

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

IN THE MATTER OF:

██████████ SCHOOL DISTRICT

OSPI CAUSE NO. 2021-SE-0174

OAH DOCKET NO. 12-2021-OSPI-01489

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

A hearing in the above-entitled matter was held before Administrative Law Judge (“ALJ”) Courtney E. Beebe via video conference, on September 12 and 13, 2022. The Guardian of the Student whose education is at issue<sup>1</sup> appeared *pro se*. The Grandmother of the Student also attended. The ██████████ School District (“District”) was represented by Carlos Chavez, attorney at law. Jenn Francis, Executive Director of the Washington Connections Academy, also attended. The following is hereby entered:

**STATEMENT OF THE CASE AND COURSE OF PROCEEDINGS**

1. The Guardian filed a Special Education Due Process Hearing Request with the Office of Administrative Hearings (“OAH”) on December 30, 2021. The parties appeared for prehearing conferences in this matter on January 25, 2022, and February 8, 2022. The First Prehearing Order was issued on February 14, 2022. The parties appeared for subsequent prehearing conferences on March 8, 2022, March 22, 2022, May 10, 2022, and August 1, 2022.
2. The due process hearing occurred on September 12 and 13, 2022, via video conference. The hearing transcript was filed on September 27, 2022. The record closed on October 14, 2022, when the parties filed written closing briefs. The decision in this matter is due thirty (30) days after the close of the record, which is November 13, 2022. (See Fifth Prehearing Order and Post-Hearing Order).

**EVIDENCE RELIED UPON**

1. The following exhibits were admitted into evidence:

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

Guardian's Exhibits: Pages 11 through 78 were admitted.<sup>2</sup>

District's Exhibits: D1, D2, D3, D4, D5, and D7.

2. The following exhibits were excluded: Guardian's Exhibits pages 1 through 10, and District's Exhibit D6.
3. The following witnesses testified under oath. They are listed in order of appearance: the Grandmother, the Guardian, Amanda Leaverton, Lisa Perry, Lyannet Ledford, Vanessa Gray, Heather Siems, and Jennifer Francis.

### ISSUES AND REMEDIES

The issues presented for due process hearings are as follows:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a Free Appropriate Public Education (FAPE) by:
  - i. Failing to provide the Guardian with requested education records prior to Individualized Education Program (IEP) meetings held on February 14, 2022, and in October 2021;
  - ii. Failing to provide the Student with specially designed instruction (SDI), designed and supervised by a certificated special education teacher, and failing to ensure that special education and related services were provided by appropriately qualified and trained staff since August 2021;
  - iii. Providing an IEP for the 2021-2022 school year that was not reasonably calculated to enable the Student to make progress appropriate in light of his unique circumstances because it did not contain appropriate and sufficient SDI, related services, and accommodations;
  - iv. Failing to implement the Student's IEP during the 2021-2022 school year;
  - v. Failing to have all mandatory IEP team members present for IEP team meetings in January and February 2022.

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<sup>2</sup> The Guardian's Exhibits are not marked as directed in the Fifth Prehearing Order. During the hearing the parties and the ALJ referred to the Guardian's Exhibits by the page number in sequence beginning with page 11. Below, the Guardian's Exhibits reflect a citation to the sequential page number of the documents filed with OAH. The documents referenced by the District Representative in the transcript differ by one page number.

b. And, whether the Guardian is entitled to their requested remedies:

- i. Compensatory education in the amount of 175 hours of one-to-one tutoring provided by Think Academy, Dr. Jack Tutoring Services;<sup>3</sup>
- ii. Or other equitable remedies, as appropriate.

(See Fifth Prehearing Order dated August 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 credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.*

#### **Washington Connections Academy and Student's Enrollment**

1. The Student is currently a resident of the Seattle Public School District. (Transcript, p.60 (Grandmother); First Prehearing Order (February 14, 2022).) During the 2021-2022 academic year, the Student was a [REDACTED] grader enrolled in virtual school through the Washington Connections Academy ("WACA"). (D1, p.5; D7, p.1; Tr., pp.33-34 (Grandmother).) The Student had attended WACA since his first grade year. (*Id.*) The District contracts with WACA. (First Prehearing Order, February 14, 2022.) The Guardian voluntarily chose to enroll the Student in WACA, and the Grandmother performs the role of learning coach. (Tr., p.77 (Grandmother).)
2. WACA provides asynchronous learning of Pearson curriculum delivered virtually to students with the assistance of an at-home learning coach, coupled with limited "Live Lessons," which is live instruction by WACA teachers. (Tr., pp.77-79 (Grandmother); 160-161 (Guardian); 191 (Perry).)
3. Asynchronous instruction is delivered on-line, whereby students and learning coaches log in to the WACA system and access reading material, lessons, activities, and reteaching and repeating instructions. (Tr., p.191 (Perry).) The students and learning coaches perform

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<sup>3</sup> The Guardian and Grandmother clarified during the due process hearing that they seek tutoring services from Dr. Jack Merchant's "Think Academy." (Tr., p.44.)

assignments, quizzes, and tests on-line independently. (*Id.*) Live Lessons are a one hour per class session taught via video conference by general education teachers and special education teachers to “further explain things that might be difficult for students and sometimes to enrich their experience.” (Tr., pp.190-191 (Perry).)

**October 23, 2020, IEP and 2020-2021 Academic Year**

4. The District last evaluated the Student on November 5, 2018. (D1, p.3.) The Student’s evaluation team determined that he is eligible for special education under the disability category of hearing impairment / hard of hearing. (*Id.*) Specifically, the Student was eligible for special education services in the areas of communication, math, reading, and writing. (*Id.*)

5. The Student’s Individualized Education Program (“IEP”) team, including the Grandmother and the Guardian, met on October 23, 2020, and completed the Student’s most recent IEP (“October 23, 2020 IEP”). (D1, pp.1-17; Tr., pp.88-89 (Grandmother); 198-208 (Perry).) The District offered specially designed instruction (“SDI”) in the area of communication from a speech language pathologist (“SLP”) and audiologist, but the Guardian declined SDI from the District in favor of private SLP and audiologist services. (D1, pp.1-17; D5, p.6; Tr., pp.82 (Grandmother); 208 (Perry).)

