

JUL 18 2005

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

OFFICE OF
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

NORTH THURSTON SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2005-SE-0001

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

RECEIVED

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Superintendent of Public Instruction
Administrative Resource Services

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Mattie Harvin Woode in Lacey, Washington, on February 24, 25, 28, March 1, April 5, 7, May 10, and May 12, 2005. The Parent ¹ appeared on her own behalf. North Thurston School District (District) was represented by Philip Thompson, Attorney at Law. The following is hereby entered:

STATEMENT OF THE CASE

On January 3, 2005, the Parent filed a request for due process hearing with the Office of Superintendent of Public Instruction. This appeal was assigned OAH docket number 200-SE-0001. A pre-hearing conference was held on January 13, 2005, pursuant to proper notice mailed to the parties. Parent requested a continuance so that she could consult with an attorney. The continuance was granted and a prehearing conference set for January 21, 2005. At the prehearing conference, hearing dates were set for June 24, 25, 28, and March 1, 2005. Additional hearing dates were added as needed to complete the testimony.

At the January 21, 2005 prehearing conference, the 45-day date was set at 30 days after the close of record. The prehearing order also stated that the close of record would be determined by the ALJ at the conclusion of the hearing. At the conclusion of the hearing, the parties were given until June 13, 2004 to submit post-hearing briefs. On June 8, 2005, the District's attorney requested an extension of time. The Office of Administrative Hearings (OAH) contacted Parent on June 8, 2005 to determine if she had any objection to the extension. Parent contacted OAH on June 9, 2005 objecting to the extension but demonstrating no prejudice by a two-day extension. The ALJ found good cause and issued an order on June 9, 2005, extending the close of record until June 15, 2005. The Parent's brief was received on June 14, 2005. The District's brief was post-marked on June 15, 2005 and received on June 17, 2005. The District's brief will be accepted but the ALJ will extend the close of record until June 17, 2005. The 45-day decision due date is July 17, 2005. Because July 17, 2005 is a Sunday, the due date for the decision is Monday, July 18, 2005.

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

EVIDENCE RELIED UPON

Exhibits Admitted:

Court: C1, C2, C3, C4

District: D 100 through D120.

Parent: P201 through P228, P230 through P248; P250 through 252; P254 through P266.

Witnesses Heard:

Mother.

Lara Cole,

Shirlee Lehnis, Linda Hitch,
Casey Ward, Joan Dorian

ISSUES

Whether the District provided an appropriate special education program for the Student during the 2002-2003, 2003-2004, and 2004-2005 school years.

Whether the District appropriately considered and/or incorporated the reports and information from outside providers in developing the Student's IEP for the 2004-2005 school year.²

Whether the methodology, specifically the reading curriculum used by the District, was sufficient to provide meaningful educational benefit to the Student considering his learning style and disability. Parent asserts that the Student made no meaningful educational progress during these school years, and that the Slingerland Tutoring Method is the more appropriate methodology to educate the Student.

Whether the Parent is entitled to the requested remedies, specifically reimbursement for private tutoring beginning in September 2004, or other equitable remedies, as appropriate.

FINDINGS OF FACT

1. The Student at issue was born [redacted] 1994. He resides with his Parents within the boundaries of the North Thurston School District (District).

2. The Student was referred for a special education evaluation in March 2002, by his first and second grade classroom teachers. At that time the Student was eight years old and in second grade. The referral indicated that there were noticeable delays or problems in his speech and language; reading; math; written language; and cognitive abilities. There was continual concern regarding oral expression and written language. It was also noted that his conversations would begin in the middle rather than beginning a thought or sequence. Because

² The issue was previously worded by Parent during the prehearing conferences as "whether some of the recommendations from the reevaluation were followed." During the course of the hearing, the ALJ has determined that there was no reevaluation and that Parent is actually referring to evaluations reports and letters from outside providers. Therefore, a rewording of the issue to clearly address the concern Mother has raised from the outset of the hearing is appropriate.

he had difficulty processing language, the unorganized language presentation made it difficult for him to be understood.

3. Mother was particularly concerned because the Student suffered a significant head injury on in February 2000 at the age of five. As a result of the head trauma, the Student experienced grand mal seizures and severe migraine headaches which led to hospitalizations and frequent trips to the nurse's office at school.

4. The District performed an initial evaluation in May 2002. The Student's intellectual abilities, adaptive behavior, and adjustment data was assessed by the school psychologist. Intelligence testing placed the Student in the high average range of development. Of note was a significant 34-point discrepancy as measured between his verbal and nonverbal scores. Disorganization of language was very prevalent and fragmentation characterized much of his expressive language. The school psychologist concluded that the Student had a serious language based learning disability.

5. On academic testing, the Student's scores on reading and written language were as follows: he was at a 2.0 grade equivalency basic reading, at a 1.9 grade equivalency for reading comprehension, and at a 1.6 grade equivalency for broad written language. Testing revealed that he had great difficulty organizing his thoughts, and punctuation and spelling were challenging for him. In math he could complete problem solving, but had difficulty completing basic addition and subtraction facts. When given a simple passage to read, he had more difficulty decoding the words and answering comprehension questions.

6. Linda Hitch, the speech and language pathologist (SLP), performed a communication assessment as part of the evaluation. The evaluation revealed that the Student had difficulty with comprehension, and confusion on language concepts, particularly temporal. His strongest area appeared to be vocabulary, specifically word association. His greatest challenge was formulating sentences, and he generally produced basic five to six word sentences, but could not use higher level words such as "instead" or "until". Although his articulation was within average, the assessment indicated significant concerns in the area of receptive language and expressive language. This adversely impacted the Student's ability to follow directions, listening comprehension, reading comprehension, oral and written language. She recommended that the Student receive specifically designed instruction through speech and language services with a focus on receptive and expressive language.

7. As a result of the assessment, the evaluation team determined that the Student qualified for specially designed instruction in reading and written language, and communication. The District found the Student eligible for special education under the eligibility category of specific learning disability.

8. The evaluation report recommended that the Student's specially designed instruction be delivered in a special education classroom and the general education classroom with adaptations. All of the members of the evaluation team, which included the Parent, agreed to the evaluation results and recommendations.

June 7, 2002 IEP

9. The District proposed an Individualized Education Program (hereinafter, IEP) on June 7, 2002, at the end of the Student's second grade year. The IEP provided for goals and objectives in the area of reading, written language, and communication. The Student's reading goal was to increase his reading skills by a year's growth from a 1.0 grade level to a 2.0 grade level. The written language goal called for the Student to increase from writing a simple sentence to writing more detailed sentences and paragraphs. His communication goal included objectives to increase his vocabulary and concept understanding and use; following two part directions with and without cues; and formulating sentences using higher level words such as "while" and "instead".

10. The June 2002 IEP provided appropriate accommodations within the general education classroom. These included: clarifying language on test directions when necessary; preferential seating when needed; allowing the Student to work or be tested individually or in a small group to reduce distractions; a reader to read listening items in assignments or tests as needed; visual aids with oral presentations; asking the Student to repeat instructions as needed; and a reader to read math assessment items verbatim in English.

11. The IEP provided for 300 minutes per week of specially designed instruction in the Success Plus classroom five days per week, plus 30 minutes per week of speech and language services once per week. Mother signed the IEP indicating her agreement with the proposed program.

Progress During Third Grade: the 2002-2003 school year.

12. According to the Student's IEP progress report for the 2002-2003 school year, the Student made satisfactory progress on all of his reading objectives. By the end of the school year he had mastered all objectives including the ability to read at a 2.0 grade level equivalent.

13. Because of the evaluation report, the Student's special education teacher, was aware that the Student was a visual learner. For that reason she chose not to teach him all of the letters and sounds in isolation in a phonic-based program, but instead chose to use his visual strength and show him that words were made out of visual patterns similar to mathematics. She believed that he performed better with those visual patterns in reading than he did in phonic-based programs.

