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June 14, 2017

Superintendent of Public Instruction
Administrative Resource Services

Parents
[REDACTED]

Melissa Madsen, Executive Director of Special Services
Issaquah School District
565 NW Holly Street
Issaquah, WA 98027

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1191 Second Avenue, Suite 2000
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In re: Issaquah School District
OSPI Cause Nos. 2016-SE-0103/-0105
OAH Docket Nos. 11-2016-OSPI-00193/-00196

Dear Parties:

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

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

Sincerely,

Anne Senter
Administrative Law Judge

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

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JUN 14 2017

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION OAH - SEATTLE

IN THE MATTER OF:

ISSAQUAH SCHOOL DISTRICT

OSPI CAUSE NOS. 2016-SE-0103
2016-SE-0105

OAH DOCKET NOS. 11-2016-OSPI-00193
11-2016-OSPI-00196

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

A due process hearing was held before Administrative Law Judge (ALJ) Anne Senter on March 17, 20 - 22, 24, and 31, and April 3 - 4, and 6 - 7, 2017, in Issaquah, Washington. The Parents of the Student whose education is at issue¹ appeared and represented themselves. The Issaquah School District (District) was represented by Carlos Chavez and Sarah Johnson, attorneys at law. Also present were Melissa Madsen, District executive director of special services, and Tara Slinn, District director of elementary and early childhood special services.

STATEMENT OF THE CASE

The District filed a Request for Due Process Hearing (the District Complaint) with the Office of Superintendent of Public Instruction (OSPI) on November 8, 2016. The District Complaint was assigned Cause No. 2016-SE-0103 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered November 9, 2016, which assigned the matter to ALJ Senter. The Parents filed a Response to the District Complaint on November 17, 2016.

The Parents filed a Due Process Hearing Request (the Parents' Complaint) with OSPI on November 22, 2016. The Parents' Complaint was assigned Cause No. 2016-SE-0105 and was forwarded to OAH for the assignment of an ALJ. A Scheduling Notice was entered November 22, 2016, which assigned this matter to ALJ Senter as well. The District filed a Response to the Parents' Complaint on December 1, 2016.

The two cases were consolidated for hearing, and the District was allowed to amend its Complaint. Prehearing conferences were held on November 18 and December 8, 2016, January 9, 20, and 31, February 1 and 3, and March 1 and 15, 2017. Prehearing orders were entered November 21 and December 15, 2016, January 6, 10, and 24, February 2 and 9, and March 3 and 16, 2017.

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¹ To ensure confidentiality, names of parents and students are not used.

Superintendent of Public Instruction
Administrative Resource Services

Due Date for Written Decision

As set forth in the Prehearing Order entered on November 21, 2016, in Cause No. 2016-SE-0103, the due date for a written decision in that case was continued to 30 days after the close of record at the District's request. As set forth in the Second Prehearing Order, the due date for a written decision in Cause No. 2016-SE-0105 was also continued to 30 days after the close of the record at the District's request. As the record closed with the parties' submission of post-hearing briefs on May 15, 2017, the due date for a written decision in both cases is **June 14, 2017**.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1- D30; and

Parents' Exhibits: P1 (page 2 only); P2 - P5; P6 (pages 2 - 3 only); P7 - P12; P14 - P15; P18 - P19; P21 - 23; P25 - P28; P30 - P35; P38; P40 - P41; P43 - P48; P51 (pages 2 - 6 only); P53; P57; P59 - P64; P66 - P72; P74; P76; P79 (pages 1 - 43 and 56 - 75 only); P82; and P85 - P87.

Witnesses Heard (in order of appearance):

The Student;
Shelly Fry, District assessment specialist;
The Student's Father;
Jessica Clark, District general education teacher;
Melissa Madsen, District executive director of special services;
Sue Schoot, District special education teacher;
Devon Heras, District school psychologist;
Cheryl Anthony, Successful Learning Educational Services LLC president;
Tara Slinn, District director of elementary and early childhood special services;
Amy Van de Vord, District general education teacher; and
Christina Desmond, District speech language pathologist.

Post-Hearing Briefs

The parties timely filed post-hearing briefs. The Parents requested to file both a written brief and an oral closing argument recorded on a DVD. To the extent the DVD contains material that was not admitted as evidence at the hearing, that material is not considered.

ISSUES

As set forth in the Sixth Prehearing Order, the issues for the due process hearing are:

- 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 appropriately evaluate the Student in 2015 by:

- A. Not evaluating the Student in all areas of suspected disability: writing, spelling, language, grammar, math, and social;
 - B. Performing biased tests;
 - C. Not appropriately assessing her given her dyslexia;
 - D. Not appropriately explaining the evaluation to the Parents;
 - E. Not following "user qualifications;"
 - F. Not completing the test;
 - G. "Skewing" evaluation results and test results;
 - H. Having evaluators not adequately trained in the Student's disability test the Student;
- ii. Failing to appropriately evaluate the Student in 2016 by:
- A. Not evaluating the Student in all areas of suspected disability: writing, spelling, language, grammar, math, and social;
 - B. Performing biased tests;
 - C. Not appropriately assessing her given her dyslexia;
 - D. Not appropriately explaining the evaluation to the Parents;
 - E. Not following "user qualifications;"
 - F. Not completing the test;
 - G. "Skewing" evaluation results and test results;
 - H. Having evaluators not adequately trained in the Student's disability test the Student;
- iii. Failing to develop an appropriate individualized education program (IEP) in 2015 by:
- A. Not basing it on the Student's individual needs or providing appropriate differentiation for the Student;
 - B. Including vague goals;
 - C. Not including social goals;
 - D. Not allowing the Parents to appropriately participate in IEP meetings;

- E. Not providing for instruction or tutoring by a one-on-one aide trained to work with dyslexic students;
- F. Placing the Student in special education classes with students who had different disabilities;
- G. Not providing services in reading, spelling, language, or math;
- H. Not considering the Parents' concerns, advice, or insight;
- iv. Failing to implement the Student's 2015 IEP in any way;
- v. Denying and/or ignoring the Parents' request for an IEP meeting(s);
- vi. The Student's failure to meet her 2015 IEP goals;
- vii. Allowing the Student's 2015 IEP to expire;
- viii. Failing to develop an appropriate IEP in 2016 by:
 - A. Not providing appropriate accommodations for the Student's dyslexia;
 - B. Not basing it on the Student's individual needs or providing appropriate differentiation for the Student;
 - C. Not including social goals;
 - D. Not providing for instruction or tutoring by a one-on-one aide trained to work with students with dyslexia to work with the Student;
 - E. Placing the Student in a special education class grouped with students who are at her reading level, not her IQ, disability, or ability level;
 - F. Not providing services in reading, language, spelling, or math;
 - G. Not making the goals different than those in the 2015 IEP;
 - H. Not allowing the Parents to appropriately participate in IEP meetings;
 - I. Not considering the Parents' concerns, advice, or insight;
- ix. Not allowing the Parents to observe the Student in her general or special education classroom;
- x. Not providing general or special education teachers and aides who are specially trained to work with students with dyslexia during the 2015-2016 and 2016-2017 school years;

b. Whether the Parents are entitled to their requested remedies:

- i. An independent educational evaluation (IEE) conducted by special education teachers certified to teach children with dyslexia;
- ii. Yearly evaluations in math, reading, spelling, and language by specialists outside the District certified to teach and test dyslexic children;
- iii. Specially designed instruction in math, English, spelling, writing, and social provided by a special education teacher trained to teach students with dyslexia;
- iv. Placement of the Student in groups with children who are dyslexic, not with students of varying disabilities but similar reading ability;
- v. Training for all special education teachers working with the Student in the Orton Gillingham method for teaching a dyslexic student;
- vi. One-on-one student to teacher/aide ratio;
- vii. An order that the ordered services be provided by a new resident school district if the Student moves to a different school district;
- viii. Reimbursement to the Parents for evaluations they obtained for the Student;
- ix. Parents to be allowed to observe the Student in her general or special education classes once per week;
- x. Prospective placement of the Student at the Hamlin Robinson School (or another school specializing in dyslexia) at the District's expense until the Student completes the eighth grade and then at a high school specializing in dyslexia, the Academic Institute of Bellevue;
- xi. A monthly stipend for the Student for transportation to the Student's private placement;
- xii. Summer school placement for the Student in a dyslexia program affiliated with Hamlin Robinson every summer until the Student turns 18 at the District's expense;
- xiii. A dance class twice a week to help the Student with social skills at the District's expense;
- xiv. And/or other equitable remedies, as appropriate.

c. Whether the District's evaluation of the Student conducted in October 2015 and revised in November 2015 is appropriate and, if not, whether the District should pay for an IEE of the Student;

- d. And, whether the District's math assessment of the Student conducted in November 2016 is appropriate and, if not, whether the District should pay for an IEE of the Student.