6. The October 23, 2020, IEP provided that the Student would receive accommodations, including closed captioning. (D1, p.9.) Also, the October 23, 2020, IEP included a modification that “nonessential lessons” would be “skipped . . . as needed.” (*Id.*)

7. The October 23, 2020, IEP provided for the following SDI:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (Setting)	Start Date	End Date
Special Education							
No	Reading Services	Special Education Teacher	Special Education Teacher	30 Min / 4 Times Monthly	Special Education	10/24/2020	10/23/2021
Yes	Written Language Services	Special Education Teacher	Special Education Teacher	30 Min / 4 Times Monthly	Special Education	10/24/2020	10/23/2021
No	Math Services	Special Education Teacher	Special Education Teacher	30 Min / 4 Times Monthly	Special Education	10/24/2020	10/23/2021

(D1, p.12; Tr., pp.184-186 (Perry).) The Student would spend 96.43 % of his time in the general education setting. (*Id.*) The October 23, 2020, IEP did not include any related services or supports. (*Id.*)

8. The October 23, 2020, IEP contained the following reading goal:

*By 10/23/2021, when given a grade level text that he reads or is read to him [the Student] will use the text information and prior knowledge to make predictions about the text improving comprehension skills from using a graphic organizer to find the main idea and two or three supporting details to using the text information and prior knowledge to make predictions about the text on 4/5 over three data days as measured by student performance, observation and data.*

(D1, p.8; Tr., p.185 (Perry).)

9. The October 23, 2020, IEP contained the following math goal:

*By 10/23/2021, when given a two-step word problem involving time [the Student] will identify the equivalent period of time to solve the problem improving math problem-solving and calculation skills from 0/5 trials to 4/5 trials over three data days as measured by student performance, observation, and data.*

(D1, p.7; Tr., p.185 (Perry).)

10. The October 23, 2020, IEP contained the following writing goal:

*By 10/23/2021, when given a topic and a graphic organizer [the Student] will use dialogue in a personal essay improving written expression from writing two five-sentence paragraphs independently to incorporating dialogue into his personal essays on  $\frac{3}{4}$  trials as measured by student performance, observation and data.*

(D1, p.7; Tr., pp.185-186 (Perry).)

11. The Guardian and the Grandmother did not disagree with the goals at the time of the October 23, 2020, IEP meeting. (Tr., pp.185-186 (Perry).) The District issued a Prior Written

Notice (“PWN”) on October 23, 2020, “proposing to continue an IEP,” and initiating the action of implementing the October 23, 2020 IEP on October 24, 2020. (D1, p.15.)

12. According to the District’s progress reports dated January 22, 2021, and June 10, 2021, the Student made sufficient progress in reading, writing, and math during the 2020-2021, academic year. (D4, pp.1-2.) The Student received B or B minus grades in Language Arts and Math during the 2020-2021 academic year, and received B+ and A grades in Social Studies and Science. (D7, p.2.) The Student received a “pass” in Physical Education, Art, and Educational Technology and on-line learning. (*Id.*)

### 2021-2022 Academic Year

13. The Guardian and the Grandmother preferred to challenge the Student academically by mainstreaming the Student in general education classrooms where he would benefit from interaction with his general education peers while receiving SDI and accommodations. (Tr., pp.84-85 (Grandmother); 128-129 (Guardian); 187-189 (Perry).) During the 2021-2022 academic year, the Student’s general education teachers and special education teachers “co-taught,” meaning they simultaneously provided instruction to the Student during Live Lessons. (Tr., pp.188-91 (Perry).) The general education teachers designed the Student’s asynchronous learning curriculum and the special education teachers delivered SDI in the areas of reading, writing and math. (*Id.*)

14. For the 2021-2022 academic year, Vanessa Gray,<sup>4</sup> special education teacher, was assigned as the Student’s case manager. (P, p.11; Tr., pp.231-232 (Gray).) Ms. Gray worked with the Guardian, the Grandmother, and WACA staff to implement the October 23, 2020, IEP for the 2021-2022 academic year. (*Id.*) Ms. Gray co-taught the Student in math with general education teachers Pam Meserve and Jackie Hulvey. (Tr., pp.188-191 (Perry); 232, 236-238 (Gray).) The Grandmother, as the Student’s learning coach, communicated with Ms. Gray during the Student’s Live Lessons, and Ms. Gray was available to the Student via an individual chat pod, breakout rooms, and testing periods. (Tr., pp.46 (Grandmother); 231-232 (Gray).)

15. The Student attended Heather Siems’<sup>5</sup> general education classroom for English language arts (“ELA”). (Tr., pp.222-223 (Ledford); 252-253, 255-257 (Siems).) Ms. Siems

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<sup>4</sup> Ms. Gray earned a degree in science from South Dakota School of Mines and Technology and a master’s in teaching from Washington State University . (Tr., pp.232-233 (Gray).) Ms. Gray is a certificated special education teacher in the State of Washington. (*Id.*)

<sup>5</sup> Ms. Siems is a certificated teacher for the state of Washington and received her bachelor’s degree in secondary education, with an emphasis in English, from Grand Canyon University. (Tr., p.251 (Siems).) Ms. Siems taught at WACA since 2019.

taught using Power Point, message boards, and study guides, as well as drop-in sessions. (Tr., pp.255-258 (Siems).) Ms. Siems was available during the Live Lessons and drop-in sessions to communicate and answer questions via an on-line chat pod. (*Id.*)<sup>6</sup> Ms. Siems implemented the same lessons for the Student as she did for all other students, occasionally skipping unnecessary lessons. (Tr., pp.40 (Grandmother); 254 (Siems).)

16. Lisa Perry,<sup>7</sup> special education teacher, co-taught with Ms. Siems beginning November 2021 until January 2022, when Lyanette Ledford,<sup>8</sup> special education teacher, took over as the co-teacher. (Tr., pp.47 (Grandmother); 188-191 (Perry); 219- 225 (Ledford).) Ms. Perry observed the Student participate in Live Lessons and she was available to answer questions in the individualized chat pod or break out room. (*Id.*) Ms. Ledford observed the Student participate in Live Lessons and was available to answer questions in the individualized chat pod or break out room. (*Id.*)

17. The Student also attended a general education Science 6A taught by Christy Tyler. (D5, p.1; D7, p.2; Tr., pp.57, 97 (Grandmother).) The Student also attended the following general education classes: Health and Physical Education 6, Art 6A, and Social Studies 6A. (D7, p.2.) The Student did not receive SDI or other special education services in these general education classes. (*Id.*)

18. On September 7, 2021, Ms. Siems emailed the Guardian and the Grandmother a list of the Student's accommodations and how she met them for her class. (P, p.68; Tr., pp.97-99 (Grandmother).) On September 27, 2021, Ms. Meserve emailed the Guardian and Grandmother and informed them that she had complied with the Student's IEP accommodations for her class. (P, p.69; Tr., pp.97-99 (Grandmother).) On September 2, 2021, Ms. Tyler emailed the Guardian and the Grandmother and informed them that she had made accommodations for the Student as per his IEP, and that these accommodations were

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<sup>6</sup> It is unknown which special education teacher co-taught ELA with Ms. Siems from September 2021 through December 2021, but the Guardian and Grandmother do not dispute that the ELA class was co-taught with a special education teacher delivering SDI during this period.