14. The Student made satisfactory progress on all of his written language IEP goals and objectives during the 2002-2003 school year. He was able to use pre-writing strategies such as graphic organizers and discussions with assistance; he was able to write a topic sentence with assistance; he was able to write a paragraph with a topic sentence and supporting details with assistance. He was able to edit his writing and master that particular objective. He did not master the first objective which was to spell phonetic and sight words on a weekly spelling test though he made satisfactory progress on that objective.

15. The Student made satisfactory progress on his communication goal and objectives. He mastered several objectives including increasing his vocabulary to use synonyms and following two-part directions with and without cues, and formulating sentences using higher level

words with cues. He did not master the objective of formulating sentences of higher level words without cues or increasing his vocabulary/concept understanding using temporal concepts. However, he made satisfactory progress on those objectives.

16. Ms. Hitch measured the Student's progress by observation and recording of data. In Ms. Hitch's opinion, during his third grade year, he made progress on his IEP objectives such as understanding temporal concepts, synonyms, and following two-part directions, and formulating sentences.

June 3, 2003 IEP

17. The Student's annual IEP review meeting was held on June 3, 2003. During the meeting, Parent was present at the meeting and participated, adding her input into the discussion of the Student's program, and expressing concern regarding the Student's education. She believed that the Student's classroom assignments were below his capabilities (i.e. spelling, tests, and written language), but sight words were not in his writing capability easily. At the conclusion of the meeting, the IEP was approved by all members of the IEP team including Mother.

18. The present levels of performance (PLP) section of the IEP reflects the Student's scores on the Woodcock-Johnson academic testing which was administered in May 2002 during his initial evaluation:

Academic:

WJ-R Clusters: May 2002	Grade Equiv.	Standard Score
Broad Written Language	2.2	73
Basic Reading Skills	2.0	91
Passage Comprehension	1.9	91

19. The PLP section of the IEP also reflects the Students results from STAR testing in December 2002, March 2003, and June 2003 of the Student's fourth grade year.

20. STAR testing is an informal computerized assessment the District uses for all students, which is part of the accelerated reader program. A student independently takes the assessments where he is given choices to fill in the blanks about a passage that he has read. The STAR assessments focus more on a student's comprehension skills and are timed tests. According to _____, this gives a rough estimate as to which reading level to administer to a child. The "range" indicates the approximate reading level material the child should use.

21. According to _____, the results from the STAR assessments are not as reliable as a standardized instrument such as the Woodcock Johnson. Although she testified that she does not put "a lot of faith" into the STAR testing, she nonetheless included the STAR results

in the Student's IEP because it is a continual assessment taken throughout the school year and gives parents some feedback as to how their children are doing.

22. The Student's scores from the STAR testing were reflected in the PLP section of his June 2003 IEP in the following chart:

STAR Testing	Grade Equiv.	% ile	Range	IRL ³
12/2002	2.9	40	2.5 - 3.5	1
3/2003	2.7	22	2.4 - 3.4	3
6/2003	2.2	8	2.1 - 3.1	2

23. From reviewing these two charts in the Student's IEP, Mother concluded that the Student was not making any progress in his reading ability during the course of his third grade year because he remained at a second grade reading level.

24. The PLPs also note that in January 2003 the Student began working from the third grade Harcourt Interventions Manual. This manual was similar to the one used by general education students, but was written at a lower reading level than third grade. Using this manual, the Student demonstrated average comprehension scores, and slight improvement in his decoding fluency. However, the teachers were seeing difficulty with comprehension in his daily work.

25. The PLPs reflect the Student's continued difficulty with spelling but with some improvement. The PLPs also indicate that he had made some progress in his writing, though with adult support.

26. Behaviorally, the PLPs indicate that the Student was demonstrating good attention, was cooperative, and was willing to do his work. Though, it was noted that he would stall when faced with an overwhelming or difficult task. The teachers noted that those were the times when the Student's headaches seemed to increase. It was also noted that the Student was taking medication for migraines which were a result of his seizure disorder. It was also noted that eye strain from not wearing his glasses increased his headaches, as well as MSG. It was noted that the teachers could help the Student by assisting him in breaking his task into small manageable pieces and assisting him in getting around the difficult obstruction.

27. The PLPs indicate that the Student made some progress in his communication skills. He had become more verbal and readily participated in group discussions. His program was focused on increasing his understandings of concepts relating to time and improving his ability to synonyms to target words. He also worked on following two-part direction as well as

³ IRL stands for "independent reading level".

improving his skill at formulating sentences. It was noted that he was able to follow two-part directions, but would frequently ask questions to verify even though he had the right information. When asked to formulate a sentence with target words, the Student's sentences varied from basic five to six word sentences to more sophisticated ten to twelve word responses. However, in more day-to-day spontaneous conversation, the Student was less likely to establish a topic with his listener, or use specific terms. As the Student's receptive expressive language skills impacted his progress in a regular class curriculum, continued intervention through SLP was recommended.

28. The June 2003 IEP provided for goals and objectives in the same area as his prior IEP. His reading goal called for him to increase his fluency and comprehension from an ending second grade level to an ending third grade level as measured by teacher charts, teacher tests, STAR curriculum assessments and/or standardized assessments.

29. The reading objectives included decoding a beginning third grade passage at 120 words per minute; and decoding an ending third grade passage at 120 words per minute; reading a third grade passage with assistance and retelling the main idea; sequence three or four events and/or predict a future event; read a third grade passage with assistance and retell the main idea with 90 percent accuracy; read a third grade passage independently and retell the main idea, sequence three or four events and/or predict a future event at 85 percent accuracy.

30. The written language goal was for the Student to increase his written language from writing sentences with full teacher support to writing sentences and paragraphs independently or with minimal teacher support.

31. His communication goal was to improve his communication skills from current level to include the objectives listed as part of his goal. His objectives included increased use of descriptive words when formulating sentences; telling a story or experience using specific vocabulary and in a logical sequence; and participate in group discussions demonstrating certain skills such as asking questions and making comments on topic.

32. The IEP provided accommodations within the regular education classroom: additional time to complete assignments or tests; occasional breaks and adjust materials to combat eye fatigue when not wearing glasses; clarify language or test directives when necessary; encourage Student to sustain effort and remain on task; check with Student throughout assignment to assist him in generating thoughts; allow Student to use study carrels or other private spaces needed; allow the Student to work or be tested individually or in a small group to reduce distractions; use of a reader to read listening items in assignments or tests as needed; shorter assignments as needed; ask Student to repeat instruction; repeat, review, or drill as appropriate; allow Student to go to the nurse as soon as possible whenever he has a headache or migraine; eye strain or challenging tasks require problem solving or a break in work; extra think time to process information prior to responding; use a reader to read math assessment items verbatim.

33. The IEP provided for 300 minutes per week in the Success Plus classroom with , and 30 minutes per week of SLP services from Linda Hitch.

Progress during Fourth Grade: the 2003-2004 school year

34. During his fourth grade, the 2003-2004 school year, the Student received special education services according to his June 2003 IEP. During his fourth grade year, _____, used the Wilson Reading program which is a multi-sensory program reading program. In _____'s opinion, the Student benefitted from this reading program when she used it with him in fourth grade.

35. The District presented copies of the Student's 2003-2004 IEP progress reports which were completed by _____ during the school year. (Exhibit D117) _____ and the paraeducator who assisted her reviewed the Student's data and determined the degree of progress the Student had made during the period of time. These reports were sent home to the Parent at the same time as the general education report cards.

36. According to his IEP progress report, the Student made some progress on each of his reading objectives. He only mastered two objectives which were to read a third grade passage with assistance and retell the main idea, sequence three or four events, and/or predict a future event with 82 percent and 90 percent accuracy. He did not master the objective of decoding a beginning third grade passage at 120 words per minute. Nor did he master the objective of decoding an ending third grade passage at 120 words per minute. These findings lend support to the STAR assessment which indicate that he was at a 3.0 grade equivalency reading level toward the end of his fourth grade year.

