton. P28; T256-58.

234. Both Dr. Wang and Dr. Dorsch recommended that the Student continue with using Barton at TLP and with her placement at St. Nicholas. P28; T404.

**CONCLUSIONS OF LAW**

***Jurisdiction and Burden of Proof***

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated 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. See *Schaffer v. Weast*, 546 U.S. 49 (2005). Therefore, in this due process hearing, the Parents bear the burden of proof. The Parents must prove their claims by a preponderance of the evidence. *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206, 102 S. Ct. 3034 (1982) (*Rowley*).

### **The IDEA**

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 *Rowley* the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

*Rowley*, 458 U.S. at 206-07 (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.” *Rowley*, 458 U.S. 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 . . .

*Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. \_\_\_, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew 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 (9<sup>th</sup> Cir.), *cert. denied*, 583 U.S. \_\_\_, 138 S. Ct. 556 (2017).

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

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

*Rowley* at 188-189.

6. A district is not required to provide a “potential-maximizing” education” to provide FAPE, but only a “basic floor of opportunity” that provides “some educational benefit” to the Student. *Id.* at 200-01. A district must provide a student with a “meaningful benefit” in order to satisfy the FAPE requirement. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9<sup>th</sup> Cir. 2014).

7. 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, but 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 (9<sup>th</sup> Cir. 2001).

8. Procedural violations of the IDEA amount to a denial of FAPE, and therefore warrant a remedy, only if they:

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

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

***Whether the District violated the IDEA and denied the Student FAPE by failing to adequately implement the Student's IEPs from March 2020 to June 2020 during the school closure.***

9. Due to the COVID-19 pandemic the District was ordered to stop all in-person educational programs on March 13, 2020, by proclamation from the Governor of Washington State. Governor Proclamation 20-09. The U.S. Department of Education (DOE) issued guidance that same day stating,

If an LEA closes its schools to slow or stop the spread of COVID-19 and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) ....

U.S. Dep't of Education, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020) at p. 2.

10. OSPI also issued guidance stating, "there remains an expectation that individualized education program (IEP) services will be delivered to the maximum extent possible during the pandemic while adjusting delivery methods to comply with state and local health/safety restrictions." OSPI, Questions and Answers: Provision of



Services to Students with Disabilities During COVID-19 in Summer and Fall 2020 (released 3/24/20, last updated 4/12/21). This guidance further recognized that there have been no changes made to the IDEA or its implementing regulations, thus, school districts are not relieved of their obligation to comply with said laws. *Id.*

11. It is clear from the DOE guidance that the District was required to provide special education services to the Student even after the COVID-19 school closure. The question is whether the services provided satisfied the District's obligation to implement the Student's IEP. Only material failures to implement an IEP violate the IDEA. On the other hand, minor discrepancies between the services a school provides, and the services required by the IEP do not violate the IDEA. See *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9<sup>th</sup> Cir. 2007).

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

...

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

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

12. The Student's IEP that was in place at the beginning of the COVID-19 school closure was the June 5, 2019 IEP. It is undisputed that prior to the school closure, the Student was receiving 150 minutes per week of SDI in reading, delivered by Ms. Saxton in small groups in the resource room at Harbor Heights. The Student's IEP was reviewed on May 21, 2020, and her reading SDI was reduced to 120 minutes per week, effective May 25, 2020.

13. After the COVID-19 school closure on March 13, 2020, the District did not offer or provide any instruction to students until April 20, 2020. Once instruction resumed on April 20, 2020, the District was required to implement the Student's IEP. There were five weeks from April 20, 2020, through May 22, 2020, and then four weeks from May 25, 2020 (when the new IEP went into effect), through the end of the school year on June 19, 2020.

14. From April 20, 2020, until June 19, 2020, the District implemented a Continuous Learning Plan, which offered a once-a-week check-in with Ms. Saxton by Zoom video conference and access to Ms. Saxton's Schoology page where the Student could access reading materials and activities. Ms. Saxton did not know how often the Student checked in with her.