<sup>7</sup> Ms. Perry earned a degree in elementary education from BYU. (Tr., pp.175-176 (Perry).) Ms. Perry earned a master's degree in special education, as well as an educational specialist in administration, principalship, and directorship of special education from Northwest Nazarene University. (*Id.*) Ms. Perry is currently the WACA director of student and special populations, and she works for Pearson curriculum as a senior manager of special education. (*Id.*) Ms. Perry is a certificated special education teacher in the State of Washington and has taught since 2003. (*Id.*) Ms. Perry also acts as the District's LEA and has the authority to commit funding to certain programs. (Tr., pp.183-185 (Perry).)

<sup>8</sup> Ms. Ledford received a bachelor's degree from UNLV in special education with a minor in English language learners. (Tr., p.219 (Ledford).) Ms. Ledford is a certificated special education teacher for the State of Washington and began working at WACA in January 2022. (*Id.*)

restricted to skipping unnecessary lessons that she did not teach to the general education students in her science class. (P, p.70; Tr., pp.97-99 (Grandmother).)

19. The Student's closed captioning accommodation was delayed by the District for "a week and a half at the beginning of the school year," and malfunctioned through September 2021. (P, pp.53-67; Tr., pp.34, 66-65, 99-100 (Grandmother); 128-129 (Guardian); 211-212 (Perry); 252-253 (Siems).) The Student, however, used his personal closed captioning device until the closed captioning accommodation was in place through the District, and his Grandmother (and learning coach) signed exact English<sup>9</sup> to communicate with the Student. (P, pp.65-67; Tr., pp.34,64-65, 99-100 (Grandmother).) The Grandmother did not observe any negative educational impact on the Student due to the District's delay in implementing the closed captioning accommodation. (Tr., pp.100-102 (Grandmother).)

20. During the 2021-2022 academic year, District personnel conducted progress reporting that showed the Student made sufficient progress towards his reading and writing goals, and mastered his math goal. (D4, pp.1-2.) The Student also received B and B- grades in Language Arts and Math, as well as grades of A and Pass in all other classes. (D7, p.2; Tr., pp.252-253 (Siems).)

### **Triennial Reevaluation and Annual IEP – September 3, 2021, through January 21, 2022**

21. In September 2021, the District recognized that it was obligated to conduct a triennial reevaluation of the Student by November 5, 2021. (P, pp.11, 14 28, 29; Tr., pp.191-193 (Perry).) On September 3, 2021, the District emailed the Grandmother and Guardian requesting that the Guardian sign a "Reevaluation Notification / Consent" form. (*Id.*) The District indicated that the reevaluation would address the areas of "academic" and "review / inclusion of outside audiology and [SLP] reports." (P, p.12.) The District sought to perform an academic assessment of the Student to evaluate his academic level using standardized assessments performed by a school psychologist. (D2, p.2; P, pp.11, 14; Tr., pp.180-181, 192-193 (Perry).)

22. To communicate the specific scope of the reevaluation the District included a chart listing the assessments it sought to conduct and the area of concern each assessment addressed. (P, p.13; Tr., pp.180-181 (Perry).) Regarding assessing the Student's overall intelligence and cognition, the District sought to administer the following assessments: Weschler Intelligence Scale for Children ("WISC"), Weschler Adult Intelligence Scale ("WAIS"), Weschler Individual Achievement Test ("WIAT") or Woodcock-Johnson Test of Achievement,

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<sup>9</sup> "Signing Exact English" is a method of using sign language to communicate that differs from American Sign Language in that the users sign the exact words from the English language.



and Non-Verbal IQ testing. (*Id.*) Regarding assessing the Student’s social / emotional and behavior, the District sought to administer the following assessments: Adaptive Behavior Assessment System (“ABAS-II”), Conner’s Rating Scales – Revised, Social Development History, and Behavior Assessment System for Children (“BASC”). (*Id.*) The District also proposed to assess the Student using the Autism Rating Scale, perform a Functional Behavior Assessment, and administer the Behavior Rating Inventory of Executive Function (“BRIEF”). (*Id.*) Lastly the District proposed to conduct a records review and obtain background information from the Guardian, Grandmother, and the Student’s general and special education teachers. (*Id.*)

23. The Grandmother responded on September 8, 2021, that the Guardian would sign the consent form. (*Id.*) The Guardian’s signature, via the electronic platform DocuSign, appeared on a consent form submitted to the District on September 13, 2021.<sup>10</sup> (P, p.14; D3, p.2.) Amanda Leaverton, assistant special education manager, spoke with the Guardian and the Grandmother on September 13, 2021, about the reevaluation process. (P, p.14; Tr., pp.169-171 (Leaverton).)

24. Barbara S. DeSalvo Incorporated (“DeSalvo Inc.”) is a private company that contracts with WACA to provide school psychologists for the purpose of assessing students. (Tr., pp.179-180, 182, 209 (Perry)). On October 11, 2021, Ms. Leaverton using the District’s internal software “Issue Aware,” created an email addressed to Kathy Schloemer at DeSalvo Inc. (P, pp.19, 71; Tr., pp.179-180, 182, 209-212 (Perry).) This email placed an order for academic assessments for the Student to be performed by DeSalvo Inc. personnel, and it included a copy of the September 13, 2021, consent form with the Guardian’s DocuSign signature. (*Id.*) The email also included the contact information, including email, for the Guardian. (*Id.*)

25. Ms. Schloemer schedules the school psychologists at DeSalvo Inc. (*Id.*) Ms. Schloemer emailed the Guardian on October 13, 2021, stating:

*[Guardian], We do the educational testing for Washington Connections and I would like to get [the Student] scheduled. We are doing virtual testing at this time. I do have weekdays at 2 or T/W/Th at 5. We can do Saturdays as well if that works better for you.*

(P, p.72; Tr., pp.137-138 (Guardian).)