37. On his written language goal, the Student made some progress on all of his objectives. He only mastered one objective which was to independently write a detailed topic sentence of eight to twelve words. The other objectives were not met though some progress was made on them.

38. According to his IEP progress report, on his communication goal the Student made satisfactory progress on all but one of his objectives. He only made minimal progress on the objective which required him to retell a story using specific word vocabulary. The Student was only able to do this with cues from the teacher. Although the Student made satisfactory progress toward his communication goal, he did not come close to mastering any of the communication objectives except for participating in group discussions wherein he would ask questions and make comments on topic. In Ms. Hitch's opinion, the objectives were appropriate because they were laying the groundwork for the Student to progress in the areas of reading, written language and oral communication.

Independent SLP evaluation by Margie Keck

39. In March 2004, Margie Keck, a speech and language pathologist (SLP) evaluated the Student. Mother sought the evaluation because she was concerned that the Student's IEP was not meeting his needs. Ms. Keck indicated in her report that the purpose of her evaluation was to determine what intervention strategies and programs would be most helpful in decreasing some of the Student's problems at school.

40. As part of her evaluation, Ms. Keck administered a variety of tests including vocabulary tests, the Woodcock-Johnson Psycho-Educational Battery-III, the Lindamood Auditory

Conceptualization Test, and informal assessment procedures. She also reviewed the results of tests that had been administered to the Student within the last two years.

41. According to Ms. Keck's report, tests results and informal procedures indicated that the Student's auditory processing skills were below normal. But, his visual processing skills were actually above average for his age. His verbal expression (vocabulary understanding, word usage and word knowledge skills) was also an area of concern. Ms. Keck did not reevaluate the Student's reading or writing, or math skills but reviewed evaluations within the last two years which to her indicated that the Student was within normal limits for his grade.

42. Ms. Keck's overall impressions were that the Student had a language-based learning disability in the area of auditory processing which has a direct effect on his verbal skills, his written language skills, and his speed in processing and work. She also determined that the Student was dyslexic.

43. Ms. Keck provided 17 detailed recommendations for the Student's educational success in the area of behavior and attention, auditory and visual processing, academics (reading, writing, and math), and expressive language. Of note, is her recommendation that the Student have a multi-sensory approach to phonics using a method such as Slingerland, and that he may benefit from tutoring to assist him with phonics. According to Mother, when she met with her, Ms. Keck personally recommended the Slingerland method, and gave Mother information about the program.

44. Ms. Hitch and _____, reviewed and considered Ms. Keck's evaluation in drafting the IEP goals and objectives for the Student's upcoming IEP.

June 2004 IEP Meetings

45. The Student's June 2004 IEP was developed over a period of two meetings in June 2004. The IEP team was properly constituted at the first meeting on June 2, 2004, and the Student's general education teacher attended. During this meeting, the team reviewed part of the IEP and discussed modifications to the regular education curriculum and accommodations to support the Student in the general education classroom. The team discussed the draft IEP which had been prepared by _____. Mother voiced concern that the Student reading and writing skills were too low and not progressing rapidly enough. She wanted him to work from fourth and fifth grade materials, and wanted his teachers to push him to work harder.

46. The IEP was not signed at that meeting because they ran out of time. It was suggested that they reconvene another day. The remaining issues to be discussed centered around Mother's request that the District pay for Slingerland tutoring for the Student.

47. The IEP meeting reconvened on June 10, 2004. The special education director, Lara Cole, the special education teacher, _____, the principal, Cathy Weight, and Mother were present. During this second meeting, the group again discussed Mother's request for tutoring services and use of the Slingerland approach versus the Wilson program. According to _____ at this second meeting, they reviewed the goals and objectives in the Student's IEP, and further discussed the accommodations that the Student would be provided in the regular education

classroom. The Student's regular education teacher was not at the second meeting when the Student's IEP, particularly the classroom accommodations, were further discussed.

June 2004 IEP

48. Mother asserts the PLP in the Student's IEP reflect that he did not make progress in his reading. The PLPs reflect the Student's academic performance on the STAR testing as follows:

STAR Testing	Grade Equiv.	% ile	Range	IRL
12/2002	2.9	40	2.5 - 3.5	1
3/2003	2.7	22	2.4 - 3.4	3
6/2003	2.2	8	2.1 - 3.1	2
11/2003	2.7	19	2.4 - 3.4	2.8
5/2004	3.0	30	2.6 - 3.6	3

49. Again, because of the prominence of the charts in the PLPs, Mother was concerned because it appeared that the Student did not make any progress in his overall reading ability, particularly comprehension. admitted that the STAR test results were not as reliable as other measures, that the Student's results were "all over the board" and because of that, it was hard to gauge the accuracy of the results. The Student did, however, meet the IEP reading goal which was to increase his fluency and comprehension from an ending second grade level to an ending third grade level.

50. The PLPs document the Student's performance on a fourth grade level District-wide assessment (QRI) where his reading speed improved from 50 percent to 89 percent with 94 percent accuracy. This was measured from September 2003 through March 2004 on assessment. This shows some progress with reading fluency. The PLPs also document that the Student's reading fluency, decoding, written language, and communication skills had improved since his last IEP.

51. The reading goal in the IEP provides that the Student will apply fluency to enhance comprehension from a third grade level to a beginning fifth grade level as measured by teacher charting, tests, STAR, and assessments. The written language goal in the IEP provides for the Student to increase written language from writing simple paragraphs to writing detailed paragraphs. The communication goal in the IEP provides for the Student to improve his language skills through the written objections as measured by therapy data, classroom performance, and standardized tests.

52. The IEP provides for accommodations in the general education classroom including additional time to complete assignments, rescheduling of tasks, clarification of language on test

directions, use of a Franklin Speller, preferential seating, individual testing, visual aid, shorter assignments as needed, and asking the Student to repeat instructions to gauge his understanding.

53. The IEP also provides for 300 minutes of specially designed instruction per week with the resource room staff, and 30 minutes per week of SLP therapy.

54. The IEP also provides that a meeting would be held by December 2004 to review the Student's progress.

55. During the June 2004 IEP meeting, Mother stated that she would like the District to consider using the Slingerland approach with the Student. informed Mother that the District uses the Wilson reading program which is a program based upon the Orton-Gillingham multi-sensory method, and is similar to Slingerland. During the meeting Ms. Cole told Mother that she has no input in regards to the methodology the District uses. This conversation lead Mother to believe that the District was going to continue using the Wilson program with the Student during the 2004-2005 school year.

56. Mother asked the IEP team to consider paying for outside tutoring since she was concerned that the Student's reading comprehension was still at the beginning third grade level when he was going into the fifth grade. This was denied by the District staff asserting that they believed the Student was receiving meaningful educational benefit from his program. According to Mother, whenever she raised the issue of using Slingerland or providing the Student with tutoring, the same response was "parroted" back to her by Ms. Cole or other district personnel. Having had the opportunity to observe Ms. Cole's demeanor throughout the course of the eight day due process hearing, the ALJ finds Mother's testimony in this regard credible. Despite these statements by Ms. Cole, the evidence establishes that the District considered Parent's requested methodology.

57. Mother sent the District a letter dated June 10, 2004, in writing requesting that the District pay for tutoring for the Student and extended school year services.⁴

58. Mother asserts that the District did not appropriately consider Margie Keck's recommendations in her March 1, 2004 report. In addition to the recommendations in the body of her report, Ms. Keck attached three pages of 20 suggestions for teachers of students with auditory processing difficulties. Mother stated during the IEP meeting that she wanted to discuss Ms. Keck's report and the attachments. In response, District staff just indicated that they had no questions about the report and there was no further discussion. Mother testified that every time she would raise a recommendation from Dr. Powell's report, District staff would again "parrot" to her the same response: "[the Student] is receiving meaningful benefit from his educational program that we are offering him."