FINDINGS OF FACT

Background

1. At the time of the hearing, the Student was eight years old and in the third grade. Exhibit D7; Student, Tr. 90.²
2. The Parents requested that the Student be evaluated for eligibility for special education and related services in October 2014 when she was in the first grade. Exhibit D2, p.3; Exhibit D3. A District guidance team denied this request because the Student was not performing significantly below her peers at the time. *Id.* Instead, the team recommended interventions in the general education setting. *Id.*

2015 Evaluation

3. The Parents made another request before the beginning of the Student's second-grade year and provided the District with the results of a private psychoeducational evaluation they had obtained from Linda Gorsuch. Exhibits D1, D2, D3. Ms. Gorsuch is a retired school psychologist. Exhibit D3, p. 15; Father, Tr. 377.
4. Ms. Gorsuch's report noted that she had the Mother complete a National Center for Learning Disabilities Checklist in which the Mother noted significant problems with language, reading, written language, and attention. Exhibit D3, p. 2. The Mother did not identify problems with math or social/emotional on the same checklist. *Id.* at 4. Ms. Gorsuch conducted a number of assessments and determined that the Student "demonstrated a pattern of academic and cognitive strengths and weaknesses consistent with the classic profile of the specific learning disability of dyslexia." *Id.* at 13.
5. Ms. Gorsuch recommended that the Student's "language abilities" be evaluated. *Id.* at 14. She also noted that the District may wish to initiate its own evaluation to determine eligibility for special education services and recommended that such an evaluation encompass written language and math to produce a more complete academic profile. *Id.*
6. Ms. Gorsuch recommended that the Student receive specialized instruction or tutoring in "reading methods consistent with the Structured Literacy approach endorsed by the International Dyslexia Association."³ *Id.* She also recommended that the Student learn to use assistive technology such as an electronic dictionary, word processor, speech to print, or

² Citations to the hearing transcript are to the name of the witness followed by the page number(s) on which the testimony is located.

³ Ms. Gorsuch's report does not identify specific curriculum. Exhibit D3, p. 12. It states that the structured literacy method is guided by four principles: intensive; systemic and cumulative; explicit instruction; and diagnostic teaching. *Id.*

computer applications. *Id.* She also identified some classroom accommodations for the Student. *Id.*

7. The District's guidance team referred the Student for a special education evaluation. Exhibits D1, D2, D4, D5.

8. The District conducted an evaluation, which resulted in an evaluation team meeting on October 15, 2015, and a report with the same date. Exhibit D7.

9. The evaluation team reviewed existing data about the Student. Exhibit D7, pp. 1-2. It noted that she had participated in a learning assistance program (LAP) during kindergarten and the later part of her first-grade year, and had participated in a reading intervention group with an educational assistant when she was not participating in LAP. *Id.* at 1.

10. The team looked at the Student's grades. In kindergarten, her third-quarter report card stated that she met grade-level expectations in all areas except phonics skills, she "demonstrate[d] appropriate attentiveness and listening behaviors," and used her time wisely. *Id.* She exceeded expectations in her physical education class. *Id.* In first grade, she was below grade-level expectations at the end of the year in "reads grade level text," she was approaching grade-level expectations with additional practice and support needed in phonics skills and comprehension. *Id.* at 2. With respect to math, the Student met grade level expectations in both content and mathematical practices. *Id.* With respect to writing, she met grade level expectations for writing structure and was approaching grade level expectations for writing development and using language conventions appropriate for grade level. *Id.* Her report card stated, with respect to math, that she has strong number sense and understanding of math concepts and that she is working on her math communication and reasoning. *Id.*

11. The team included the Student's health and developmental history received from the Parent. Exhibit D7, p. 6. The Mother completed a parent input form, in which she identified art, social skills, kindness, and math as the Student's strengths, and dyslexia, speech, and getting ideas across as her concerns at both home and school. *Id.* Under "medical diagnosis," the evaluation report notes that the Parents report the Student has dyslexia and difficulty with language. *Id.* It also noted Ms. Gorsuch's conclusion that the Student "demonstrated a pattern of academic and cognitive strengths and weaknesses consistent with the classic profile of the specific learning disability of dyslexia." *Id.* Under educational implications, the report quoted the following from Ms. Gorsuch's report:

Dyslexia is a language-based learning disability. Dyslexia refers to a cluster of symptoms, which result in people having difficulties with specific language skills, particularly reading. Students with dyslexia usually experience difficulties with other language skills such as spelling, writing, and pronouncing words.

Id. The school nurse conducted vision and hearing screenings, which the Student passed. *Id.* at 6-7.

12. The Student's second grade teacher, Jessica Clark, identified the following strengths:

Math is [the Student's] stronger subject. She also enjoys helping other students and the teacher. She volunteers to take care of things and has started to

organize things for an absent friend even without prompting. She is silly and has a good sense of humor. She likes to laugh and is a happy girl to have in class.

Exhibit 6, p. 5. Ms. Clark reported the Student was below average/weak in basic reading skills and reading fluency, but average/age appropriate in reading comprehension. *Id.* at 3. She identified that the Student was below average/weak in both writing conventions and writing process. *Id.* With respect to math she reported that the Student was average/age appropriate in math calculation and below average/weak in math problem solving. *Id.* She stated, regarding math, that the Student had demonstrated “adequate progress” in place value and skip counting, the two areas recently covered. *Id.* at 4. With respect to behavior/attention, Ms. Clark stated that the Student is “very sweet and can be a social butterfly – which is okay at recess, but not during . . . work time.” *Id.* at 4. She noted that the Student’s attention needs to be redirected occasionally. *Id.* With respect to social skills, Ms. Clark noted that the Student gets along with other students, enjoys helping others, and tries very hard to make smart choices. *Id.* at 5. She noted that the Student is often a model for other students when she has her tools cleaned up quickly and quietly and is ready for the next set of directions. *Id.* The teacher reported that the Student’s Fountas and Pinnell (F & P) instructional reading level ranged between E and G. Exhibit D11, p. 2.

13. The evaluation report noted that the Student performed in the 21st percentile for total reading and in the 40th percentile for total math on the Stanford 10, a standardized evaluation given by the District to all first graders. Exhibit D7, p. 11.

14. Devon Heras, District school psychologist,⁴ was the case manager for the Student’s evaluation. Exhibit D7, p. 1. Ms. Heras holds an educational specialist degree in school psychology from the University of Washington. Heras, Tr. 1360-61. This was a three-year, post-graduate program that included an internship. *Id.* She holds a residency educational staff associate certificate with a school psychologist endorsement from OSPI. Exhibit D30; Father, Testimony. Her training included administering social-emotional behavioral assessments, and she was observed during her practicum by Ph.D.-level school psychologists when she administered these types of assessments. Heras, Tr. 1323. She was also supervised in administering, scoring, and interpreting these assessments during her internship. *Id.* Ms. Heras has worked as a school psychologist for three years. *Id.* at 1245.