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<sup>10</sup> The Guardian testified that she believed her signature was fraudulently placed on the consent form through the DocuSign platform. However, based on the Guardian’s subsequent communications in which she refused to consent to a reevaluation of the Student, the District “voided” the consent. (Tr., pp.194-195 (Perry).) No further findings are entered on this issue because the reevaluation, or lack thereof, is not at issue.

26. On November 8, 2021, Ms. Schloemer again emailed the Guardian to schedule the Student's reevaluation. (P, p.74.) The Guardian responded by requesting a "brake (sic) down of all testing that you will be doing along with the psychological evaluation . . . Please share the signed consent form." (P, pp.73-75; Tr., pp.138-139 (Guardian).)

27. In December 2021, Ms. Perry began regularly communicating with the Guardian and Grandmother via email to explain the reevaluation process. (P, pp.19-27, 30; Tr., pp.180-182 (Perry).) Ms. Perry is designated by the District as an individual that can approve funding expenditures, but she does not keep records showing how each individual student's IEP and accommodations are funded. (Tr., pp.183-185 (Perry).)

28. The District did not conduct any annual IEP or triennial reevaluation meetings between September 2, 2021, and January 26, 2022. (Tr., pp.101-103 (Grandmother); 199-200 (Perry).) Sometime during this period the Guardian requested the Student's educational records and "financial records" from the District, and the District provided the Guardian with the Student's educational records. (Tr., pp.133-134 (Guardian).)

29. On December 21, 2021, the District issued a PWN "proposing to continue" the Student's "educational placement" and perform a "reevaluation" of the Student. (D2, p.2; Tr., pp.192-194 (Perry).) Instead of conducting a complete reevaluation of the Student, the District proposed to accommodate the wishes of the Guardian and Grandmother and complete the triennial reevaluation on January 6, 2022, using data and reports from the 2015 and 2018 reevaluations, as well as an "informal review of [the Student's] current academic performance." (*Id.*) The District also proposed to continue the Student's current education placement and October 23, 2020, IEP, so that the Student could continue to benefit from SDI and accommodations. (*Id.*)

30. In the December 21, 2021, PWN the District noted that the Guardian had "voided" the consent to reevaluation dated September 13, 2021. (D2, p2; P, pp.18-24; Tr., pp.193-194 (Perry).)

31. Ms. Perry, the Guardian, and the Grandmother continued to communicate via email about scheduling a meeting to discuss the Student's triennial reevaluation and annual IEP. (P, pp.30-34; Tr., pp.194-198 (Perry).) Ms. Perry provided the Guardian and Grandmother with all copies of documentation regarding teacher input and the Student's October 23, 2020, IEP. (P, p.25; Tr., pp.200 (Perry).)

32. The Guardian filed a due process hearing request on December 30, 2021.

33. On January 21, 2022, the District issued another PWN “proposing to continue an IEP” and “complete eligibility using previous testing and current informal academic documentation.” (D3, pp.1-2; Tr., pp.199-200 (Perry).) In this PWN, the District proposed to conducting a reevaluation of the Student based on only the information the Guardian and Grandmother consented to using. (*Id.*) Specifically, the District would perform a reevaluation based on a review of the following data:

*(1) medical/physical report by Corey Clark, school psychologist completed in 2015; (2) cognitive testing dated 11/7/2015; (3) academic assessment dated 11/8/2015; (4) communication report by Sandra Robinson dated 10/10/18; (5) Speech-Language Auditory – Oral Skills Evaluation completed on 1/30/18; (6) social / emotional assessment completed 11/8/15; (7) audiology report from Seattle Children’s Hospital dated 1/30/18, and (8) a review of [the Student’s] current academic performance.*

(D3, p.2; Tr., pp.91-93 (Grandmother); 179-180 (Perry).) The District proposed to conduct a combined reevaluation and IEP team meeting scheduled for January 27, 2022, and agreed to “answer any questions from [the Grandmother] and [the Guardian].” (D3, p.2; Tr., pp.198-200 (Perry).)

#### **Reevaluation and IEP Meeting – January 27, 2022.**

34. The following individuals attended the January 27, 2022, IEP and reevaluation meeting: Ms. Perry, as Administrator / LEA Representative; Ms. Gray, special education teacher / case manager; Erick Albertine, Administrator / LEA Representative; Christy Tyler, general education science teacher; Carrie Bishop, District contracted school psychologist from DeSalvo Inc.; Robyn Raye, District contracted SLP from DeSalvo Inc.; the Guardian; and the Grandmother. (D5, p.1; Tr., pp.178-179, 185-186 (Perry).) Ms. Tyler took the meeting minutes. (D5, pp.1-5; P, pp.36-40.)

35. At the meeting, the Grandmother objected to the review of the 2015 medical / physical report by Corey Clark, school psychologist. (Tr., pp.44 (Grandmother); 197-199 (Perry).) The Guardian and the Grandmother informed the reevaluation and IEP team members that an Independent Educational Evaluation (“IEE”) existed and that this report is more representative of the Student’s skill levels. (*Id.*) The reevaluation and IEP team members considered reviewing Corey Clark’s 2015 report but rejected the option and deferred to the Guardian and the Grandmother’s objection. (D5, pp.6-7; Tr., pp.44 (Grandmother); 197-199 (Perry).) The Guardian and Grandmother agreed to provide the District with the IEE. (*Id.*) The Guardian and Grandmother also agreed to sign a release for the Student’s current SLP and audiology private

therapy records.<sup>11</sup> (*Id.*) The Guardian and the Grandmother did not inform the District that they lacked records, reports, or other documentation necessary to participate in the January 27, 2022, reevaluation and IEP team meeting. (Tr., p.201 (Perry).)

36. At the January 27, 2022, reevaluation and IEP team meeting the individuals present were not able make an eligibility determination based on the data and documentation consented to by the Guardian and Grandmother. (D5, pp.6-7; Tr., pp.198-201 (Perry).) The reevaluation and IEP team members were able to determine that the Student continued to have a hearing impairment which required audiology and SLP services, but the Guardian and Grandmother continued to prefer to seek those services from private providers. (*Id.*) Ms. Tyler, based on the Student's good performance in the general education environment, proposed implementing a Section 504 plan for the Student to accommodate him in the general education setting, and the Guardian and Grandmother requested additional time to consult with legal counsel and obtain information. (D5, pp.6-7; P, p.35; Tr., pp.154-156 (Guardian); 178, 203-204 (Perry).)