15. While the COVID-19 school closure is in no way the District's fault, it is difficult to see how the limited services provided to the Student did not amount to a material failure to implement her IEP. The District argues that its reasonable efforts to implement the Student's IEP in response to the unprecedented circumstances caused by COVID-19 should be considered. The District also argues that the Parents "simply chose to largely not access the District's offers of Zoom interaction with Ms. Saxton and the Student's 4th grade peers, in favor of accessing other online activities." District Closing Brief, p24. This is a mischaracterization of the evidence. Here, the Mother assisted the Student with accessing both the general education Zoom sessions as well as some weekly check-ins with Ms. Saxton in addition to completing work packets provided by the school, and accessing Ms. Saxton's Schoology page to complete the reading activities provided by Ms. Saxton. Findings of Fact (FOF) 43-44. Regardless, even if the Student had accessed every single weekly check-in with Ms. Saxton, this is still well short of 120 to 150 minutes of SDI per week. The District did not offer any small group Zoom reading sessions with Ms. Saxton or any other special education teacher or paraeducator.

16. The period relevant to this issue is April 8, 2020,<sup>7</sup> through June 19, 2020. The District began offering services to students on April 20, 2020. From April 20, 2020, through May 22, 2020, the Student's IEP called for 150 minutes per week of SDI in reading. This amounts to a total of 750 minutes of SDI in reading (five weeks times 150 minutes per week) that the District did not provide to the Student. From May 25, 2020, through June 19, 2020, the Student's IEP called for 120 minutes per week of SDI in reading. This amounts to a total of 480 minutes of SDI in reading (four weeks times 120 minutes per week) that the District did not provide to the Student. In sum, the District failed to provide a total of 1,230 minutes, or 20.5 hours of SDI in reading.

17. The District's material failure to implement the Student's IEP from April 8, 2020, through June 19, 2020, violated the IDEA and denied the Student FAPE.

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<sup>7</sup> The Parents filed their complaint on April 8, 2022. Based on the two-year statute of limitations, the Parents are limited in the scope of their issues to the period dating back to April 8, 2020. WAC 392-172A-05080

***Whether the District violated the IDEA and denied the Student FAPE by failing to properly implement the Student's IEPs upon return from the school closure by not delivering the Student's specially designed instruction minutes through a certified special education teacher at various times during the 2020-2021 academic year.***

18. Pursuant to WAC 392-172A-02090(1), District personnel who provide special education and/or related services must meet the following requirements:

(a) All employees shall hold such credentials, licenses, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment....

(b) In addition...all special education personnel providing, designing, supervising, monitoring or evaluating the provision of special education services shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement...on an individual teaching certificate issued by the OSPI, professional education and certification section.

....

(h) Paraeducator staff and aides shall present evidence of skills and knowledge established under the rules of the professional educator standards board, necessary to meet the needs of students eligible for special education services, and shall be under the supervision of a certificated teacher with a special education endorsement, or a certificated educational staff associate or a licensed staff...

(i) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff...or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

WAC 392-172A-02090(1).

19. The Student's IEP in place at the beginning of the 2020-2021 school year was the May 4, 2020 IEP. The Student's IEP was updated on September 15, 2020, shortly after the start of the school year, to increase the SDI in reading from 120 to 150 minutes per week. Both IEPs state that the service provider for delivering SDI is a special education teacher. FOF 45; 88.

20. The District started the 2020-2021 school year using Zoom for remote learning for both special education and general education. Ms. Saxton offered SDI reading groups by Zoom four times per week for 30 minutes each session. During the second week of October, the District then started offering SDI to the Student in-person at Harbor Heights. During the time that Ms. Saxton offered Zoom SDI sessions, there were various times that the group was run by substitute teachers. There is no information in the record regarding the qualifications, or lack thereof, of the substitute teachers.