15. To assess the Student’s social/emotional functioning, Ms. Heras had Ms. Clark and the Mother complete rating scales for the Behavior Assessment System For Children – Second Edition (BASC-2). Exhibit D7, p. 12. Based on the Mother’s ratings, the following composites and scales were in the at-risk range: internalizing problems composite, anxiety scale, somatization scale, atypicality scale, hyperactivity scale, activities of daily living scale, and functional communication scale. *Id.* Scores in the at-risk range may identify a significant problem that may not be severe enough to require formal treatment or may identify the potential

⁴ The Parents allege they were improperly led to believe that Ms. Heras was a psychologist, rather than a school psychologist, during the evaluation. However, the evaluation report identifies Ms. Heras as the case manager with her title listed as “school psychologist” on the first page of the evaluation summary. Exhibit D7, p. 1. The evaluation report refers to Ms. Heras as a school psychologist in many other places as well. Exhibit D7. Additionally, she was identified as a school psychologist on the prior written notice proposing to initiate the evaluation. Exhibit D2, p. 6.

of developing a problem that needs careful monitoring. Exhibit P64, p. 7. The Mother identified two critical items: "easily annoyed by others: sometimes" and "sleeps with parents: sometimes." Exhibit D7, p. 12. Critical items are areas that may be of particular interest when responses include sometimes, often, or almost always. Exhibit P64, p. 8.

16. Ms. Heras noted in her report that the Student had been in Ms. Clark's class for only three weeks when Ms. Clark completed the BASC-2. *Id.* Ms. Clark rated the Student in the at-risk range in the following areas: school problems composite, learning problems score, adaptive skills composite, adaptability scale, social skills scale, leadership scale, and study skills scale. *Id.* Ms. Clark did not identify any critical items. *Id.* Ms. Heras learned that Ms. Clark had rated the Student as never demonstrating a variety of behaviors under the adaptive skills composite because Ms. Clark had not observed her demonstrating those skills, not because the Student could not demonstrate them. Accordingly, Ms. Heras noted that the results of the teacher rating scale, particularly those under the adaptive skills composite, should be interpreted with caution. *Id.* Neither the Parent nor Ms. Clark identified any clinically significant areas of concern. Exhibit D7, p. 12. Scale scores in the clinically significant range suggest a high level of maladjustment. Exhibit P64, p. 7.

17. Comparing the ratings provided by the Parent and Ms. Clark, Ms. Heras determined there was a difference between how the Student is perceived at home and at school. Exhibit D7, p. 13. She noted that this could be the result of differing expectations and challenges in the two different environments. *Id.* The report noted that the BASC-2 is not a diagnostic tool and its results indicated the Student may be experiencing difficulties with academics at school, and behaviors related to anxiety, somatization, atypicality, hyperactivity, activities of daily living, and functional communication at home. *Id.* Specially designed instruction (SDI) in this area was not recommended as there was no adverse educational impact at school. *Id.*

18. The BASC-2 manual identifies the "user qualifications" as follows:

Individuals using the *Behavior Assessment System for Children, Second Edition* (BASC-2) interpret its various components and use them in the evaluation, diagnosis, and treatment of developmental, learning, and behavioral disorders. Users are expected to have completed a recognized graduate training program in psychology; to have received formal academic training in the administration, scoring, interpretation of behavior-rating scales and personality scales; and to have received supervised experience with such instruments. Most clinical, school, pediatric, counseling, neuro-and applied developmental psychologists will have received such training.

Exhibit P64, p. 2 (Italics in original). Notably, the "user qualifications" apply to individuals who "interpret" the components of the BASC-2, not those who complete the rating scales. *Id.* The scales completed by Ms. Clark are called "teacher rating scales" and ask the individual completing the scales "what type of class do you teach." *Id.* at 24. Ms. Heras has the education, training, and experience to meet the user qualifications criteria to interpret the BASC-2 and Ms. Clark, as a teacher completing the rating scales, was not a "user" for purposes of the user qualifications. There is no evidence of record, including the excerpts from the BASC-2 manual and the teacher rating scales, that identifies any qualification or training required for teachers who complete the teacher-rating scales. There is no evidence of record to find that a

teacher must have worked with a student for some minimum amount of time before that teacher can complete the BASC-2 teacher rating scales for that student. *Id.* at 1 - 28.

19. With respect to the Student's cognitive function, the team considered Ms. Gorsuch's report. Exhibit D7, p. 14. Ms. Gorsuch had administered the Woodcock-Johnson Fourth Edition (WJ-IV) test of cognitive abilities. *Id.* The testing resulted in an average score in general intellectual ability. *Id.* Most subtests also resulted in average scores, although the Student scored above average in concept formation and well below average in phonological processing. *Id.* Ms. Gorsuch noted that phonological processing underpins and intertwines with the development of spoken and written language so impairment in phonological processing affects the development of reading and written language production. *Id.*

20. Ms. Heras conducted cognitive testing as well. Ms. Heras administered the Differential Abilities Scale, Second Edition (DAS-II). *Id.* at 14. Ms. Heras followed the instructions for administering the assessment. Heras, Tr. 1369. The Student's standard scores for general conceptual ability (GCA) was at the 50th percentile and in the average range. *Id.* at 16. The Student's verbal abilities score, nonverbal reasoning score, and spatial composite score were all in the average range as well. Exhibit D7, p. 14. The results of the DAS-II indicate that the Student's overall cognitive functioning falls within the average range. The Student's performance on the DAS-II corresponds to a criterion score of 82, as determined by Washington's severe discrepancy table for purposes of identifying students with specific learning disabilities using the severe discrepancy model. *Id.* at 16; Exhibit P82.

21. The team reviewed Ms. Gorsuch's academic assessments of the Student. Exhibit D7, p. 17. Ms. Gorsuch had assessed the Student's reading skills with the WJ-IV test of achievement, Form B. The Student's standard scores in broad reading and basic reading skills clusters were below average. *Id.* Her standard scores in the phoneme-grapheme knowledge cluster were average and her standard scores in the reading fluency cluster were well below average. *Id.* Her standard scores in letter-word identification and spelling of sounds subtests were average. *Id.* Her standard scores in passage comprehension, sentence reading fluency, word attack, oral reading, and spelling subtests were all below average. *Id.*

22. Ms. Gorsuch had also administered the Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2), which addresses phonological awareness, phonological memory, and rapid naming. *Id.* Ms. Gorsuch reported that the Student's composite scores in phonological awareness were average, although the subtests that make up the composite were variable. *Id.* at 17-18. Her scores on the phonological memory and rapid symbolic naming composites were below average. *Id.* Ms. Gorsuch reported that these findings predict the Student may have difficulty acquiring efficient reading and written language skills. *Id.* at 18.

23. Ms. Gorsuch also administered the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) oral reading fluency assessment. *Id.* at 18. The Student obtained an oral reading fluency score of 38 words read correctly per minute (WRCPM) on a second-grade reading passage for which the benchmark is 51 WRCPM. *Id.* Her accuracy was 82 percent. *Id.*

24. In addition to reviewing Ms. Gorsuch's academic assessments, the evaluation team conducted academic testing as well. Sue Schoot, a District special education teacher, administered the Kaufman Test of Educational Achievement-Third Edition (KTEA-III). *Id.*; Exhibits P71, P72. Ms. Schoot has been a special education teacher for 19 years and has

training and experience administering the KTEA-III to students. Schoot, Tr. 1023, 1026, 1840-41.