59. According to Mother, even Ms. Hitch, the SLP, did not explain to her how the Student's difficulty with auditory processing (a difficulty identified in Ms. Keck's evaluation) was being addressed in his program, other than to say that the Student was receiving appropriate services.

⁴ The District provided the Student with summer school program, at no cost to the Parents.

60. Several of the District's witnesses including , Ms. Hitch, and Ms. Cole testified regarding the recommendations in Ms. Keck's report and Dr. Powell's report and how they relate in regard to the Student's program. However, based upon Mother's testimony, this type of dialogue and explanation did not occur during the IEP meeting. The ALJ finds Mother's testimony credible, that the District did not substantively discuss the outside reports with her or explain in detail how or if the recommendations in these outside reports would be implemented in the Student's program. Mother's assertion in this regard has been consistent, from her letters to the District in the fall of 2004, to her pre-hearing asserts and request for due process, and her testimony.

61. Although the report was not discussed in detail with the Parent during the IEP meeting, Ms. Hitch reviewed the report prior to the meeting and considered Ms. Keck's recommendations in drafting communication goals and objectives for the Student's June 2004 IEP. After Ms. Hitch reviewed Margie Keck's report, she wrote Mother a letter, pointing out certain inaccuracies in the report and provided updated progress data. In her letter to Mother, she also indicated that she found the report helpful and agreed with it except for Ms. Keck's assertion that the Student was not receiving SLP services. Ms. Keck's report was also reviewed before the meeting by the Student's special education teacher, , who drafted his IEP.

Report from Dr. Christine Powell and letter from Dr. Lawrence Hannah

62. In early spring, prior to the June IEP meetings, Parent requested that the District provide an independent educational evaluation (IEE). The District granted Parent's request and authorized an IEE to be performed by Dr. Kristine Powell, a clinical neuropsychologist. Dr. Powell specializes in the assessment, evaluation, and treatment of children and adults with brain injury and cognitive dysfunction, ADHD, and other psychological disorders.

63. Dr. Powell evaluated the Student on April 16, 2004 and May 1, 2004. Her report was prepared on May 15, 2004. Mother did not receive a copy of the report until June 18, 2004, after the IEP meeting. Mother delivered a copy to the District's special services department on the same day.

64. The evaluation consisted of a clinical interview of the Mother and the Student, intelligence and academic testing, behavioral skills and assessments and review of some school records and the SLP evaluation by Margie Keck on March 1, 2004.

65. Doctor Powell noted the Student's medical history and developmental history. She also considered the Student's psychological history and his IQ scores from testing done in May 2002. His testing in May 2002 as compared with the testing by Doctor Powell in 2004 showed a full scale IQ drop of 12 points with comparable declines and verbal and performance IQ levels. Doctor Powell's report indicates that these changes over a two-year period were not the result of a deterioration in the Student's cognitive functioning, but were probably reflective of a failure to progress at the same rate as his peers. In comparison to his age and grade peers, the Student's achievement levels reflected abilities in the borderline to extremely low range. His word reading was his most difficult area and math reading was in the average range while numerical operations was in the borderline to low average range. Dr. Powell noted that the Student functions below age and grade level in word reading, reading comprehension, numerical operations,

spelling, and listening comprehension. Reading rate and comprehension were also significantly below average.

66. Dr. Powell diagnosed the Student as having a reading disorder and mood disorder. She found his emotional status and poor self-image were becoming more pronounced as his personal awareness of his difficulties has increased; he focuses on his deficits and worries about his decrease school performance; and is at an age where children become more aware of themselves and compare themselves to other students in looks and skills. She also stated in her report that it is often a difficult time for children, especially those with some type of handicap or disability. Youngsters in this age group with depression will usually act out behaviorally. Oppositional behaviors, arguing, anger, and refusal to work are common. She found that the Student internalizes his feelings in areas of deficiencies while externalizing his frustrations.

67. Dr. Powell also noted the Student's seizure disorder, which she stated in her report can cause alterations in cognition, affect, personality, and other behaviors. The affective states can reflect a decrease in functioning or be part of a developmental sequence. She stated that although the Student's seizures were well controlled, the likelihood of epilepsy triggering some of his difficulties is strong.

68. Dr. Powell also found that his intellectual functional abilities are in the low average range for overall verbal abilities, and in the high average for performance and spatial skills. Spatial and manipulative tasks are a strength for him.

69. Dr. Powell also found that the Student's achievement scores are below age equivalent and grade level except for in word decoding and math. His area of poorest performance was in word reading which was in the extremely low range. Reading comprehension was in the low range. His reading rate (which includes comprehension and speed) was in the far low average range. His ability to comprehend information when listening was in the average range. His conceptual organization was in the high average to excellent range.

70. Dr. Powell found that math reasoning (auditory word problems) is a strength and indicates the ability to follow step by step instructions and solve problems. His actual ability to solve written math questions using basic principles such as adding, subtracting is in the borderline to low average range. She found that the Student continuously exhibited difficulty with decoding symbols, such as letters and numbers, visually, but performed well when hearing the information.

71. Dr. Powell had several recommendations as a result of her evaluation of the Student. To address the issue of self-esteem she recommended that he participate in an activity in which he can do well or excel: activities that can help increase his skill levels and sense his self-esteem. She also recommended treatment for depression and anxiety in the form of grief counseling and a medical consultation with primary care physician regarding use of pharmacologic treatment. She recommended that speech therapy continue with the school district and the Parents consult with the primary physician regarding sleep disturbances which were noted by Mother and the Student during the course of the evaluation. She also recommended that the District consider having special school accommodations where someone reads the questions or material to the Student, rather than the Student doing the reading (and symbol decoding). She also recommended that whenever possible the District should try to arrange for audio versions of text

books or reading assignments to be made available. Finally, Dr. Powell suggested that the Student's performance level should receive ongoing evaluations.

72. Although Doctor Powell recommended some brief counseling to address the Student's issues of low self-esteem and ineffectiveness, Mother instead worked with the Student to engage him in structured activities where he could have some measure of success. Mother also discussed the Student's mood disorder with his pediatrician, Doctor Hannah. Together, they decided not to administer pharmaceutical intervention but instead a behavioral plan. Mother wanted the District to take his mood disorder into account in working with him and developing his program.

73. The Student's pediatrician, Lawrence Hannah, MD, wrote a letter dated July 29, 2004. Dr. Hannah began treating the Student after his head injury in 2002, and the resultant seizures and medication. Dr. Hannah indicates that the anticonvulsant medication that the Student was taking could have adverse effects on his mood and his capacity for learning. He also indicated that the Student's migraine headaches could indicate the Student was having a seizure. Dr. Hannah indicated that he was in favor of whatever extraordinary means that could be used by the community and the school system to help the Student succeed in his academic program.

74. Even though the letter states that the anticonvulsant medication could affect the Student's mood and his capacity for learning, Ms. Cole testified that there was nothing in Dr. Hannah's letter which would require the District to change the Student's program.

Fifth Grade: the 2004 - 2005 School Year

75. _____ was the Student's fifth grade general education teacher. He provided the Student with the accommodations listed in his IEP. The Student received extra time to work on assignments – he stayed in class during band to work on any of his classwork sometimes with the assistance of _____. The Student took his tests in _____ room. _____ also modified the Student's assignments so that the Student could present the material in a different form, or given less work to do. He could not recall asking the Student's special education teacher, to work with the Student on any particular project or assignment, but would speak with _____ on a weekly basis regarding the Student's progress in his classroom.

76. During the 2004-2005 school year the District implemented the accommodations listed in the Student's IEP when he was in the regular education classroom.

September 24, 2004 Meeting

77. In the fall of 2004, District staff met with Mother on several occasions to discuss the Student's program. On September 24, 2004, Ms. Cole and _____ met with Parent to discuss Parent's request for reimbursement for Slingerland tutoring. During that meeting, the District verbally asked for permission to reassess the Student in math due to the general education teacher's concerns. Mother agreed to an assessment in math, but not reading or written language.