21. When the Student started in-person SDI sessions at Harbor Heights, she worked with Michelle Brooks, a paraeducator. The Student worked with Ms. Brooks from October 7, 2020, through January 2021. Ms. Brooks did not testify, and other than Ms. Saxton's and Ms. Roberts' testimony that she was a paraeducator with the District there is no other information in the record regarding Ms. Brooks' qualifications or lack thereof.

22. Regulations do not require that only special education teachers can deliver SDI. The Student's IEP, however, did have such a requirement and the Parents allege that having a paraeducator deliver the Student's SDI was a material failure to implement the Student's IEP.

23. As discussed above, only a material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. *Van Duyn*, 502 F.3d at 821-22

24. The Parents have not met their burden to show that the substitute teachers running the Zoom sessions lacked the proper qualifications to deliver the Student's SDI. The evidence does show, however, that Ms. Brooks was a paraeducator and not a special education teacher. As such, having her deliver the Student's SDI amounts to a failure to implement the IEP as written. However, the Parents have not proven that this failure to implement was material or denied the Student FAPE.

25. It is clear from the record that Ms. Saxton, a certificated special education teacher was designing the curriculum being offered to the Student and supervising the paraeducators or substitutes in charge of delivering the Student's SDI. Further, the Student's IEP was revised on January 6, 2021. This IEP specifically provided for delivery of SDI either by a special education teacher or a paraeducator under the supervision of a special education teacher. FOF 159.

26. The Parents have not met their burden to show that the use of a paraeducator to deliver the Student's SDI from September 2020 through January 6, 2021, constituted a material failure to implement the Student's IEP. At all other times during the 2020-2021 school year, the Student's IEP specifically allowed for delivery of services by a paraeducator, as is consistent with WAC 392-172A-02090.

***Whether the District violated the IDEA and denied the Student FAPE by failing to properly consider the evaluative data and recommendations from the independent neuropsychological evaluation conducted in October 2020.***

***Whether the District violated the IDEA and denied the Student FAPE by failing to properly consider the evaluative data and recommendations from the reports from The Learning Place (TLP) that were written in September 2020 and April 2021.***

27. These two issues relate to the District's alleged failure to consider evaluative data and recommendations from non-District professionals, so they will be addressed jointly.

28. Among the procedural requirements of the IDEA with respect to any reevaluation is the obligation of the IEP team to review existing evaluation data on a student, including evaluations and information provided by the parents of the student. WAC 392-172A-03025. Here, the Parents provided copies of Dr. Dorsch's evaluation and a copy of the September 9, 2020 TLP assessment to Ms. Aleshire for consideration in the December 3, 2020 reevaluation of the Student.

29. Dr. Dorsch's evaluation states: "In order to address dyslexia, both an intensive evidence-based approach to reading and writing instruction, as well as modifications of instructional materials/environment are required to access an appropriate education."

30. The District included this recommendation in the Student's December 3, 2020 reevaluation report as well as other recommendations noted in Dr. Dorsch's report. The District's reevaluation report states: "An abbreviated summary of

recommendations from Dr. Dorsch for the school team to consider is below. Please see the full report located in [Student's] confidential special education file for the complete summary, which includes recommendations for consideration beyond elementary and middle school as well as examples. These are not school district adopted recommendations but are for IEP team consideration, in addition to the team being given copies of the full report..."

31. The District's December 3, 2020 reevaluation report also contains a paragraph that summarized Ms. Hall's September 9, 2020 assessment report from TLP.

32. The PWN for the December 3, 2020 evaluation meeting notes that the IEP team reviewed records provided by the Parent including Dr. Dorsch's evaluation and the TLP report, as well as Parents input. There is no other information in the record to suggest that the District did not review the Parents' input, which included the outside provider evaluations, in the reevaluation process. Accordingly, the Parents have not met their burden to show a procedural violation of the IDEA.

33. What the Parents appear to actually be alleging with these issues is a violation of the IDEA related to the development of the Student's IEPs after the December 3, 2020 reevaluation and the failure of the District to meaningfully consider Dr. Dorsch's recommendations for what the Student needed to access an appropriate education and incorporate those recommendations into the Student's IEP. As such, the substantive nature of the "failure to properly consider" issues will be discussed below in the context of the IEP development issues.