37. The District issued a PWN on February 3, 2022, regarding the January 27, 2022, reevaluation and IEP team meeting. (D5, pp.6-7; Tr., pp.202-203 (Perry).) The District "proposed to continue" the Student's October 23, 2020, IEP and to "wait to determine eligibility for special education" until a subsequent meeting could be held with the Guardian and Grandmother present. (D5, pp.6-7; Tr., pp.203-205 (Perry).) The District sent the attendees, including the Guardian and Grandmother, a copy of the meeting minutes. (D5, pp.1-3; P, pp.35-36; Tr., pp.156-158 (Guardian); 201-202 (Perry).) The District encouraged the attendees to offer any corrections to the meeting minutes, but the Guardian and Grandmother did not offer any corrections. (*Id.*) The District did not hold or conduct any IEP or reevaluation meetings during February 2022. (Tr., pp.102-103 (Grandmother); 204-205 (Perry).)

## CONCLUSIONS OF LAW

### THE IDEA AND JURISDICTION

1. OAH has jurisdiction over the parties and subject matter of this action for the Office of 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

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<sup>11</sup> There is nothing in the record demonstrating that the Guardian or Grandmother signed a release for the Student's SLP / audiology records or provided the District with an IEE conducted concurrent with or after the evaluation performed by Corey Clark in 2015.

promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

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

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

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

*Rowley, supra*, 458 U.S. at 206-07 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Id.* at 200-01.

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

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

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

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

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

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

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

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

**The Guardian has Not Shown that the District Failed to Provide the Guardian with Educational Records for the Student Prior to the January 27, 2022, IEP and reevaluation team meeting.**

**a. Applicable Law**

6. Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained or used by the district. WAC 392-172A-05190. "The school district shall comply with a request promptly and before any meeting regarding an individualized education program or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student." *Id.* A school district must respond within forty-five (45) calendar days. *Id.* The right to inspect records includes a right to an explanation and interpretation of the records, the right to copies of the records "if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent review the records." *Id.* Education records means the type of records covered under the definition used in the Family Education Rights and Privacy Acts ("FERPA"). WAC 392-172A-05180(2). FERPA defines an education record as records that are 1) directly related to the student and 2) maintained by an educational agency or institution. 34 C.F.R Section 99.3.

**b. Analysis**

7. The issue statement in this case refers to the Guardian requesting records before IEP meetings held in October 2022 and February 2022. However, as found above, no IEP meetings were conducted in October 2022 and February 2022; the only meeting held during the period at issue was the January 27, 2022, IEP and reevaluation meeting. The issue, then,

is whether the District provided the Guardian with requested educational records prior to the January 27, 2022, IEP and reevaluation team meeting.

8. The Guardian and Grandmother were not able to identify when they made the request for educational records. However, the Guardian asserts that she and the Grandmother “did not receive . . . [the] 2021 IEP and the 2022 IEP until a due process hearing was filed” on December 31, 2022. (Guardian’s Closing Brief, p.2.) During the hearing the Guardian testified that she also requested records showing how the Student’s IEP and accommodations are funded by the District. (Tr., pp.133-134 (Guardian).) The Guardian testified under oath that she received all the requested educational records for the Student, but she is still missing “the financial piece.” (*Id.*) During the hearing the Grandmother testified that the District did not submit written statements or reports before the January 27, 2022, IEP and reevaluation team meeting. (Tr., pp.52-54 (Grandmother).) The Grandmother did not specifically identify which written statements or reports she required to participate in the January 27, 2022, IEP and reevaluation meeting.

9. The District argues that it produced all educational records requested, and that Ms. Perry ensured that the Guardian and Grandmother had copies of all reports, records, and drafts prior to the January 27, 2022, IEP and reevaluation team meeting.

10. Based on the Guardian’s testimony that she received all of the Student’s educational records before the January 27, 2022, IEP and reevaluation team meeting, coupled with Ms. Perry’s testimony that she produced all reports and records by January 21, 2022, it must be concluded that the District complied with WAC 392-172A-05190.

11. Regarding the “financial records,” the Guardian and the Grandmother both testified that the only information that they did not have was the financial records showing how the District directly funded the Student’s SDI and accommodations. Such information does not meet the definition of an “education” or “educational record” as defined by the IDEA and FERPA because these records are not directly related to the Student nor maintained by the District. As testified to by Ms. Perry, the District does not keep records showing how individual students’ IEP’s or accommodations are funded. Given that the records the Guardian seeks are not the kind of records kept by the District, and because the financial records are not educational records pertaining to the Student, it is concluded that the District was not obligated to provide such records to the Guardian.

12. In sum, it is concluded that the Guardian has not demonstrated that the District failed to produce any educational records pertaining to the Student. Also, the Guardian has not shown that the District was required to produce the “financial records” regarding how the

District funds the Student's individual IEP and accommodations. As a result, it must be concluded that the Guardian has not carried her burden and has not shown that a violation of WAC 392-172A-05190 occurred.

**The Guardian has Not Shown that the District Failed to Ensure All Mandatory IEP Team Members Were Present for the January 27, 2022, Reevaluation and IEP Team Meeting.**

**a. Applicable Law**

13. Where a student may be participating in the general education environment, the required members of the student's IEP team are a general education teacher, a special education teacher or provider, a district administrative representative, the parents, and if appropriate, the student. WAC 392-172A-03095. The district members of the team must include someone able to interpret the instructional implications of evaluation results. *Id.*

14. Regarding reevaluation meetings, WAC 392-172A-03020 requires districts to convene a "group of qualified individuals" to conduct the reevaluation. Further WAC 392-172A-03025 requires that districts include a student's "IEP Team and other qualified professionals" at a reevaluation meeting to review reevaluation and assessment data and reports in order to make an eligibility determination. (*Id.*)

**b. Analysis**

15. While the issue in this case is whether the District failed to ensure that all mandatory IEP team members were present for IEP meetings in January and February 2022, the evidence presented shows that the only meeting held during the time period at issue occurred on January 27, 2022. There is no evidence of any other IEP team and / or reevaluation team meetings in January or February 2022. The evidence available reflects that the purpose of the January 27, 2022, IEP and reevaluation team meeting was to address the need to conduct a triennial evaluation and to continue the Student's October 23, 2022, IEP. Therefore, the issue for determination is whether all mandatory IEP team and reevaluation team members were present for the January 27, 2022, IEP and reevaluation team meeting.