25. The Student's reading composite score was 82, which is below average. Exhibit D7, p. 18. Her letter and word recognition score of 87 was average, but her reading comprehension score of 79 was below average. *Id.* Her math composite score was 95, which is average, and both her math concepts and applications score of 104 and her math computation score of 87 were average. *Id.* Her written expression score was 92, which is average. *Id.* at 18-19. The written expression subtest included the writing of an essay. *Id.* at 19. Ms. Schoot noted that the Student had many errors in spelling. *Id.*

26. The Student's standard scores in written expression, basic reading skills, reading fluency skills, reading comprehension, mathematical calculation, and mathematical problem solving on the KTEA-III were compared against her criterion score from the DAS-II found on the State's severe discrepancy table. *Id.* at 28. Two of the standard scores – those in reading fluency skills and reading comprehension – were below the criterion score, demonstrating a severe discrepancy between the Student's achievement and her ability level in those areas. *Id.* Accordingly, the team concluded that the Student had a specific learning disability (SLD) in those areas and recommended that she receive SDI in them. *Id.* at 19, 28.

27. Although there Student's scores in written expression on the KTEA-III were average and did not identify a severe discrepancy between her achievement and ability, the team determined, based on professional judgment, that she receive SDI in written expression because she struggles with writing in the classroom, often makes spelling mistakes, and has difficulty with punctuation. *Id.* at 18-19, 28.

28. The team did not recommend SDI in math because the Student performed within the average range on the KTEA-III on both subtests and because her teacher's report and performance on the Stanford 10 indicated adequate progress in the area. *Id.* at 18.

29. Stacie Schultz, a District speech language pathologist (SLP), conducted a communication evaluation. *Id.* at 21. Ms. Schultz holds a master's degree and a certificate of clinical competency. *Id.*; Desmond, Tr. 2193-94.

30. Ms. Schultz administered the Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5), which is a standardized test for the identification of language and communication disorders. Exhibit 7, p. 21. The Student's composite language score, receptive language index score, expressive language index score, and language structure index scores were all within the average range. *Id.* Based on these results, her ability to both understand and use spoken language are within normal limits. *Id.* at 22. Ms. Schultz compared the Student's results on the CELF-5 with her verbal score on the DAS-II and determined that they were consistent. *Id.*

31. Ms. Schultz also administered the Goldman-Fristoe Test of Articulation – Second Edition (GFTA-2), which considers a child's ability to accurately produce a speech sound at the single word level. *Id.* The Student's score was within the average range, although Ms. Schultz noted some speech sound errors related to /s/ and "sh" sounds. *Id.* At the sentence level, Ms. Schultz noted that the Student was able to produce /s/ and "sh" sounds without error. *Id.* She also noted that the Student self-corrected two other errors during the sentence-level testing. *Id.*

Ms. Schultz also used informal probes to further consider the Student's speech sound errors. When given placement cues, the Student correctly produced the /s/ sound in all word positions without a model and produced the "sh" in the initial word position without a model. *Id.* Ms. Schultz also obtained input from Ms. Clark, who rated the Student's speech as intelligible with no noticeable differences from same-age peers. *Id.* Additionally, Ms. Schultz conducted a structural-functional exam, which revealed normal symmetry, range of movement, strength, and coordination in the Student's tongue, lips, and jaw. *Id.* Ms. Schultz also noted that the Student's fluency and rate of speech are typical for her age. *Id.* Further, Ms. Schultz noted that the Student's voice had a slightly hyponasal quality but that it did not impact her intelligibility. She determined that her voice quality and pitch are in the typical range with no concerns. *Id.* Ms. Schultz noted that the Student demonstrated appropriate social communication skills for her age. *Id.* at 23. Because the Student's scores on standardized measures showed her communication skills were within the average range compared to same-aged peers and because her communication skills did not impact her communication in the class room, it was determined that SDI was not recommended in communication. *Id.*

32. The Student's fine motor skills were assessed by Cindy Hendrickson, occupational therapist (OT). *Id.* at 24. Ms. Hendrickson used the Bruininks-Oseretsky Test of Motor Proficiency - Second Edition (BOT-2) - fine motor, which is a standardized assessment for evaluating fine motor skills. *Id.* The Student's performance was average in both fine motor control and manual coordination. *Id.* Ms. Hendrickson also reviewed writing samples provided by Ms. Clark from the classroom and received information from Ms. Clark, who reported that the Student's fine motor skills were in the low average range. *Id.* Ms. Hendrickson also observed the Student writing. *Id.* SDI in fine motor skills was not recommended for the Student because her fine motor skills fell within the average range. *Id.* Because the Student demonstrates some difficulty with the formation of letters and with the appropriate sizing and spacing of letters when not using lined paper, it was recommended that she be given accommodations such as lined paper for assignments and early access to keyboarding. *Id.*

33. As part of the evaluation, the Student was twice observed by Ms. Heras, once during a lesson in math and once while she was working independently. *Id.* at 26. Ms. Heras observed that the Student's behavior was similar to her peers' and noted that she raised her hand when the teacher asked for volunteers and shared her answers with another student when prompted to do so. *Id.* Ms. Heras's observations reflected that the Student is capable of following classroom instructions, attending to a lesson, participating with her peers, and completing class work. *Id.* at 27.

34. The evaluation team concluded, and stated in the evaluation report, that the Student qualified for special education and related services under the specific learning disability eligibility category. Exhibits D7, D8. It also concluded that she should receive SDI in reading (reading fluency and reading comprehension) and written expression (writing conventions and writing process). *Id.* It also recommended a number of accommodations for the Student. Exhibit D7, pp. 4, 9.

35. After the testing was complete, an evaluation team meeting was held on October 15, 2015, with both Parents participating. Exhibits D7, D8. In addition to the draft evaluation report, Ms. Heras provided the Parents with a four-page summary of the evaluation results in a different format. Exhibit D8. The team agreed to the Parents' request that an assistive technology assessment be conducted. Exhibit D9, p.2.

36. The evaluation report included a discussion of the assessments and review of data to support the conclusion regarding eligibility, a statement of how the Student's disability affects her involvement and progress in the general education curriculum, and dated signatures of each of the professional members of the reevaluation group, certifying the report represented their conclusions. Exhibit D7. It also contained documentation of the results of individual assessments or observations of individuals contributing to the report. *Id.*

37. The District conducted an assessment revision to assess the Student in assistive technology (AT) as it had agreed with the Parents at the evaluation team meeting. Exhibit D11. Maddy McAllen, an assistive technology specialist, assessed the Student to determine if she was a candidate for the use of software products that facilitate reading and written language. *Id.* at 3. Ms. McAllen used Microsoft Word with Co:Writer on a laptop. *Id.* Ms. McAllen observed the Student's use of the word prediction and dictation features in Co:Writer and recommended that she have access to a computer for writing assignments with word prediction/spelling support and text to speech software. *Id.* The assessment report also included and referred to the information in the evaluation report from October 15, 2015. It contained dated signatures of each of the professional members of the reevaluation group, certifying the report represented their conclusions. *Id.* It also contained documentation of the results of Ms. McAllen's individual assessment and observations of the Student. *Id.*

38. A meeting was held on November 5, 2015, to discuss the AT assessment revision and the Student's initial individualized education program (IEP). Exhibits D11; D12. The Father attended the meeting, but the Mother was unable to attend because she was in the hospital. Exhibit D11, p. 6; Exhibit D12, p. 3; Father Testimony. The Father did not ask that the meeting be rescheduled. Schoot, Tr. 1844; Slinn, Tr. 1632; Father Testimony.

2015 IEP

39. The IEP resulting from the meeting on November 5, 2015, bears that date as both the "IEP meeting date" and the "IEP start date." Exhibit D12, p. 3. The IEP states that the next IEP meeting and the next IEP start date must both occur on or before November 5, 2016. *Id.*

40. The IEP provides for 20 minutes of SDI in reading and 20 minutes of SDI in writing five times per week, with the remainder of the Student's education in the general education setting. *Id.* at 21.