78. Mother asserts that Dr. Powell's report was not discussed when she met with the District at the September 24, 2004 meeting. Neither of the Student's special education teachers, _____ or _____, reviewed Dr. Hannah's letter or Dr. Powell's evaluation report which was dated stamped received by the District on June 18, 2004. _____ testified that she only read the report in preparation for the due process hearing. She testified that since the report came in at the end of the year, she would have already transferred the file to _____, his special education teacher and case manager for the next school year. The school psychologist, Casey Ward, did not review Dr. Hannah's letter or Dr. Powell's report. The Student's general education teacher, _____, did not review the letter or the report.

79. There is some evidence that Lara Cole, the special education director, reviewed Dr. Powell's report, but the evidence is not clear whether she reviewed the report in proximity to the September 2004 meeting. In Ms. Cole's opinion, the report just served as additional documentation to many of the things Mother had already shared with the IEP team members, and to her, the report mainly makes recommendations outside of the control of the public school system.

80. The SLP, Linda Hitch, reviewed Dr. Hanna's letter which first made her aware that the Student was taking anti-seizure medication. Ms. Hitch reviewed Dr. Powell's report sometime subsequent to the meeting. In her opinion, Dr. Powell's report did not indicate that she needed to do something different than what she was already doing.

81. In their testimony, Ms. Cole and Ms. Hitch suggest that Dr. Powell's report was discussed at a meeting on September 24, 2004 with Mother - however, they did not testify to what degree the report was "discussed." Mother testified several times that she tried to discuss the recommendations made by Dr. Powell at this meeting to determine how they could be implemented into the Student's program. However, she received the same response from the District, that the Student was receiving an appropriate educational program. None of the attendees, other than the special education director, Ms. Cole, had reviewed Dr. Powell's report, and the report was not read aloud or summarized at the meeting. Ms. Hitch did not review the report until after the meeting. Nonetheless, the testimony of Ms. Cole and Ms. Hitch support the District's assertion that Dr. Powell's report was discussed at the September 2004 meeting.

82. During the meeting on September 24, Parent again informed the District that she intended to place the Student in tutoring and discussed the Student's schedule. The District asked Parent to wait four to six weeks for his special education teacher, _____, to work with the Student, and see what progress she would make. Mother did not wait.

83. _____ has been a special education teacher with the District for the past two years. She teaches 5th and 6th grades in the "success plus" program. The success plus program is the District's name for its resource room where children receive pull-out special education services. _____ has approximately 28 years experience as a teacher, 12 of those years experience teaching special education. She has a master's of education in reading and learning disabilities and a certificate of advanced graduate studies in special education and consulting.

84. [redacted] was the Student's success plus teacher for the 5th grade, taking over the Student's special education program from [redacted]. [redacted] is familiar with the Wilson reading program. In fact she suggested that the District purchase this program and continue to use it each year so that the District can accurately measure a child's growth. The Wilson reading program is a multi-sensory reading program which is an offshoot from the Orton-Gillingham programs which have been developed for children with language development difficulties. According to [redacted], the Slingerland and the Wilson programs are similar programs. Slingerland having been developed in 1960 and Wilson in 1988. Both programs address word attack, fluency, comprehension, and vocabulary. [redacted], the Student's private tutor, also testified that Wilson is an Orton-Gillingham based program, highly respected in the educational field for reading. But, based upon her review of literature, Wilson is a reading program - not a total language-based program like Slingerland and Wilson is not a simultaneous multi-sensory program like Slingerland.

85. [redacted] Instead of continuing the Wilson program with the Student, [redacted] decided to use the Rewards program during his fifth grade year. [redacted] found that although the Wilson program was successful with the Student in terms of one syllable words, the Rewards program would be a better program to fit the Student's individual needs. The Rewards program also used a visual strategy which [redacted] believed would work well with the Student's visual strength and which provided for more multi-syllabic words which would be used in a 5th grade general education classroom. Mother was not aware until the due process hearing that the Wilson program was no longer being used with the Student.

86. [redacted] On October 15, 2004, Mother met with Ms. Hitch, [redacted] and [redacted] to review the Student's eligibility for special education in the area of math. As a result of the meeting, the Student's IEP was amended to include a math goal, and adjust his special education minutes. [redacted] would work with the Student four days per week (40 minutes per day) in math. He would also stay in fifth grade regular education math but with accommodations. During the meeting the team also discussed the fact that the Student was not correctly writing all of his homework assignments in his daily planner. It was decided that [redacted] would daily initial the Student's planner to ensure that he wrote complete and accurate assignments in his planner.

Private Tutoring with [redacted]

87. [redacted] Because Mother was concerned that the Student was entering the fifth grade at a beginning third grade reading level, she sought the assistance of a private tutor to help him with his reading. Mother used the services of [redacted], an experienced educator with 25 years of experience in the field of education and special education. [redacted] has a Master's degree in special education, and she has studied or worked in the field of dyslexia since 1978. She has also been trained and is a director in the Slingerland Institute for Literacy, an organization which trains teachers how to teach children using the Slingerland approach. [redacted] has taken several layers of training by the Institute and as a director, is qualified to teach other educators how to teach using the Slingerland approach.

88. [redacted] The Slingerland approach was developed by Beth Slingerland in 1960 as an adaptation of the Orton-Gillingham multi-sensory approach originated by Dr. Samuel Orton and Anna Gillingham. The Orton-Gillingham based multi-sensory approach incorporates the use of the visual, the auditory, and the kinesthetic modalities integrated together for learning.

89. The Slingerland approach is a total language approach – a method of delivery using all of the pieces involved in language: writing, reading, speaking, spelling, and decoding. It is an approach which according to [redacted], has been scientifically proven to work with dyslexic children because it integrates all areas of language so that a child with processing difficulty, either visually, auditorially, or kinesthetically, can learn. Using a total language multi-sensory approach - where the child can simultaneously hear, feel, see - helps a child by creating new neural pathways in the brain so that information can be permanent.

90. [redacted] has used the Slingerland approach for 25 years, both as a regular education teacher and special education teacher and as a private tutor when she is not working for the District. She has also worked for the District from 1985 to 1990, and 2002 to 2004. She is not familiar with the Rewards reading program (which was used by [redacted] during the Student's fifth grade year). She acknowledged that there are many multi-sensory approaches but some are geared better towards some children than others.

91. [redacted] began working with the Student at the end of September. She did not review any of the Student's records from the District. She started out by giving the Student a placement evaluation to determine his ability and to identify whether her tutoring would be beneficial. On September 24, 2004, [redacted] administered the Grays Oral Reading Test which is a standardized test and is a statistically reliable tool to determine a child's reading ability. The Student was scored according to his fluency (rate and accuracy), comprehension. The Student scored a grade equivalent score of 2.7 for fluency, and 2.7 for comprehension. According to [redacted], the Student had "gaps" in his phonemic awareness when she began to work with him and that she systematically worked with the Student to fill in those gaps. In her opinion, he needed a simultaneous multi-sensory approach to reading and written language.

92. [redacted] administered a different section of the same test four months later on January 19, 2005. By this time she had worked with the Student 30 hours over a four-month period (two times per week for one hour each session). The Student's fluency score had increased to a grade equivalency of 3.7, and his reading comprehension had increased to a 3.4 grade equivalency. She stopped the Student during this part of the test. Even though he could read the words in the passage with accuracy, he did not understand the passage and could not answer the comprehension questions. The Student's accuracy score (part of fluency) went up two grade levels from a 2.2 to a 4.0. His rate score went up from a 3.2 to a 4.2 grade equivalency. The gap between his accuracy and rate closed so that they were both at a fourth grade level rather than one year apart. The Student's instructional level was a high third/beginning fourth grade level, his independent reading level was at a middle third grade, and his frustration level (material which he could not read independently or comprehend) was a middle fourth grade level.