16. In the Guardian's closing brief, the Guardian does not offer further explanation regarding whether certain individuals were present or should have been present at the January 27, 2022, IEP and reevaluation team meeting. During the hearing, the Grandmother and Guardian asserted that Ms. Hulvey (general education teacher), Ms. Ledford (special education teacher), and Ms. Siems (general education teacher) should have attended, as well as the Student's private SLP Sandy Robinson. (Tr., pp.54-56 (Grandmother); 131-132



(Guardian).) Both the Grandmother and the Guardian asserted that Carrie Bishop (school psychologist) and Robin Raye (SLP) from DeSalvo Inc. should not have attended. (Tr., pp.54-66 (Grandmother); 131-132 (Guardian).)

17. The District argues that all required and necessary IEP team members and reevaluation team members were present at the January 27, 2022, IEP team and reevaluation meeting.

18. The record shows that the persons present at the January 27, 2022, IEP and reevaluation team meeting were as follows: Ms. Perry, as District Administrator / LEA Representative; Ms. Gray, special education teacher / case manager; Erick Albertine, Administrator / LEA Representative; Christy Tyler, general education teacher (Science); Carrie Bishop, District contracted school psychologist; Robyn Raye, District contracted SLP; the Guardian, and the Grandmother. These personnel meet the requirements of WAC 392-172A-03095, WAC 392-172A-03020, and WAC 392-172A-03025.

19. If the Guardian and the Grandmother wanted Sandy Robinson, Ms. Hulvey, Ms. Ledford, and Ms. Siems to attend, then the option to invite these individuals was available as per WAC 392-172A-03095. However, there is nothing in the record that shows the Guardian or Grandmother asked that these individuals attend, or that the District prevented the individuals from attending. It appears that the Guardian and Grandmother determined after the January 27, 2022, IEP and reevaluation meeting that these individuals should have attended and that the Guardian and Grandmother would have benefitted from their attendance. Notably, however, because the District sought to schedule a second meeting in February 2022, the Guardian and Grandmother had the opportunity to request that Sandy Robinson, Ms. Hulvey, Ms. Ledford, and Ms. Siems attend.

20. While it is understandable that the presence of Ms. Bishop and Ms. Raye from DeSalvo Inc. at the meeting was confusing given that they do not directly work with the Student, the purpose of the meeting was to address the Guardian and Grandmother's concerns about DeSalvo Inc. and the reevaluation process. Ms. Bishop was present to answer questions about the proposed academic, cognitive, and behavioral assessments and to offer information about reviewing the Student's previous evaluations. Ms. Raye was present to assist in answering questions about assessing the Student in the area of communication and to review the Student's SLP records. Both were available to participate in the eligibility determination process. Thus, given the purpose of the meeting as well as the requirements of WAC 392-172A-03095, the presence of Ms. Bishop and Ms. Raye was appropriate.

21. The record available does not support the Guardian's contention that other qualified professionals or IEP team members were required to be present at, or were excluded from, the January 27, 2022, IEP and reevaluation team meeting. Therefore it is concluded that the Guardian has not carried her burden and has not proven a procedural violation of WAC 392-172A-03095, WAC 392-172A-03020, and WAC 392-172A-03025.

**The Guardian Has Not Shown that the District Failed to Develop a Reasonable and Appropriate IEP for the 2021-2022 Academic Year That Was Designed to Enable the Student to Make Progress Given the Student's Unique Circumstances, as required by WAC 392-172A-03090.**

**a. Applicable Law**

22. When determining whether an IEP is appropriate, the "question is whether the IEP is reasonable, not whether the court regards it as ideal." *Rowley*, 458 U.S. at 206-07. 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.* In developing a Student's IEP, WAC 392-172A-03110(1) requires the IEP team to consider:

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

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

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

understandable and must be measurable in order to determine whether a student is making progress toward the goals. (*Id.*)

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

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

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

28. School districts are generally entitled to deference in deciding what programming is appropriate for a student. *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1031 n.5 (9th Cir. 2009). For that reason, IEPs need not address the instructional method to be used unless a specific methodology is necessary for a student to receive an appropriate education. See *id.* at 1039; see also *Department of Education, Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46665 (2006) (nothing in IDEA requires IEP to include specific methodology; methods may be addressed in IEP if necessary for child to receive FAPE).

29. The IEP Team must also determine a student's "least restrictive environment," as required by WAC 392-172A-02050:

*Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:*

*(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and*

*(2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

30. Regarding a student's placement, the IEP team must consider the terms of WAC 392-172A-02060:

*(1) When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.*

*(2) The selection of the appropriate placement for each student shall be based upon:*

*(a) The student's IEP;*

*(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;*

*(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and*

*(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.*

*(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.*

31. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.* ("Instead of asking whether the [IEP] was adequate in light of [the

student's] progress . . . the more pertinent question [is] whether the [IEP] was appropriately designed and implemented so as to convey a meaningful benefit [to the student].")

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

## **b. Analysis**

33. The issue here initially appeared to be a challenge to the District's failure to create and implement an annual IEP for the Student in October 2021. However, as the proceedings in this matter progressed through the due process hearing, it became clear that the Guardian was challenging the October 23, 2020, IEP.<sup>12</sup> The Guardian's closing brief asserts that the Student's October 23, 2020, IEP does not reflect a "growth mindset" and reflects a "culture of poverty." (Guardian's Closing Brief, p.1.) During her testimony, the Guardian also stated that the Student's IEP was not appropriate because it relied on a 2015 evaluation by Corey Clark. (Tr., pp. 123-124; 142-144 (Guardian).) The Guardian did not otherwise identify why she disagreed with the contents of the IEP except that she believed the Student should be challenged. (Tr., pp.127-128 (Guardian).)