41. The IEP includes the following annual goals:

Annual goal: Reading

By 11/04/2016, when given text at her instructional reading level [Student] will apply phonetic principals (sic) to read (sounds out, uses initial letters, uses common letter patterns to make sense of whole words improving word recognition and word meaning skills to read and comprehend text. (sic) from 94% words read correctly to 98% words read correctly as measured by teacher data.

By 11/04/2016, when given a 2nd grade level story containing controlled text [Student] will read the story and answer multiple choice and or fill in the blank

comprehension questions improving her comprehension skills from 6/12 correct questions to 10/12 correct questions as measured by classroom data.

By 11/04/2016, when given an (sic) writing assignment [Student] will write grade appropriate sentences using inventive spelling and her sight word vocabulary improving writing process from writing 1 long run on sentence to being able to write 4 sentences as measured by daily writing assignments.

By 11/04/2016, when given a writing assignment [Student] will use correct punctuation throughout her writing improving writing conventions from 0% accuracy using correct punctuation in her writing to 50% accuracy using correct punctuation in her writing as measured by weekly writing assignments.

Id. at 15-17.

42. The IEP provides the following accommodations and modifications: access/use of visual aids in all classrooms; access/use of a word processor/computer with word prediction software and text to speech in the general education and special education classrooms; access/use of audiobooks read aloud in the general education and special education classrooms daily when appropriate; access/use of Brightlines paper in all classrooms; redirection to task in all classrooms; materials/tests read aloud to verify the Student knows what is expected of her in the general education classroom; preferential seating near point of instruction in the general education classroom; extra time for writing assignments in the general education classroom; modified homework/classwork in the general education classroom; modified grades in content areas impacted by disability in the general education classroom; use of a human/electronic reader for all passages or items for standardized assessments; standardized testing to take place individually, in a small group, or in an alternative setting. *Id.* at 18-19.

43. The Father believes he may have asked for accommodations that day that were not included in the IEP, including that the Student's work not be corrected with red pen and that the Student not be allowed to do crossword puzzles or word game activities, but he is not certain. Father Testimony. District staff present at the meeting do not recall him requesting those accommodations at that time. Schoot, Tr. 1846; Clark, Tr. 720; Slinn, Tr. 1632. This is consistent with the Mother's statement in a later IEP meeting that the reason there was no accommodation about no corrections in the IEP was that the Father did not know all the details when the IEP got signed when she was in the hospital. Exhibit P10, p. 35. Accordingly, the Parents have not proven that they asked for accommodations that day that were not included in the Student's IEP. At the time, the Father was pleased that the District had agreed to provide services in reading and writing, which were his greatest areas of concern. Father Testimony. He was not then concerned that the IEP did not address math or social skills. *Id.*

44. Although the Parents allege that the District failed to implement the IEP in any way, they acknowledge that Ms. Schoot provided the Student with the SDI identified in her IEP. Father Testimony. Ms. Schoot worked from the Fountas and Pinnell Level Literacy Intervention program during the Student's second-grade year and noted that she made progress in it. Schoot, Tr. 1037.

45. Both Ms. Schoot and Ms. Clark credibly testified that they consistently provided the accommodations set forth in the initial IEP. The Parents' assertions to the contrary rely largely

on speculation or their understanding of reports from the Student as they were not present in the classroom. See Father Testimony. The Parents did demonstrate that the Student did not always use either the computer or Brightlines paper, but could not establish the frequency with which the Student wrote on other worksheets or lined paper without highlighting. Some of the Parents' allegations relate to the use of crossword or scramble worksheets or correcting the Student's paper, which had not been incorporated into the IEP as accommodations.

46. On January 19, 2016, the Mother contacted Leslie Lederman, the principal, and asked to schedule an "issue review" for the Student. Exhibit D14, p. 4. A meeting was initially scheduled for January 27, 2016, but once Ms. Lederman learned more about the subjects the Mother wished to discuss, she suggested that the whole IEP team be present. *Id.* at 1. The meeting was rescheduled to a time the team could meet.⁵ *Id.*

47. An IEP meeting was held on February 2, 2016. Exhibit D16. Both Parents attended the meeting. Exhibit D16, p. 1. Ms. Schoot provided an update of how the Student was performing in the special education class. As a result of the meeting, the team agreed to a number of the Parents' requests, which were memorialized in a PWN dated February 12, 2016:

- The teacher will provide Brightlines paper for the Student to use at home and the Student will be encouraged to use it at school when she is not using her laptop.
- The Student will not participate in state or District testing.
- The Student will not read or work with parent volunteers in the general education classroom.
- Ms. Clark will encourage the Student to use Co:Writer in the general education classroom whenever possible.
- The Student will not be provided scrambled or crossword puzzle word exercises during choice time.
- A time was arranged for the Mother to speak to the Student's class about dyslexia.
- The team confirmed that the computer has been and will be accessible to the Student at all times.

Exhibit D17, p. 3.

48. In addition, the District responded, in the prior written notice (PWN), to a number of other issues raised by the Parents at the meeting. Exhibit D17. In response to the Parents' request that they or their "learning guides" be able to drop into the general education class to monitor

⁵ The Father testified, responding to a leading question by the Mother, that the Mother asked the principal to amend the IEP about a week after she got out of the hospital, but the District refused. Father, Tr. 401. The Father testified the family had sent emails to the District with this request. *Id.* at 402. The record does not contain the date on which the Mother returned home from the hospital. The record contains no emails from the Parents to the District requesting an IEP meeting or changes to the IEP before the email chain starting on January 19, 2016. See Exhibit D14. Thus the Parents have not met their burden of proving they requested an IEP meeting or changes to the IEP prior to the email request for a meeting on January 19, 2016.

the Student and her progress, the District informed the Parents they could contact Ms. Clark to volunteer in class during designated times but visits must be scheduled in advance in accordance with District policy because dropping in unannounced is disruptive to the learning environment. *Id.* at 2.

49. In response to the Parents' request that the District look at the Student's communication again because they believed her lisp was getting worse, the District notified the Parents that Ms. Heras has contacted the SLP, who will follow up with the request. *Id.*

50. In response to the Parents' request for a tutor for the Student in the summer, the District informed the Parents that it would provide information about a fee-based general education summer school program to all parents in the spring. *Id.*

51. The Parents had learned at the IEP meeting that another student would be joining the special education class so the Student would be receiving instruction in a small group rather than one-on-one with Ms. Schoot. The Parents requested that the instruction remain one-on-one. The District informed the Parents that delivery of the SDI in a small group setting is the least restrictive environment and that a one-on-one setting would be too restrictive. *Id.*

52. The Parents requested that the Student leave the general education class and go to Ms. Schoot's class when there is a substitute in Ms. Clark's class and that she remain in Ms. Clark's class all day when there is a substitute in Ms. Schoot's class. The District explained that it is important for the Student to stay with her peers in her least restrictive environment when Ms. Clark is gone but that Ms. Clark will provide substitutes with information about the Student and her needs. The District also explained that the Student's IEP requires she receive her SDI in the special education environment. Ms. Schoot shared that the substitute in her class is often the same person, who is a qualified teacher. *Id.*

53. In response to the Mother's request to read with the Student in her general education class during independent reading time Monday through Friday, the Parents were informed that they could contact Ms. Clark to volunteer on Tuesdays and Thursdays during designated parent volunteer times. The District informed the Parents that the Mother could not support the Student in the special education classroom because of confidentiality concerns. *Id.*

54. In response to the Parents' request that Ms. Schoot and Ms. Clark be trained in the Orton-Gillingham method, the District explained that it has selected other research- and evidence-based curricula and methodologies for the general and special education settings. Ms. Schoot agreed, however, to review the Orton-Gillingham manual. *Id.*