93. In spelling, the assessment [redacted] administered showed that the Student did not have a stable foundation for sound-symbol relationships. She also noted that the Student, who is dyslexic, would be able to grasp a concept visually, which showed in his spelling, but had not

gotten it auditorially, where he could identify the sound. Children who are dyslexic⁵ need to integrate what they see, feel, and hear. Handwriting is also integrated into language. She also worked on the Student's handwriting, encouraging him to use more cursive writing. She noted a definite improvement in his handwriting and spelling. Her opinion, based upon research is that handwriting which is automatic, legible, and fast enough to keep up with a student's thoughts is essential for written expressive language.

94. In _____ opinion, the Student would have difficulty being successful in a fifth grade classroom without the appropriate accommodations due to his auditory processing difficulties and reading difficulties. In her opinion, the Student would need additional assistance with comprehension of the written material, since he has difficulty with reading comprehension, and of the information verbally presented by the teacher in a class such as science, since he has difficulty processing information even auditorially. Another accommodation the Student would need in the regular education classroom is to break assignments up into small steps. Since the Student is much stronger visually, she recommends that he receive an outline of the teacher's presentation so that he has a better opportunity to process the information rather than from just hearing it.

95. _____ could not express an opinion as to whether the Student made progress on his IEP objectives during the other school years because she did not work with the Student at the time, and has not reviewed all of his IEPs or progress reports.

Progress During from September 2004 through December 2004

96. During the period of time from September through December 2004, the Student's fifth grade year, the Student made excellent progress. His knowledge of vowel combinations went from 40 percent up to 73 percent. His reading level increased from a beginning third grade equivalency to a fourth grade equivalency. The evidence does not support the District's contention that this progress was made mainly due to the program provided by the District. The Student received intensive 1:1 tutoring from an experienced educator, _____, during this same period of time, using a multi-sensory program which met the Student's particular needs. During this same time, _____ was also working with the Student, though not with the Wilson program but the Rewards program.

97. According to Mother, the Student has made great gains in his spelling since September 2004 when he began working with _____. She has noted that the Student has

⁵ Dyslexia is defined 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.

"Overcoming Dyslexia", Dr. Sally Shaywitz 2003 (Exhibit P248)

been able to perform in the classroom better based upon the type of work he has been doing. Mother attributes this to the tutoring with

98. attributed the Student's progress during the fall of his fifth grade year to the efforts the District made during that period of time.

99. In opinion, her work alone with the Student could have resulted in the growth in his abilities during the four-month period from September 2004 to January 2005, because she has seen this same type of growth with other children. However, because she believed that the District was using the Wilson program at the same time that she was using Slingerland (he was not), she attributed some of the Student's growth to the District. In opinion, a piecemeal approach (putting together a child's instructional lessons based on parts of programs where none of them are connected or integrated) would not normally result in success for the child.

100. The ALJ has carefully reviewed the testimony of both and , and because of their education, training, experience with the Student, and extensive years of experience give their testimony more weight than the other witnesses who testified. In comparing their testimony with each other, the ALJ affords more weight to the testimony of was clearly well researched and experienced in her field, and her testimony was more clear, knowledgeable, and based upon her years of training and years reviewing extensive research and scientifically proven methods.

101. The evidence supports the finding that it was the work and intervention of both and which attributed to the increased progress that the Student made during this time. However, the ALJ is persuaded that despite experience and efforts with the Student, he would not have made the progress he had without the intervention and work by . Therefore, in considering whether the Student made sufficient progress such that he received educational benefit from the District's program, this period of time cannot be considered.

102. The District held a meeting in October 2004 with Mother, , and There was a discussion regarding the Student's struggle with math work and the Student's failure to know his homework assignment each night. The Student was having difficulty completing his assignments because many times he did not write down clearly what the assignment was. The group decided that would write down the daily homework into the Student's planner for him. In November 2004, the Student's IEP was amended to include math as an area where the Student qualified for specially designed instruction. The Student began to receive pullout instruction in the resource room for math.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. Section 1401 *et seq.* [Individuals with Disabilities Education Act (IDEA), formerly Education for All Handicapped Children Act], 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) 300 *et seq.*, and Chapter 392-172 Washington Administrative Code (WAC).

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

First, had 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.

Id. at 458 U.S. at 207;103 S. Ct. at 3051.

3. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

According to the definitions contained in the (Education for All Handicapped Children Act) a 'free appropriate public education' consists of education instruction specifically 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 of the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act.

Id. at 458 U.S. at 188-189;103 S. Ct. at 3041-3042.

Procedural Violations

4. Parent has raised a number of issues in her testimony and post-hearing briefing, some of which are not properly before the ALJ. Therefore, the ALJ will only address those issues which have been raised in a timely fashion. From the outset of the hearing, Parent stated that she did not wish to assert any procedural violations against the District, but just the issues which have been identified in the above issue section. In its closing brief, the District asserts that Parent has conceded that there are no allegations of procedural violations by the District. District Brief, p.21. The ALJ however, notes that the second issue raised, whether the District appropriately considered the reports and information from outside providers in the development of the Student's

IEP for the 2004-2005 school year, is a question of procedural compliance. Therefore, regardless of Parent's characterization of the issue, this issue will be addressed as one of procedural compliance.⁶

5. Parent has framed one of her issues as "whether the District has policies and procedures in place that require IEP team members to have prompt access to IEEs and medical documentation that have been received." The legal standard is not the District's internal policies and procedures, but whether the District has appropriately considered such information. Federal regulations provide:

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation- (1) must be considered by the public agency, if it meets agency criteria, in any decisions made with respect to the provision of FAPE to the child; ...

34 C.F.R. § 300.502(c)(1). Washington state regulations mirror the federal language, but includes IEEs obtained by parents at either public or private expense. WAC 392-172-150(8).

6. The district has the burden of establishing by a preponderance of the evidence that it has complied with the procedural requirements of the Individual with Disabilities Education Act (IDEA), 20 U.S.C. §1401 et. seq. , and its implementing regulations, 34 C.F.R. §300 et. seq., and state law. *Clyde K. v. Puyallup School District*, 35 F.3d 1396, 1398 (9th Cir. 1994). This includes the appropriateness of its evaluations, notices, and eligibility determination for the student. See *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1497 (9th Cir. 1996); *Hacienda La Puente School District v. Honig*, 976 F.2d 487 (9th Cir. 1992).

7. Procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE. *W.G. v. Bd. Of Trustees of Target Range*, 960 F.2d 1479 (9th Cir. 1992); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990).

Consideration of reports and letters by outside providers

8. Parent asserts the District failed to properly implement the recommendations from the speech and language evaluation from Margie Keck, the independent education evaluation from Doctor Kristine Powell, and a letter from the Student's pediatrician Doctor Lawrence Hannah.

SLP Evaluation by Margie Keck

⁶ The ALJ notes that the June 10, 2005, IEP meeting was not properly constituted. There was no regular education teacher as part of the team, even though the meeting continued to address the accommodations the Student would need in the general education classroom. This issue was addressed by the District in its brief, but not raised by Parent in any of her letters, prehearing conference statements, or post-hearing brief. Given the fact that Parent has indicated that she does not wish to assert any procedural issues, the issue of the absence of a regular education teacher is not properly before the ALJ and will not be addressed.

9. In regards to the SLP evaluation, Parent's main assertion is that there was no substantive discussion of Ms. Keck's report at the IEP meetings in which she was a participant and therefore, it was not "considered". Neither the state nor federal regulations offer a definition of the word "considered." The plain meaning of the word "consider" is "to deliberate upon; to take into account; to think carefully on, objective evaluation based upon reflection and meaning." American Heritage Dictionary 284 (1981). Other circuits have given a limited meaning to the word "consider". (Group sufficiently considered IEE report, where special education director and school psychologist read part of IEE to the group and summarized other portions of the report to the group.) *T.S. v. Bd. of Educ. Town of Ridgefield*, 10 F.3d 87 (2nd Cir. 1993); (The requirement that an IEE be considered does not require a substantive discussion of the IEE.) *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991). In *Westmoreland*, the evaluation report from an outside provider was reviewed at the IEP meeting and partially incorporated into the IEP. In *Evans v. District No. 17*, 841 F.2d 824, 830 (8th Cir. 1988), the court determined that the special education director demonstrated that she considered the evaluation because she wrote the parent a letter explaining that she had reviewed the evaluation and indicated her agreement with the evaluation.