34. During the hearing, the Grandmother asserted that because the District was "still using Dr. Corey Clark's assessments and recommendations" and the Student's "lessons were two years behind," she believed that the October 23, 2020, IEP was not appropriate. (Tr., pp.58-67; 91-96 (Grandmother).) The Grandmother also asserted that she believed that the accommodation allowing general education teachers to "skip" unnecessary lessons was

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<sup>12</sup> The District was unable to perform either a triennial evaluation or develop an annual IEP in October 2021 due to lack of consent and participation by the Guardian. When a parent revokes her consent for a student to continue to receive special education services or an evaluation, the district may not continue to provide the student special education services or conduct an evaluation after providing a prior written notice. Washington Administrative Code (WAC) 392-172A-03000(1)(f) and (2)(e). A school district does not bear fault when the parents prevent the district from implementing the IEP. *Downingtown Area Sch. Dist.*, 113 LRP 34703 (SEA Pa. 2013) ("The District cannot be faulted for not doing what the Parents prevented it from doing."); *Bethlehem Area Sch. Dist.*, 109 LRP 21907 (SEA Pa. 2007) ("Having thus handcuffed the District, [the Parents] cannot now be heard to complain that the inclusion aspect of the program was not implemented appropriately."). It is undisputed that the Guardian prevented the District from developing and implementing an annual IEP in October 2021, that the District issued PWNs in December 2021, and January 2021, documenting its inability to proceed, and that District continued to implement the Student's October 23, 2020, IEP through the 2021-2022 academic year.

inappropriate, and that the Student should have received an SEE interpreter. (Tr, pp. 58-67, 91-97 (Grandmother).)

35. The District argues that at the time the October 23, 2020, IEP was developed, the Guardian and Grandmother did not express any concerns, that the IEP was reasonable and appropriate as it was based on the 2018 reevaluation of the Student, and the Student's grades and progress show that he progressed over time. The District also notes that the Grandmother may be requesting to add an accommodation to provide a "Sign Exact English" ("SEE") interpreter, but that she has not previously requested such an accommodation. The District does not address the Guardian's argument that the "skipped lesson" accommodation was inappropriate.

36. Certainly, the Guardian and the Grandmother overall believe that WACA and its curriculum were a poor fit for the Student for a variety of reasons. However, at no point did the Guardian or Grandmother specifically identify how the October 23, 2020, IEP academic goals in reading, writing, and math were unreasonable or inappropriate.

37. The record supports a conclusion that the October 23, 2020, IEP contains measurable goals, based on the strengths of the Student, the 2018 evaluation, the Guardian's desire to streamline the Student in the general education environment, and the academic needs of the Student, as required by WAC 392-172A-03090 and 03110. Moreover, the October 23, 2020, IEP lists the SDI and accommodations for the Student as required by WAC 392-172A-03090, and establishes his placement and least restrictive environment as required by WAC 392-172A-02050 and 02060.

38. It is clear that the Guardian and the Grandmother dispute a 2015 evaluation performed by Corey Clark. However, neither witness articulated why the 2015 evaluation was inappropriate or produced the IEE or SLP records that they believed would better inform the IEP team. Importantly, the October 23, 2020, IEP was not based on the 2015 evaluation performed by Corey Clark, but instead was formulated from the 2018 reevaluation, the 2019 IEP, and other data and reports by the Student's teachers, the Grandmother, and the Guardian.

39. Regarding the accommodation of skipping unnecessary lessons, the Grandmother and Guardian asserted that the Student did not need this accommodation and that he should participate in all lessons, necessary or unnecessary. However, at the time of the October 23, 2020, IEP meeting neither the Grandmother nor the Guardian objected to this accommodation.

40. Even so, as explained by Ms. Perry and Ms. Siems during the hearing, the accommodation was intended to treat the Student the same as all general education students and to allow general education teachers to skip lessons for all students. Further, as discussed below, Ms. Siems and Ms. Tyler, as well as other general education teachers, only skipped unnecessary lessons for all general education students. There is no evidence that the general education teachers or special education teachers skipped teaching the Student lessons that were otherwise taught or required of other general education students. Further, there is no obligation imposed by the IEP to give the Student more work or lessons than general education students. Given these circumstances, then, it is concluded that the accommodation of skipping unnecessary lessons to place the Student in the same or similar position as the other general education students meets the request of the Grandmother and the Guardian that the Student be challenged and streamlined into the general education environment. As a result, it is concluded that the Guardian has not shown that the accommodation was inappropriate.

41. Regarding the request for an SEE interpreter, the Guardian did not show that either she or the Grandmother requested this accommodation during the development of the Student's October 23, 2020, IEP, or that the accommodation would assist the Student in accessing his education nor advancing towards his educational goals. It is very important to note the fact that the Student had attended WACA for six years without the benefit of an SEE interpreter, and that the Student used multiple forms of communication including closed captioning, individualized chat pods, message boards, and break out rooms to communicate with WACA staff. It was only at the due process hearing that the Grandmother raised the request for an SEE for the first time.<sup>13</sup> While it is understandable that the Guardian and Grandmother would like the Student to access all available accommodations and supports, they have not shown that failure to include an SEE interpreter rendered the October 23, 2020, IEP inappropriate or that the Student was not able to access his education or receive an educational benefit without the SEE interpreter.

42. Given that the Guardian and Grandmother were not able to articulate the specific way the Student's October 23, 2020, IEP was unreasonable or inappropriate, and based on the evidence presented regarding the requested accommodations, it must be concluded that the Guardian and has not shown by a preponderance of the evidence that the October 23, 2020, IEP was inappropriate or not reasonably calculated to enable the Student to make progress appropriate in light of the Student's unique circumstances.

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<sup>13</sup> The Student no longer attends WACA, and is currently enrolled in the Seattle School District for the 2022-2023 academic year. (Tr., pp. (Grandmother).)

**The Guardian Has Not Shown that the District Materially Failed to Implement the Student's IEP During the 2021-2022 Academic Year Such that the Student was Denied a FAPE.**

**a. Applicable Law**

43. Once an IEP is completed, the school district is obligated to implement the IEP in conformity with its provisions. WAC 392-172A-03105(2)(b). Only material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9<sup>th</sup> Cir. 2007). Minor discrepancies in the services required by the IEP do not violate the IDEA:

“[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.

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

44. Violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

**b. Analysis**

45. The Guardian and the Grandmother testified that the District did not implement the Student's IEP during September 2021 because the District did not make the closed captioning accommodation available to the Student. (Tr., pp.34, 66-65, 99-100 (Grandmother); 128-129, 135-137 (Guardian).) During the due process hearing the Grandmother did not



specifically identify how the District did not otherwise implement the Student's IEP, but challenged the interpretation of the Student's IEP by Ms. Perry. (Tr., pp.66-68 (Grandmother).)