***Whether the District violated the IDEA and denied the Student FAPE by failing to draft and implement an IEP in January 2021 that allowed the Student to make adequate academic progress, specifically by failing to offer sufficient SDI and measurable and appropriate goals.***

#### January 6, 2021 IEP Drafting

34. An IEP is a "written document that states the child's present levels of performance, creates measurable annual goals for the child, describes the child's progress toward meeting the annual goals, and explains the services that will be provided to the child to help him advance toward attaining his particular goals." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1111 (9<sup>th</sup> Cir. 2016)

35. The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry that must focus on the unique needs of the

student at issue. “A focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s “*unique needs.*” *Endrew F.*, 137 S. Ct. at 999 (emphasis in original). “Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* (emphasis in original). 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.*

36. WAC 392-172A-03110(1) requires an IEP team, in developing an IEP, to consider the student’s strengths; the student’s most recent evaluation results; the academic, developmental, and functional needs of the student; and the parents’ concerns for enhancing the student’s education.

37. An IEP must contain “[a] statement of the student’s present levels of academic achievement and functional performance,” which includes how the student’s disability affects their involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a).

38. Additionally, an IEP must contain a statement of measurable annual goals, including academic and functional goals designed to meet the student’s needs that result from her disability to enable her 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).

39. An IEP must include a description of how the district will measure the student’s progress toward meeting the annual goals set forth in the IEP as well as when the district will provide periodic reports on the progress the student is making toward meeting annual goals. WAC 392-172A-03090(1)(c).

40. The IEP must also contain 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).

41. The educational benefits flowing from an IEP must be determined from the combination of offerings rather than the single components viewed apart from the whole. See, e.g., *Karl v. Bd. of Educ. of Geneseo Cent Sch. Dist.*, 736 F.2d 873, 877 (2<sup>nd</sup> Cir 1984); *Palo Alto Unified Sch. Dist.*, 118 LRP 21969 (CA SEA 2018) (citing *J.M. v. New York City Dep't of Education*, 171 F. Supp. 3d 236, 247-48 (S.D.N.Y. 2016) (“An IEP must be considered as a whole; its individual parts cannot be judged in isolation.”)).

42. In the January 6, 2021 IEP, there is a progress statement after the first goal from the previous IEP indicating that the Student read 66 wpm with 91% accuracy on the DIEBLS.

43. The Student’s correct words per minute decreased from 73 (March 12, 2020 progress report) to an average of 66 based on data collected in the fall of 2020. Her accuracy also decreased from 94% as of March 12, 2020, to 91% based on fall 2020 data. Compare D2p1 and D24p6.

44. Based on Dr. Bain’s testimony, the Student’s DIEBLS scores from both March 12, 2020, and fall 2020 indicate that she would not have been meeting expectations for first grade students. This is consistent with Dr. Dorsch’s evaluation which found that the Student’s reading capabilities fell between a first and beginning third grade level.

45. There is no progress data for the second goal from the May 2020 IEP. Rather, the District noted scores from the 2018 WIAT-III that was administered as part of the Student’s initial eligibility evaluation and the 2020 WIAT-III scores from Dr. Dorsch’s administration of that assessment. As noted by Ms. Aleshire, evaluation assessment tools are not appropriate progress measures. Regardless, the Student’s standard scores decreased from 2018 to 2020.

46. In response to the Parent’s concerns raised during the January 6, 2021 IEP meeting about the Student not making progress and request to use an Orton-Gillingham or similar curriculum, the District responded that its reading curriculum was evidence-based and that the District “has monitored [Student’s] progress and she continues to make progress toward her goals.” FOF 160.