10. Ms. Keck's SLP report was distributed to and reviewed by the Student's special education teacher and his SLP prior to the IEP meeting. They each individually reviewed Ms. Keck's report and had an opportunity to consider the report as they drafted the Student's proposed goals and objectives in his IEP prior to the IEP meeting. Ms. Keck's report was not reviewed at the IEP meeting in any detail, no portion of it read to the IEP team, nor were portions of the report summarized for the group at the meeting. However, the report was considered when the Student's IEP goals and objectives and classroom accommodations were drafted. In addition, Ms. Hitch wrote Parent a letter acknowledging that she had received and read Ms. Keck's evaluation, referring a specific point in the evaluation and her overall agreement with it. Therefore, the ALJ finds that Ms. Keck's SLP report was sufficiently considered.

Neuropsychological Evaluation by Dr. Powell

11. Parent asserts the neuropsychological evaluation by Dr. Powell was not appropriately considered. Dr. Powell's report was not provided to Parent or the District until eight days after the completion of the IEP so it was not possible for it to be considered at the June 10, 2004 IEP meeting. The issue becomes whether the report sufficiently considered after the IEP meeting.

12. Even after the District received the neuropsychological report, it was not reviewed by his prior special education teacher, _____, nor his then-current special education teacher and case manager, _____, nor the general education teacher, _____ except in connection with the due process hearing. Neither was it reviewed by the school psychologist. The SLP, Linda Hitch, reviewed the report only after the September meeting. There is no evidence to suggest that any of the contents of the report was read aloud or summarized at the meeting.

13. The level of "consideration" given Dr. Powell's neuropsychological report was far below that given to the outside provider reports in *T.S.* or *Westmoreland*. But it was reviewed by the special education director (as in *Evans*), though not clear as to what degree. In all of the cases the ALJ has reviewed regarding consideration of an outside evaluation report, the parents made the same or similar complaint as the Student's Parent in this case - - that the evaluations

were not discussed in detail during the IEP meeting and/or not incorporated in whole or in part into the IEP. The ALJ is sympathetic to Parent's frustration by the District's unwillingness to engage in a substantive discussion with her regarding the evaluation, and her perception that the District was just giving her lip service regarding Dr. Powell's report. While the Student would have been better served, and District resources better spent, if the District had distributed the evaluation and engaged in a substantive discussion of the information in the report, the consideration given to the evaluation was sufficient to satisfy the Student's due process rights under the IDEA.

14. Parent's testimony clearly indicates that she expected the IEP team to go through Dr. Powell's report and even Ms. Keck's report line by line, and expected the District to adopt at least some of the recommendations in the report. In fact, these same assertions by the parents were rejected in *T.S.*⁷ This expectation is understandable, however, the District has satisfied the minimal requirement to at least consider the evaluation.

Letter from Dr. Hannah

15. Dr. Hannah's letter, which came in a month after the IEP meeting, and after the school year had ended, was not reviewed by either the last or current special education teacher, nor the regular education teacher, nor the school psychologist. It was however, reviewed by the special education director who testified that there was nothing in the letter which would require the District to change the Student's program. Therefore, the District sufficiently considered Dr. Hannah's letter.

16. Although the District may have sufficiently considered Dr. Hannah's letter, it should have requested additional information from the doctor as to *how* the anti-seizure medication impacts the Student's mood and capacity for learning within the school environment.

17. It is clear that the District could have done a better job in communicating to Parent regarding the contents of reports and letters from outside providers. However, the evidence establishes that the District met its requirement to consider the information from the IEE and reports from outside providers.

Substantive Review of August 19, 2002 IEP

18. Having determined the District's procedural compliance, the next issue is whether the Student's IEPs developed through these procedures were reasonably calculated to enable the child to receive educational benefit. "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 207.

19. In order to satisfy the IDEA's requirement of a FAPE, an IEP must be "reasonably calculated to enable the child to receive educational benefit." *Rowley*, 458 U.S. at 207. The substantive test of *Rowley* does not require the absolutely best or potential-maximizing education for the individual child. The states are obliged to provide a basic floor of opportunity through a program individually designed to provide educational benefit to the handicapped child. *B.S.*, 82,

⁷ *T.S.*, 10 F.3d at 89.

F.3d at 1500, quoting from *Union School District v. Smith*, 15 F.3d 1519, 1524 (9th Circuit, 1994). "[T]he basic floor of opportunity provided by the Act consists of access to specialized instruction and related services. . . ." B.S. 82, F.3d at 1500; *Rowley*, 458 U.S. at 201. However, a FAPE is provided if the student derives more than minimal or trivial progress in a placement, considering the student's unique characteristics. *Florence County Sch. Dist. Four v. Carter*, 950 F.2d 156, 160 (4th Cir. 1991).

20. The IEP is the cornerstone of the provision of special education services under the IDEA. WAC 392-172-160 requires an IEP to contain: a statement of the student's present levels of performance; a statement of measurable annual goals and short-term objectives; a statement of the specific special education, related services, supplementary aids and services and program modifications or supports to be provided, an explanation as to the extent to which the child will participate in the general education environment; a statement of any modifications in the administration of state or district-wide assessments, the proposed initiation date of modifications and services and the expected frequency, location and duration of those modifications and services; a statement of how the student's progress toward the annual goals will be measured; for students age 14 a statement of the transition service needs of the student; aversion interventions, if applicable; and extended school year services.

Parent's assertions regarding the substantive IEPs

21. Parent's challenges to the Student's IEPs center on the amount of SLP services provided, his accommodations within the regular education classroom, the particular methodology the District used to work on the Student's reading and written language goals, and his progress in those areas each year.

22. In regards to the amount of SLP services, Parent asserts that the District did not offer the Student an appropriate amount of SLP services. Specifically, Parent asserts that the level of services provided, 30 minutes per week in a group setting, was not based upon the Student's individual needs, but rather because this amount of time was the standard amount of SLP services offered.

23. The District presented credible, un rebutted testimony that 30 minutes of SLP services each week in a group setting was sufficient to meet the Student's speech and language needs and make progress toward his IEP goals. In fact, during each school year he made progress toward his IEP objectives, mastering some of them. Mother did not present any evidence which would rebut Ms. Hitch's testimony. Even Margie Keck's SLP evaluation does not support Mother's assertion that more than 30 minutes per week of SLP services were needed.

24. In regards to the accommodations provided by his IEP, Parent asserts that the District did not incorporate the recommendations and suggestions in Ms. Keck's report to assist the Student in the regular education classroom. However, the Student's special education teacher and speech and language pathologist reviewed this report and considered whether any of the suggestions should be incorporated into the Student's IEP. In fact, they testified that some of Ms. Keck's recommendations and suggestions were already part of the Student's IEP. Even though a school district is required to consider outside reports, it is not required to incorporate findings or recommendations from these reports if they are not warranted. Parent has not presented any

expert testimony to show that there were certain recommendations which needed to be incorporated into the IEP.

25. Mother also asserts that the District failed to take into account the Student's developing mood disorder which she believes, was developed in part due to his persistent failure at school. Dr. Powell made recommendations to address the Student's depression, which included activities where the Student could excel which would increase his self-esteem, grief counseling, and pharmacological intervention. Although Dr. Powell recommends counseling, she did not indicate that it needed to be part of the Student's educational program or provided on a private basis by Parent. Counseling as a related service provided as part of public education, would only be part of a student's IEP if it is shown that counseling was required in order for the student to benefit from his special education program. Here, there is no evidence that the Student *required* counseling services to benefit from his education. The Student has benefitted from his special education program for several years.