55. In response to the Parents' request that the Student's work not be corrected, the team explained that effective teaching includes a one-on-one discussion of errors and re-teaching as close to the initial instruction as possible. *Id.*

56. In response to the Parents' request that the Student be required to use Co:Writer at all times, the District explained that the Student would be encouraged, but not required, to use it and will have access to it on her laptop at all times. *Id.*

57. The Parents did not request another IEP meeting during the remainder of the Student's second-grade school year. Schoot, Tr. 1860. Soon after the school year ended, the Parents

asked for another IEP team meeting to be held "ASAP" for the fall because they didn't want the Student to have to wait until October or November to get help. Exhibit D18, p. 4; D28. Principal Lederman responded that, even though the Student's annual IEP review would be after school started, she would still receive services in September. Exhibit D18, p. 4. The Parents responded that they wanted it ASAP so she would be set up the first day of school. *Id.* The same day, the Parents wrote to the superintendent and a number of other District staff, stating that they were requesting mediation. *Id.* at 3. Ms. Madsen provided the Parents with contact information for the Sound Options Group to request mediation. *Id.* at 2. After talking with Sound Options, the Parent informed the District that she would like to have a facilitated IEP meeting and asked if it could be held before school started. *Id.* A meeting was set for August 31, 2016. *Id.*

58. A facilitated IEP meeting was held on August 31, 2016, with a Sound Options facilitator. Exhibit P10, pp. 30-44. The team worked on the wording of new goals and agreed to get new baselines for them when school started. *Id.* They also discussed possible accommodations and addressed a number of the Parents' concerns. *Id.* It was agreed that a draft IEP would be developed at the end of the month based on the changes discussed with updated present levels and goals. *Id.* at 44.

59. Following the facilitated IEP meeting, the Mother wrote to the superintendent and told him the meeting was "fabulous." Exhibit D20, p. 1. She stated that the team drafted a new IEP for the Student and that, for the first time in three years, she had hope for the Student and the school year. *Id.*

60. Amy Van de Vord was the Student's third-grade general education teacher. Van de Vord Testimony. She provided the Student with the accommodations from the initial IEP during the portion of the school year before the new IEP was developed. *Id.* At the beginning of the third-grade year, Ms. Schoot determined that the books in the Fountes and Pinnell (F & P) curriculum were becoming too challenging for the Student. Schoot, Tr. 1038. She changed to the Read Well curriculum because it had different pieces that she thought would be useful for the Student. *Id.* at 1038. The Read Well curriculum is based, at least in part, on the Orton-Gillingham method. Madsen Testimony.

2016 IEP

61. An IEP team meeting was held on October 27, 2016, with both Parents present. Exhibit D23. The resulting IEP states that its "start date" is November 8, 2016. Exhibit D23, p. 3. It provides for an increase to 30 minutes of SDI in reading and 30 minutes of SDI in writing five days per week, with the Student otherwise educated in the general education setting. *Id.* at 14.

62. The IEP addressed the Student's present levels of performance and progress on her goals from the initial IEP. Exhibit D23, pp. 5-6. With respect to math, Ms. Van de Vord reported that the Student seems to be able to work through story problems and understand what to do with the information when the class completes problems together, but she is not always able to correctly read the problem or work through multistep problems independently without support or clarification from the teacher. Exhibit D23, p. 5. She noted that the Student is quick to complete problems and rushes through her work, leading to simple errors in calculations or missed information from the problem. She is working on slowing down and going back to check her work.

63. With respect to reading, the Student was at an F & P instructional level J. *Id.* at D23, p. 5. The grade-level expectation was between levels M and O. *Id.* This was an increase from the instructional level range of E through G at the time of the initial evaluation. See Exhibit D11, p. 2. With respect to writing, Ms. Van de Vord reported that the Student writes stories quickly but with limited use of punctuation, capitalization, and correct spelling. On one writing project, the teacher recorded the Student's voice telling the story and then had her listen to it over and over when she typed the story using Co:Writer to find the correct spelling. *Id.* at 5-6. Socially, Ms. Van de Vord reported the Student is very sweet and kind to her peers. She can act "a little silly" at times but also focuses and follows directions when instructions are given. She is not shy to participate or work with her teammates. She likes to help her peers and teachers. *Id.* at 6.

64. Ms. Schoot reported the Student's progress on her previous goals. *Id.* With respect to the goal of improving from 94% to 98% of words read correctly at her instructional level. The Student was at 94% level accuracy. *Id.* Thus, she had not met the goal. However, because her instructional reading level had increased several levels, she had made some progress on the goal by reading the same percentage of words correctly at the higher level.

65. With respect to the second reading goal about improving comprehension skills for a second-grade level story from 6/12 correct questions to 10/12 correct questions, the Student was able to answer 8/10 questions correctly. *Id.* at 6-7. Thus, she had not met the goal, although she had made some progress on it.

66. With respect to the writing goal about writing grade-appropriate sentences, improving from writing one run-on sentence to being able to write four sentences, the Student was continuing to work towards writing paragraphs including a topic sentence with supporting sentences and a conclusion. *Id.* Thus, she had not met this goal, but made progress toward it.

67. As to the second writing goal regarding using correct punctuation, improving writing conventions from zero percent to 50 percent accuracy, the Student was at 50 percent accuracy when using a computer with teacher support. The IEP stated that the Student had met this goal. However, the goal did not state that it would be measured with teacher support. Accordingly, it is not evident that the goal is met, although reaching 50 percent with teacher support constitutes progress toward the goal.

68. The IEP contains the following goals:

Annual Goal: Reading

By 11/7/2017, when given text at her instructional reading level [Student] will apply phonetic principals (sic) to read and make sense of whole words improving fluency by increasing her accuracy with word recognition and word meaning skills from 71 CWPM (correct words per minute) to 120 CWPM (correct words per minute) as measured by teacher data

Annual Goal: Reading

By 11/07/2017, when given a 3rd grade level story containing controlled text [Student] will read the story out loud and answer multiple choice (sic), improving her comprehension skills from 13/20 or 65% correct questions to 18/20 or 90% correct questions as measured by teacher data

Annual Goal: Writing

By 11/07/2017, when given a writing assignment [Student] will use a computer to write to the topic improving writing organization and conventions from a score of 6 on the Paragraph Writing Rubric (see attached) to a score of 12 on the same rubric as measured by CBM⁶ x 3 data probes.

Id. at 9. The attached paragraph writing rubric sets forth scoring criteria for main idea topic sentence; supporting details; explanations, examples, expansions; basic writing conventions, and neatness. *Id.* at 10.

69. The IEP contains the following accommodations: access/use of audiobooks in the general education classroom; access/use of bright lines paper in all classrooms; word prediction software in the general education classroom; materials/tests read aloud to verify the Student knows what is expected of her in the general education classroom; provision of visuals (e.g. rubrics, checklists, graphic organizers) in all classrooms; preferential seating close to instruction in the general education classroom; redirection of attention to task in all classrooms; an electronic/adult reader to read text/items that do not measure reading ability in the LRC 1 classroom; and additional time to complete tasks in all classrooms. *Id.* at 11.

70. The IEP also contains the following modifications for the general education classroom: "not to correct in writing on her work (content)," not asking the Student to read out loud in a large group, and modifying homework/classwork. *Id.* at 11-12. Additionally the IEP provides that parent volunteers will not work the Student and she will not participate with peer reading partners. *Id.* at 12.

71. For assistive technology, the IEP states that the Student will have access to a computer for writing assignments with word prediction/spelling support and text to speech software and to Bookshare3 for auditory access to textbooks or books or other online reading websites. *Id.* at 4. The IEP does not provide for extended school year (ESY) services. *Id.* at 15.