47. Here, the Parents allege that the District failed to properly consider Dr. Dorsch’s and TLP’s evaluation and recommendations because the District failed to offer the Student an evidence-based approach to reading and writing instruction in the IEPs that followed the December 3, 2020 reevaluation. In their closing brief, Parents assert that “what is in dispute is how districts are required to respond when it [sic] receives clinical



and evaluative information on what is necessary to provide a particular student FAPE.” Parents’ Closing Brief, p38. Both the Parents and the District cite to *Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048 (9th Cir. 2022), in which the Court held that “a district is not required to use the methodology a parent prefers when providing special-education services for a child. School districts are ‘entitled to deference in deciding what programming is appropriate as a matter of educational policy.’” *Crofts*, 22 F. 4th at 1056 (citing *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 945 n.5 (9th Cir. 2010)). The Court in *Crofts* went on to state, however, that districts “need not specify an instructional method *unless that method is necessary to enable a student to receive a FAPE.*” *Id.* at 1057 (emphasis added).

48. Parents assert that the undersigned should look to *Rogich v. Clark County Sch. Dist.*, 2021 U.S. Dist. LEXIS 197135 (D.NV 2021) for guidance. In *Rogich*, the primary dispute was whether the student’s IEP team was required to include the Orton-Gillingham methodology, or similar program, in the Student’s IEP. In concluding that it was necessary for the IEP to specify an Orton-Gillingham or similar curriculum, the Court held:

Specifically, in light of the recommendations cited in the evaluations, Defendant failed to consider “the concerns of the parents” by refusing to discuss with them during development of the IEP the types of programming provided by the District that had the capacity to address O.R.’s unique needs. O.R.’s parents had presented compelling professional evidence that was unrefuted or challenged by the District which established that O.R. required a teaching methodology with particular facets.

*Rogich*, at 18-19.

49. The *Rogich* Court went on to hold: “thus, it is evident from the undisputed evaluations, which stress the importance of ‘methodology’ and the use of ‘research-based learning programs,’ that the IEP team failed to consider the evaluations in any meaningful way.” *Id.* at 21. The Court also noted that during the IEP development process, “the District failed to provide any response to the specific needs of O.R. except to essentially say to the parents – trust us to provide her with what she needs.” *Id.* at 19.

50. The facts in *Rogich* are similar to those in this case, and the undersigned finds the reasoning of the *Rogich* Court persuasive.

51. In this case, Dr. Dorsch's undisputed evaluation of the Student indicated that she required an "intensive, evidence-based approach to reading and writing instruction...to access an appropriate education." Dr. Dorsch's evaluation states:

Evidence-based approaches to dyslexia emphasize both phonemic awareness and orthographic aspects of reading and writing. This includes more explicit instruction in the phonological aspects of oral and written language, sound-symbol associations, and phonemic and orthographic pattern recognition. This also involves frequent repetition and review of phonological principles and high frequency words, or "sight words."

52. Dr. Dorsch also opined that the Student required multi-modal or multi-sensory instruction, particularly visual support for verbal material and experiential "hands on" learning.

53. As in *Rogich*, the District failed to acknowledge the outside evaluation and the Parents' request to utilize the recommended curriculum by stating that the District's curriculum was evidence-based, without providing any further information to support this claim, and that the Student was making progress. It is clear from the Student's January 6, 2021 IEP alone, that she was not making progress toward her annual goals. She had, in fact, regressed. See FOF 150-154.

54. The District continued to tell the Parents that the Student was making progress using Corrective Reading as the basis for its decision to deny the Parents request to use an Orton-Gillingham or similar curriculum for the Student's SDI. All of the District's statements about the Student's progress are conclusory and unsupported by data. For example, in the Student's March 12, 2020 progress report, Ms. Saxton simply stated "[Student] continues to grow as a reader." All actual data points in the record suggest that the Student was either regressing or not making meaningful progress.