26. In considering all of the evidence, the ALJ concludes that the educational programs provided to the Student during the 2002-2003, 2003-2004, and September through December of the 2004-2005 school years were reasonably calculated to provide educational benefit, evidenced by the fact that the Student made progress on his IEP goals and objectives each of these school years.

Consideration of Parent's requested methodology

27. The courts have long said that once a court determines that the requirements of the Act have been met, questions of methodology are best left to the discretion of the states, *Rowley*, 458 U.S. at 208; *Lachman v. Illinois State Bd. of Education*, 852 F.2d 290 (7th Cir. 1988). "*Rowley* and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right under the [IDEA] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." *Lachman*, 852 F.2d at 297.

28. However, the discretion a school district has in selecting methodology does not relieve the district from an obligation to at least consider parent's requested methodology. The evidence establishes that the District did discuss and consider Parent's requested methodology during a number of meetings.

29. In regards to the methodology, Parent asserts that the Slingerland approach was the more appropriate methodology to teach the Student in the areas of reading and written language. Unfortunately, this is not the legal standard. It must be remembered that although Parents are equal participants in an IEP team and in the development of a child's IEP, the law is clear that a Parent does not have the right to compel a District to use a particular instructional method.

"The primary responsibility for formulating the education to accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the 'Act to state and local educational agencies in cooperation with the parents or guardian of the child. . . . Therefore, once a court determines that the requirements of the Act have been met, questions of

methodology are for resolution by the states.” *Rowley*, 458 U.S. at 207-208.

30. Parent asserts that Slingerland is a better or more appropriate program to use for the Student. The Supreme Court explicitly rejected the argument that school districts are required to provide services “sufficient to maximize each child’s potential commensurate with the opportunity provided other children.” *Rowley*, 458 U.S. at 198. The question is not whether Slingerland was more appropriate for the Student, but rather whether the methodology chosen by the District was reasonably calculated to confer educational benefit - even if such educational benefit is less than he would have received using the Slingerland method.

31. During the Student’s fourth grade year, the special education teacher used the Wilson reading program - a multi-sensory program based upon the same Orton-Gillingham approach. During his fifth grade year, from September to December, the special education teacher used the Rewards Reading program along with other programs which she selected because she believed, after assessing him, that they would fit his individual need. With these programs, the Student derived meaningful educational benefit in the area of reading and written language. His IEP progress reports document that he was either meeting or making significant progress toward his IEP objectives. His reading rate, fluency, and decoding skills were increasing and he met his IEP reading goal each year.⁸

32. Parent points to the fact that the Student was only reading at a third grade level while he was about to enter the fifth grade. However, this in and of itself does not show a lack of progress or educational benefit, especially given the fact that when he was identified for special education, he was reading at a first grade level. The fact that the Student made more progress once he was tutored under the Slingerland method for four months does not prove that the District’s methods were not appropriate.

33. The tutoring by _____, using the Slingerland method, contributed to the Student’s significant increase in reading fluency and comprehension -- one full grade level within four months. The evidence is not clear, and the ALJ cannot distinguish between how much progress the Student made due to his private tutoring using Slingerland, and the progress made due to his special education program. Most likely, the Student made this degree of progress due to the work of two experienced, dedicated educators using appropriate methodology. The fact that the Student probably made more progress during this period because he had the additional Slingerland tutoring, does not mean that the District’s program was not appropriate. Considering _____ experience and training, her use of a multi-sensory program which she felt would meet the Student’s needs in a fifth grade class better, the appropriateness of the reading goals and objectives, and his past progress on prior IEP goals (prior to his tutoring in fifth grade) all point to the conclusion that the District’s program was reasonably calculated to provide meaningful

⁸ In her testimony Parent asserted that the STAR testing results, which were placed in the present levels of performance section of the Student’s IEPs, show that he did not make progress in his reading. The ALJ notes that the reliability of the STAR assessment was questioned by the special education teacher. This raises the question of why unreliable, and potentially confusing information was placed in the PLP in such a prominent place, which ultimately led Parent to believe that his reading level had not increased over a two year period. However, Parent does not raise this procedural issue as a basis for denial of FAPE and it is not before the ALJ.

educational benefit, and that the Student received educational benefit. Once, it has been determined that the District's program was reasonably calculated to provide meaningful educational benefit, then the child has been provided a FAPE, and the law can require no more. *Rowley*, 458 U.S. at 207.

34. Parent was understandably disheartened that the Student was not making the type of progress under his special education that she expected. Her assertion that the Slingerland approach would be better for the Student may be correct. However, as stated earlier, "appropriate" public education under the IDEA does not mean what is "best" for the Student or "potential-maximizing" education. *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493 (9th Cir. 1996); *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1314 (9th Cir.1987).

35. Parent also asserts that the District staff were not appropriately trained to teach the Student through Slingerland method or similar multi-sensory approach. Where a parent is requesting a particular methodology, the school district need not compare the qualifications of its staff with that of the parent's chosen private provider, but rather must show that the staff is trained and qualified to implement the child's educational program. *G. ex re. R.G. v. Fort Bragg Dep. Schs.*, 343 F.3d 295 (4th Cir. 2003). The evidence clearly establishes that the District personnel were qualified to implement the Student's education program during each of the school years at issue.

Reimbursement for Slingerland tutoring

36. Reimbursement is an appropriate remedy of compensatory education when there has been a denial of FAPE. There has not been a denial of FAPE either procedurally or substantively in any of the issues raised by Parent. Therefore, Parent is not entitled to reimbursement for the tutoring by

37. The administrative law judge has considered all arguments made by the parties. Arguments that are not specifically addressed have been duly considered but are found to have either no merit or not raised in a timely fashion.

ORDER

A. The District provided a free appropriate public education during the Student during the 2002-2003 and 2003-2004 school years, and from September through January of the 2004-2005 school year.

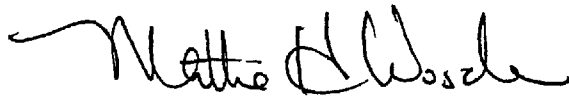
B. The District appropriately considered the reports and information from outside providers in developing the Student's IEP for the 2004-2005 school year.

C. The methodology, specifically the reading curriculum used by the District, was sufficient to provide meaningful educational benefit to the Student.

D. Because there has been no denial of FAPE, the Parent is not entitled to reimbursement for private tutoring by

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Signed at Seattle, Washington on July 18, 2005.



Mattie Harvin Woode
Administrative Law Judge
Office of Administrative Hearings

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Final Decision

Further Appeal Rights: Information About Your Right To Bring A Petition For Reconsideration And Your Right To Bring A Civil Action.

RECONSIDERATION

This is a final decision. Pursuant to RCW 34.05.470, either party may file a petition for reconsideration within 10 days after the ALJ has served the parties with the decision. Service of the decision upon the parties is defined as the date of mailing of this decision to the parties. A Petition for reconsideration must be filed with the administrative law judge at his/her address and served on each party to the proceeding. A copy of the petition must be provided to OSPI, Administrative Resources Section. An order denying reconsideration is not subject to judicial review. The filing of a petition for reconsideration is not required before bringing a civil action under the appeal provisions of the Individuals with Disabilities Education Act (IDEA) that allow for the filing of a civil action.

RIGHT TO BRING A CIVIL ACTION

Pursuant to 20 U.S.C. § 1415(i)(c) of the IDEA, 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. *See also* WAC 392-172-360. The civil action must be filed in court and served on all parties of record within thirty days after the ALJ has mailed the final decision to the parties. If a petition for reconsideration is filed, this thirty-day period will begin to run after the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local and state or federal rules of civil procedure. The Superintendent of Public Instruction must also be served with a copy of the civil action.

CERTIFICATE OF MAILING

This certifies that a copy of the above Order was served upon the parties or their representatives on July 18, 2005, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following.

Parent

Olympia, WA

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