72. At the IEP meeting, the Parents and the team addressed a number of concerns the Parents had identified in advance after reviewing the draft IEP. Exhibit P10, pp. 2-9. None of these concerns involved adding additional accommodations to the IEP or concerns about the Student socially. *Id.* The Mother noted that she had a hard time helping the Student with Co:Writer at home, but the meeting notes do not reflect that the Parents asked the District to have the Student stop working with the computer or using Co:Writer. *Id.*

73. The Parents asked about reevaluating the Student in math and communication. Exhibit P10, p. 5. The team agreed to reevaluate in math. The team did not agree to reevaluate in communication. The Student had not qualified in the area of communication during the initial evaluation. Ms. Schultz was no longer working at the school, so Christine Desmond, a different SLP, was present at the IEP meeting. She reviewed the initial evaluation and determined that it was done correctly and that the Student's score would need to drop significantly before she would qualify for speech services. Additionally, Ms. Van de Vord shared that the Student was

⁶ CBM means curriculum based measurements. School Testimony.

not struggling with pronunciation in class although she sometimes tripped on her words. *Id.* at 6. The Parents requested ESY services and the team explained that those decisions were not made until the spring. *Id.* at 7. The Parents asked for a one-on-one aide in the general education class. The team said it was not hearing a need for that from the teacher but it would take data and the team could come back together, after interventions were put in place, to make that decision later. *Id.*

74. The Parents each indicated that they did not fully agree with the IEP when they signed it. *Id.* at 3. The District provided the Parents with a PWN dated November 4, 2016, proposing to implement the IEP as written on November 8, 2016. *Id.* at 16-17. The PWN identified a number of requests made by the Parents and explained why they were not accepted. *Id.* The PWN also stated that the team had agreed to conduct an assessment revision in math, which would be completed within 35 school days from the date the Parents' consent was received. *Id.* at 17.

2016 Assessment Revision in Math

75. Ms. Heras coordinated the assessment revision in math. Exhibit D27. She reviewed existing data, including the results of assessments from the initial evaluation. She noted that, since the initial evaluation, the Student had taken the IOWA test in second grade, a district-wide academic achievement test. The Student had scored in the 2nd percentile in reading and in the 45th percentile in math. *Id.* at 3. On the Student's third-trimester report card in second grade, she was approaching grade-level expectations for both math content and mathematical practices. *Id.* at 4.

76. Ms. Van de Vord provided teacher input, reporting that the Student was performing below average in math. She noted that the Student struggles to understand the information given in story problems and what to do with it. She also noted that she would be more successful with calculations if she slowed down. When Ms. Van de Vord asks the student to recheck her work and try again, the Student can sometimes fix her errors, although Ms. Van de Vord usually needs to further explain or demonstrate before the Student can independently continue. She noted that the Student did not meet standard for any of the questions on the first module covered and that she needs continuous practice with basic math facts. *Id.*

77. The Student was also administered curriculum based measures in the form of addition and subtraction problems, on which she earned a score of 76 percent. She was also given a "sprint" in which she had to add and subtract and was able to complete 17 out of 24 problems in one minute. When given a sprint with repeated addition and multiplication, she earned a score of 23 out of 27 in one minute. It was noted that the Student rushes through her work when solving addition, subtraction, and multiplication problems and does not recognize what mode of operation she should be applying. *Id.*

78. Ms. Schoot administered the KTEA-III in math. *Id.* at 4. The Student's composite math score of 91 fell within the average range. Her math concepts and applications subtest score of 101 was also in the average range. Her math computation subtest score of 84 was below average and placed her in the 14th percentile. *Id.* The report noted that the Student appeared to rush through items on the math computation subtest and did not pay close attention to what type of problem she was trying to solve, sometimes adding instead of subtracting. *Id.* All of the standard scores on the KTEA-III were higher than the Student's criterion score of 82 established from the administration of the DAS-II in the initial evaluation. *Id.* at 6. Accordingly, a severe

discrepancy was not established between the Student's performance and her ability and she did meet the eligibility criteria for a specific learning disability in math. *Id.* at 6. The team concluded, based on the Student's performance on the KTEA-III, curriculum based measures and District testing, that SDI was not recommended at the time. While testing and in the general education classroom, the Student tends to rush through her math work. The team determined that the Student would benefit from accommodations in the general education classroom, such as frequent check-ins, reminders to slow down, and reminders to check her work. The team determined that she did not require SDI in math to make adequate progress. *Id.*

79. The Parents received a draft assessment revision report prior to the evaluation team meeting. Father Testimony. Although the Parents were invited to the evaluation team meeting, they declined to attend. *Id.*

80. The assessment revision report stated that the Student continued to be eligible for special education due to a specific learning disability in reading and writing. Exhibit D27, p. 6. It included a discussion of the assessments and review of data to support the conclusion regarding eligibility and a statement of how the Student's disability affects her involvement and progress in the general education curriculum. *Id.* Exhibit D7. It contains documentation of the results of individual assessments or observations of individuals contributing to the report, but it does not contain dated signatures of the professional members of the evaluation team certifying that the evaluation represents their conclusions. *Id.*

The Student's Progress

81. In addition to making progress on her IEP goals, the Student made progress in the general education curriculum as well. The Student made progress in reading in both second and third grade. Clark, Tr. 616, 702; Van de Vord, Tr. 1973-75. By the winter assessment period of the 2016-2017 school year, the Student had progressed to a level M in F & P, which measures reading comprehension, fluency, and accuracy. Clark, Tr. 738; Schoot, Tr. 1065, 1871-72, Van de Vord, Tr. 1973-75, 2090. The Student made progress in math as well. Clark, Tr. 616-18, 700-01, 739-40.

82. The Parents believe that the Student has not made progress on her goals or in the general education class based on their observations of the work she brings home and the work she does at home. The Parents timed the Student reading a passage and counted her errors during her testimony. However, the record does not contain evidence of the significance of that information. The Parents presented some Student work sample and elicited multiple opinions about whether they demonstrated progress. However, at least one of the samples was a writing project the Student completed on her own at home and others were journal assignments in which the Student was encouraged to write freely without worrying about writing conventions. Other samples included math pre-tests in which the Student had not yet been taught the material. For these reasons, the examples and testimony about them do not carry greater weight than the testimony of the teachers who work with the Student on a regular basis and evaluate her work.

Parents' Expert

83. The Parents presented testimony by Cheryl Anthony. Ms. Anthony has a Master's Degree in Education, which focused on curriculum and instruction. Exhibit P86. She is a certificated teacher in Washington with a K-12 reading endorsement. *Id.* She does not have a special education endorsement. Anthony, Tr. 1569. She is the president of Successful Learning Educational Services LLC, an educational service business providing screening for dyslexia and dysgraphia and direct services for reading, spelling, math, written composition, handwriting, and time management. Exhibit P86. She has training in assessing dyslexia and in certain reading and other educational programs. *Id.* She has also lobbied in Washington and Oregon for additional training for Washington educators in dyslexia. *Id.* Ms. Anthony has taught in first through fourth grade for approximately eight years. Anthony, Tr. 1592. She has reviewed many IEPs over the years but has only begun writing them herself during this current school year. Anthony, Tr. 1548. Ms. Anthony has not met the Student and did not talk to any of her teachers. Anthony, Tr. 1582. She reviewed samples of the Student's written work from the Parents, but did not know what the samples represented, such as whether they were samples of free writing or of exercises the District had used to measure her progress against her goals. Anthony testimony. Because Ms. Anthony does not have education, training, and experience in special education, has little experience writing IEP goals, has not met the Student or talked to her teachers, and has only reviewed samples of the Student's work provided by the Parents without an understanding of what the samples represented, her opinion is given little weight.