55. The District also suggests that the Parents are responsible for the lack of progress data because they did not access Ms. Saxton's Zoom sessions during the Spring or early Fall of 2020 and then did not deliver the Student to Harbor Heights regularly enough for her SDI sessions. It is evident from the record that the Parents did their best to assist the Student with accessing her remote learning sessions despite the sessions being chaotic and the Student's frequent meltdowns. Once in-person SDI resumed, it is also clear that the Student enjoyed working with Ms. Brooks and regularly attended her SDI sessions from October 2020 to January 2021. The District did administer the DIEBLS during the fall of 2020 as reflected in the January 6, 2021

IEP, which shows that the Student regressed as discussed above. The District did not collect any data during this period for the Student's second goal from the May 21, 2020 IEP.

56. Dr. Dorsch's evaluation did not specify that the Student specifically required an Orton-Gillingham program to receive an appropriate education. Per Dr. Dorsch, however, Orton-Gillingham based programs are the gold standard in teaching students with dyslexia to read, and utilize all the methodologies recommended by Dr. Dorsch for the Student to receive an appropriate education. In this case, a specific method of reading instruction was required for the Student to receive FAPE, and the District's failure to adopt either an Orton-Gillingham program or similar methodology that was evidence-based, direct, sequential, multi-sensory, and implemented with fidelity resulted in an inappropriate IEP and denial of FAPE.

57. In summary, the January 6, 2021 IEP did not contain appropriate present levels of performance, including progress data, which would be necessary for the IEP team to craft appropriate annual goals. The District also failed to consider the undisputed evaluative data and recommendations from Dr. Dorsch in drafting a statement of the special education and related services to be provided to the Student to enable the Student to advance appropriately toward attaining her annual goals and to be involved in and make progress in the general education curriculum.

58. Based on the foregoing, the January 6, 2021 IEP, taken as a whole and reviewed at the time it was drafted, was not reasonably calculated to confer meaningful educational benefit to the Student and resulted in a denial of FAPE.

#### January 6, 2021 IEP Implementation

59. Only a material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. *Van Duyn*, 502 F.3d at 821-22.

60. Here, the January 6, 2021 IEP called for 150 minutes of SDI in reading and 90 minutes per week of SDI in writing. It also called for 15 minutes per month with an OT to address fine motor issues.

61. Due to a variety of circumstances outside of the District's and Parents' control, from January 7, 2021, to March 26, 2021 (the date of the Student's next IEP), the Student attended four SDI sessions, two with Ms. Pierce and two with Ms. Yancey. The

Student was required to quarantine, per the District's COVID-19 policy, on two separate occasions due to out of state travel during mid-winter break and the Student having a fever.

62. The Student also missed one week of SDI sessions due to the Parents' dissatisfaction with the District's reading curriculum and the way it was being implemented.

63. During the sessions that the Student did attend, the Student received her reading, but not writing, SDI.

64. There were 11 and a half weeks in the period from January 7, 2021, through March 26, 2021. This period includes one week for mid-winter break when school was not in session and that is not counted toward missed weeks of SDI. Accordingly, the Student should have received 1,575 minutes of SDI in reading (10 weeks times 150 minutes, plus 75 minutes for the half week). The Student should have also received 945 minutes of SDI in writing (10 weeks times 90 minutes, plus 45 minutes for the half week). The Student should have received 45 minutes of SDI with an OT for fine motor support (15 minutes times 3 months).

65. Based on the above, the Student received 300 minutes of SDI in reading, no SDI in writing, and no SDI with an OT. Although the COVID-19 closure was in no way the District's fault, and the policies stemming from the public health emergency were necessary to keep families and District staff safe and healthy, the District is still not excused from the requirements of the IDEA. See COL 9-11. The District did not offer any remote SDI sessions or attempt to implement the Student's IEP in any way during the times that the Student was required to quarantine by the District's COVID-19 policies.

66. Although the Parents did not send the Student for one week, there are still eight weeks of reading SDI that the Student missed based on either the Student being required to quarantine or the District not having a paraeducator to work with the Student after Ms. Pierce refused to work with the Student. The District simply did not provide any SDI in writing or OT even when the Student was available and attending her SDI sessions. This constitutes a material failure to implement the January 6, 2021 IEP, and denied the Student FAPE.