46. In her closing brief, the Guardian identified that the Student did not receive closed captioning for a period of time, stating as follows:

*-Manual mode of communication such as Sign essential English, Sign exact English, or cued speech ESL*

*-No Sign Exact English or Sign Language Trilingual Interpreter to ensure equal access*

*-Closed Captioning: May 25, 2021, Governor Jay Inslee signed the Closed Captioning*

*-Accommodation Ordinance. April 2019 our Mayor Jenny Durkan signed the Closed Captioning*

*-Accommodation Ordinance*

(Guardian's Closing Brief, p.2.)

47. The District argues that while there was a short period of time in September 2021, that the District's closed captioning accommodation did not function, the failure was not a material failure because the Student had a personal closed captioning device.

48. It was undisputed that the Student's October 23, 2020, IEP required the District to provide closed captioning as an accommodation. Ms. Perry and Ms. Gray admitted that there was an unknown period of time in September 2021 that this accommodation was not provided to the Student. The Grandmother's testimony that closed captioning software was necessary and that it was not provided for a period in September 2021 is credible. Given the admissions of Ms. Perry and Ms. Gray, coupled with the Grandmother's credible testimony, it is concluded that the District materially failed to implement the Student's closed captioning accommodation for a period of time in September 2021, and a violation of WAC 392-172A-03105 occurred.

49. However, there is no showing that the Student was denied a FAPE. The Student used his own closed captioning device, communicated with the teachers through an individualized chat blog, message board, and break out room, as well as accessed all written learning materials. There is no testimony that the Student could not otherwise participate in general education classes such that his right to FAPE was impeded or that he was deprived of any

educational benefit. Thus, while a violation occurred, because the Student was not denied a FAPE as per WAC 392-172A-05105(2), no relief is warranted.

**The Guardian Has Not Shown that Since August 2021 the District Failed to Provide the Student with SDI and Related Services that are Designed and Supervised by a Certificated Special Education Teacher and / or Appropriately and Qualified Staff**

**a. Applicable Law**

50. Special education must be provided by appropriately qualified staff. WAC 392-172A-02090. Other staff, including general education teachers and paraprofessionals, may assist in the provision of special education if the instruction is designed and supervised by special education certificated staff and the student's progress is monitored and evaluated by special education certificated staff. WAC 392-172A-02090(1)(i).

51. Under the IDEA, a school district may generally select the staff that serves a student. *Mercer Island Sch. Dist.*, 119 LRP 21258 (SEA Wash. 2019). Unless only one particular individual can provide the services a student needs to receive FAPE, school districts retain the right to select staff to provide instruction and services to a student eligible for special education. (*Id.*) As long as a classroom teacher is properly qualified, the IDEA provides no authority for parents to request one teacher over another. (*Id.*; see also *Morton Sch. Dist.*, 106 LRP 18808 (SEA Wash. 2006) (“Case law is clear, school districts have the sole discretion to hire and assign staff.”).

**b. Analysis**

52. The Guardian argues that Ms. Gray, Ms. Ledford, Ms. Perry, Ms. Leaverton, and Ms. Siems were not qualified to teach the Student because “they did not talk to the family,” or “support the Student’s deafness,” or provide a curriculum that reflected the Student’s need for a “growth mindset theory model.” (Guardian’s Closing Brief, pp.1-2; Tr., pp.48-52 (Grandmother); 134-137 (Guardian).) Further, the Guardian and Grandmother argue that the District’s staff did not develop a “therapeutic relationship” or use curriculum that reflected “Afro-Americans and Latinx” diversity. (*Id.*)

53. The Guardian’s and Grandmother’s aspirational goal of obtaining teachers who will support the Student, form a therapeutic relationship, use curriculum based on a diversity, equity, and inclusion, and address the desire for a “growth mindset” is admirable and would maximize the Student’s educational experience.

54. However, the law only requires that the District provide staff that is certificated and trained such that they are “appropriately qualified.” Here, all the Student’s teachers received at least a bachelor’s degree (some have master’s degrees), have experience teaching in the general education and special education environments, and are certificated to teach in the State of Washington. Further, the special education teachers assigned to the Student are educated in special education, have experience teaching special education, and are certificated in special education in the State of Washington. These teachers designed, supervised, and delivered the Student’s SDI and accommodations. Notably, there is no showing that the Student needed a specific individual to provide specific SDI in the areas of reading, writing or math, or implement the Student’s accommodations.

55. Because the law does not provide any authority for the Guardian or the Grandmother to request a specific teacher or require the District’s staff to meet the aspirational goals for the Student’s education, it is concluded that the Guardian has not met her burden on this issue. Therefore, it is concluded that the District did not fail to provide the Student with SDI and accommodations that are designed and supervised by a certificated special education teacher and appropriately qualified staff.

#### **REQUEST FOR RELIEF**

56. Because the Guardian has not carried her burden on the issues presented, it is concluded that there is no basis for an award of compensatory education, or other equitable remedies.

#### **ORDER**

Based on the above findings of fact and conclusions of law, it is THEREFORE HEREBY ORDERED:

1. The Guardian has not shown that the District failed to provide the Guardian with the Student’s educational records prior to the January 27, 2022, IEP and reevaluation meeting.
2. The Guardian has not shown that the District failed to provide the Student with SDI designed and supervised by a certificated special education teacher and / or appropriately qualified staff;
3. The Guardian has not shown that the District failed to provide an IEP for the 2021-2022 academic year that was not reasonably calculated to enable the Student to make progress appropriate in light of the Student’s unique circumstances;

4. The Guardian has not shown that the District failed to implement the Student's IEP during the 2021-2022 academic year such that the Student was denied a FAPE;
5. The Guardian has not shown that the District failed to have all the mandatory IEP team members present for the January 27, 2022, IEP and reevaluation meeting;
6. The Guardian's request for relief is therefore DENIED.

Served on the date of mailing.



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COURTNEY E. BEEBE  
Administrative Law Judge  
Office of Administrative Hearings

### **Right To Bring A Civil Action Under The IDEA**

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

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Dated November 2, 2022, at Seattle, Washington.

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Representative  
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cc: Administrative Resource Services, OSPI