***Whether the District violated the IDEA and denied the Student FAPE by failing to draft and implement an IEP in May 2021 that allowed the Student to make adequate academic progress, specifically by failing to offer sufficient SDI and measurable and appropriate goals.***

May 13, 2021 IEP Drafting

67. The Student's January 6, 2021, IEP was amended on March 26, 2021. There were no changes to the Student's reading and writing goals or minutes of SDI in reading or writing; however, at this point, the District had agreed to use the Lindamood-Bell Seeing Stars curriculum with the Student, which was an OG based curriculum that met the criteria recommended by Dr. Dorsch.

68. The March 26, 2021 IEP added one goal in the area of social/emotional/behavioral as well as 30 minutes per week of SDI in social/emotional/behavioral. The IEP was amended again on May 13, 2021, to add additional AT supports. No changes were made to the reading and writing goals or SDI minutes set forth in the January 6, 2021 IEP or the March 26, 2021 IEP.

69. As of March 26, 2021, and continuing with the May 13, 2021 IEP, the District had agreed to use the Seeing Stars curriculum, which met the criteria recommended by Dr. Dorsch for the Student to receive FAPE. Accordingly, the May 13, 2021 IEP, taken as a whole, was reasonable at the time that it was drafted. The Parents have not met their burden to show that the May 13, 2021 IEP violated the IDEA or denied the Student FAPE.

May 13, 2021, IEP Implementation

70. Although the May 13, 2021 IEP was appropriate given that the District had agreed to trial Seeing Stars with the Student, the District failed to actually provide this curriculum to the Student. There were a number of scheduling issues that the District and Parent worked through, resulting in the Student only attending nine SDI sessions from March 19, 2021, through June 10, 2021. It does appear from the record that the Parent, during the latter half of the 2020-2021 school year was prioritizing TLP over the services the District was offering. The District cannot be faulted for this. Nonetheless, the District had several opportunities to begin the Seeing Stars curriculum, the most critical aspect of the IEP, with the Student, and it failed to do so. This is a material failure to implement the May 13, 2021 IEP, which violated the IDEA and denied the Student FAPE.

***Whether the private services and evaluations obtained by the Parents from September 2020 to present were appropriate for the Student.***

71. It is unclear from this issue what the Parents are asking the undersigned to conclude in terms of whether there has been a violation of the IDEA or denial of FAPE. This issue is relevant, however, in the context of determining whether the Parents request for reimbursement for private services is an appropriate remedy, and will be discussed below.

***Whether the Parents are entitled to their requested remedies.***

72. The Parents have requested multiple remedies, including declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE by the District's actions, compensatory education, and reimbursement for private evaluations and services.

73. As discussed above, the District violated the IDEA and denied the Student FAPE by:

- a. Failing to implement the Student's IEP during the COVID-19 school closure from April 8, 2020 through June 19, 2020;
- b. Failing to draft and implement an appropriate IEP on January 6, 2021; and
- c. Failing to properly implement the May 13, 2021 IEP.

**Compensatory Education**

74. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9<sup>th</sup> Cir. 2011). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Id.* at 524. A hearing officer may fashion

individualized relief for students seeking compensatory education. As noted in *R.P. v. Prescott*:

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4th Cir. 2009) (court can order that private school tuition be reimbursed); *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (court can order additional training for a child's teachers).

631 F.3d at 1126.

75. Due to the COVID-19 public health emergency and school closure, the Student was deprived of 20.5 hours of SDI in reading. The Parents have established that the services at TLP provided some educational benefit that was specifically designed to meet the Student's needs. Accordingly, the Parents are awarded 20 hours of prospective tutoring at TLP in the area of reading, to be funded by the District. The District may either contract directly with TLP or reimburse the Parents for the cost of the tutoring. The hours must be used within 12 months of the date this decision is issued.

76. The District's failure to develop an IEP in January 2021 that was reasonably calculated to meet the Student's needs in reading and writing, as well as the failure to implement the May 13, 2021 IEP, also warrants further compensatory education.

77. The Parents and the owners of TLP testified that the Student attended twice per week with regularity, only missing sessions if the family was out of town. The Parents would also try to make up the missed sessions the following week if possible. TLP also remained open on holidays such as Martin Luther King Jr. Day. The Student's regular attendance is also supported by progress reports drafted by the Student's tutors at TLP, Natalie and Danelle Jaeger. The Parents testified that they have receipts or invoices, but these are not the record. The Father testified that the Parents have spent approximately \$10,000.00 at TLP over the course of two years.

78. Upon provision of receipts or invoices to the District, the District shall reimburse the Parents for the Student's tutoring sessions at TLP from September 2020 through September 2021, the time at which the Parents chose to unenroll the Student and

unilaterally place her at St. Nicholas. The reimbursement amount is capped at \$5,000.00. The District shall reimburse the Parents within 30 days of receiving the Parents' receipts.

#### Reimbursement for private evaluations

79. The Parents have requested reimbursement for private evaluations and services from November 2020 to the present. There is no evidence in the record of the cost of the private evaluations obtained by the family, other than the Mother's recollection that the evaluation with Dr. Dorsch and the Student's treatment with Dr. Beilke and Dr. Wang was all paid for by the Parents' health insurance. Given the lack of information about any out-of-pocket costs incurred by the Parents, this requested remedy is denied.

#### Tuition Reimbursement for St. Nicholas Catholic School

80. The Parents further request tuition reimbursement for the 2021-2022 and 2022-2023 school years at St. Nicholas Catholic School.

81. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if: (1) the district placement violated the IDEA; and (2) the Parents' private school placement is "proper" under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361 (1993).

82. District violated IDEA and denied the Student FAPE, so the first prong of the reimbursement test is met.

83. Under the second prong, "[a] placement is proper if it is specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *Bellflower Unified Sch. Dist. v. Lua*, No., 2019 U.S. Dist. LEXIS 112829 \*13 (C.D. Cal. July 8, 2019), *aff'd* 2020 U.S. App. LEXIS 33641 (9<sup>th</sup> Cir. 2020). It is not necessary for parents to show that the private placement "furnishes every special service necessary to maximize their child's potential." *Id.*, quoting *C.B. v. Special Sch. Dist. No. 1*, 635 F.3d 1155, 1159 (8<sup>th</sup> Cir. 2011). Parents "need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *Id.* Additionally, a private placement does not need to satisfy the IDEA's least-restrictive environment requirement to be proper under the Act. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 991 (8<sup>th</sup> Cir. 2011).



84. There is no evidence in the record to support the contention that St. Nicholas is a proper placement for the Student. No one from St. Nicholas testified and the only information in the record shows that Student participates in general education curriculum and does not receive any SDI to address her dyslexia and language-based learning disability. The Parents have not met their burden to show that St. Nicholas is a proper placement for the Student. Accordingly, the Parents' request for tuition reimbursement is denied.

Prospective Placement at St. Nicholas Catholic School

85. The Parents further request prospective placement at St. Nicholas. For the reasons discussed above and the lack of information in the record regarding whether St. Nicholas is a proper placement, the Parents' request for prospective placement at St. Nicholas is also denied.

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

**ORDER**

Based on the above Findings of Fact and Conclusions of Law, it is HEREBY ORDERED:

1. The District violated the IDEA and denied the Student FAPE as summarized in Conclusions of Law 1 – 71.
2. The Parents are awarded the remedies outlined in Conclusions of Law 72 – 78.
3. All other remedies requested by the Parents are denied.

SERVED on the date of mailing.



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Jenna Schuenemann  
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 (90) days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at [appeals@k12.wa.us](mailto:appeals@k12.wa.us).

DECLARATION OF SERVICE

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

Parents



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Dated November 17, 2022, at Seattle, Washington.

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Representative  
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cc: Administrative Resource Services, OSPI