84. Ms. Anthony testified that she "would say" the Student is severely to profoundly dyslexic. Anthony, Tr. 1503. However, she acknowledged that she had not diagnosed the Student and was relying on her understanding that Ms. Gorsuch had diagnosed the Student with dyslexia. *Id.* at 1575.

85. Ms. Anthony opined that a dyslexic child needs "a multisensory approached instruction that is explicit and direct." Anthony, Tr. 1505. Ms. Anthony uses Orton-Gillingham based programs. *Id.* at 1505. She opined that it is "imperative" that educators use these methods in teaching children with dyslexia. *Id.* She acknowledged, however, that Washington State does not require school districts to use specific programs or methods. Anthony, Tr. 1591-92.

86. Ms. Anthony's opinion is that teachers teaching children with dyslexia need specific training to meet their needs. Anthony, Tr. 1509. Her experience is that children in special education classes make little progress in reading, spelling, and written communication. *Id.* at 1510. Additionally, her opinion is that it is important for general education teachers working with dyslexic students to have training in dyslexia to properly provide support and instruction for them. *Id.* at 1515. Ms. Anthony acknowledged that the Washington State legislature has not mandated that school districts provide any specific training on dyslexia to teachers. Anthony, Tr. 1591.

87. Ms. Anthony opined that it would be helpful for someone who administers the CELF test to have training in dyslexia. Anthony, Tr. 1523. However, Ms. Anthony does not have training as an SLP and has not herself administered that test. Anthony, Tr. 1569.

88. Ms. Anthony is "somewhat familiar" with Fountas and Pinnell and does not believe it to be a beneficial reading program for dyslexic students because they need instruction in a program that is explicit, multisensory, direct, and with a structured language approach. Anthony, Tr.

1522. Ms. Anthony is also “somewhat familiar” with the Read Well program. Anthony, Tr. 1522. She does not recommend it for dyslexic students. Although it has elements that could be helpful for a child with mild dyslexia, she does not believe it to be in-depth enough or to provide the intensive practice necessary for a child who is moderately to profoundly dyslexic. *Id.* She does not recommend it for the Student because it does not have the intensive practice in phonemic awareness, which is a key component for progress for children with dyslexia. *Id.* at 1522. Ms. Anthony recommends an Orton-Gillingham-based program. *Id.* at 1523. Ms. Anthony does not know whether the Read Well program is based on Orton-Gillingham. *Id.* at 1592.

89. When Ms. Anthony teaches students privately who come to her in the third grade, they typically work with her for at least three and a half years to get to where they should be. *Id.* at 1573.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the District is the party seeking relief in Cause No. 2016-SE-0103 with respect to the Parents' request for independent educational evaluations (IEEs), the District has the burden of proof with respect to those issues. As the Parents are the party seeking relief in Cause No. 2016-SE-0105, they have the burden of proof with respect to the remaining issues, which were raised in that case.

The IDEA

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Board of Education of Hendrick Hudson Central School District 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.

Id. at 206-207 (footnotes omitted).

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

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

Id. at 188-189.

5. A district is not required to provide a "potential-maximizing" education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01.

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

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

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

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

M.C. v. Antelope Valley Union High Sch. Dist., ___ F.3d ___, 2017 U.S. App. LEXIS 9359, at 22 (9th Cir. 2017)(citation omitted).

EVALUATIONS

7. School districts are required to follow the requirements for evaluations set forth in WAC 392-172A-03020, which provides:

Evaluation procedures.

(1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an

assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

See also 34 CFR 300.304.

8. School districts must also follow the requirements for evaluations set forth in WAC 392-172A-03025, which provides in pertinent part:

Review of existing data for evaluations and reevaluations.

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

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and

whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

See also 34 CFR 300.305.

9. In conducting evaluations, school districts are required to follow the requirements for evaluation reports set forth in WAC 392-172A-03035, which provides:

Evaluation report.

(1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

Independent Educational Evaluations (IEEs)

10. Parents have the right to obtain an IEE if they disagree with a school district's evaluation under certain circumstances. WAC 392-172A-05005(1); 34 CFR 300.502(a)(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district at district expense. WAC 392-172A-05005(1)(c)(i); 34 CFR 300.502(a)(3). If a parent requests that a district provide an IEE, the district must either ensure that an IEE is provided at public expense without unnecessary delay or initiate a due process hearing within 15 days to show that its evaluation is appropriate. WAC 392-172A-05005(2)(c).

2015 Evaluation

Assessing Areas of Suspected Disability

11. As set forth above, when conducting evaluations, districts must ensure that a child is assessed in "all areas of suspected disability." WAC 392-172A-03020(3)(e); 34 CFR 300.304(c)(4). But a district need not evaluate in the areas in which it does not suspect a disability. See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C. 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (SEA WA 2009).

12. The Parents argue that the District did not evaluate the Student in all areas of suspected disability because it did not evaluate her in writing, spelling, language, grammar, math, and social. The District did, however, evaluate the Student in writing, math, speech/language, and social. Spelling and grammar are both components of written language, an area in which the District did test the Student. Accordingly, the District has tested the Student in all areas of suspected disability.

Not Appropriately Assessing "Given Dyslexia" and Training of Evaluators

13. The Parents argued that the Student was not appropriately assessed given her dyslexia. But it is unclear in what manner the Parents believe the District's evaluation was flawed or inappropriate with respect to the Student's dyslexia. It is possible that the Parents are complaining that the District assessed the Student to determine if she had a specific learning disability, rather than to determine if she had dyslexia. This distinction is without merit.

14. A student who is eligible for special education means, in part, a student who has been evaluated and determined to need special education because of having a disability in one of 13 eligibility categories. One of those 13 eligibility categories is the "specific learning disability" category. WAC 392-172A-01035(1)(a); 34 CFR §300.8(a)(1). Specific learning disability means:

[A] disorder in one or more of the basic psychological processes involved in understating or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, *dyslexia*, and developmental aphasia, that adversely affects a student's educational performance.

WAC 392-172A-01035(2)(k)(i); 34 CFR §300.8(c)(10) (emphasis added). Therefore, the law recognizes that dyslexia is *one example of a larger group* of specific learning disabilities (SLDs), although dyslexia is not its own separate eligibility category.

15. The District properly assessed the Student to determine if she had a specific learning disability in reading, writing, and/or math, be it dyslexia or some other type of SLD. The U.S. Department of Education, Office of Special Education Programs (OSEP), recently reiterated its guidance on this matter:

As we explained in our October 23, 2015 letter, *while IDEA does not prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in eligibility*

determinations, there is no requirement under IDEA that a disability label or "diagnosis" be given to each student receiving special education and related services, so long as the child is regarded as having a disability and receives needed special education and related services. 34 CFR § 300.111(d). To ensure that this occurs, the public agency must ensure that each child is assessed in all areas related to the suspected disability, including as appropriate, academic performance. 34 CFR § 300.304(c)(4). There is no provision in the IDEA that gives a parent the right to dictate the specific areas that the public agency must assess as part of the comprehensive evaluation; the public agency is only required to assess the child in particular areas related to the child's suspected disability, as it determines appropriate.

Letter to Unnerstall, 68 IDELR 22 (OSEP 2016) (italics added). OSEP went on to state:

However, if a determination is made through the evaluation process that a particular assessment for dyslexia is needed to ascertain whether the child has a disability and the child's educational needs, including those related to the child's reading difficulties, then the public agency must conduct the necessary assessments.

Id. No such determination was made by the District in this case that testing in dyslexia was necessary to determine the Student's educational needs and it has not been established that it was necessary to appropriately evaluate the Student.

16. The Parents also argue that the individuals who evaluated the Student should have been trained in dyslexia to properly assess her. But they provided no evidence that any of the assessment materials used by the District required such training for evaluators. The only evidence presented by the Parents on this subject was Ms. Anthony's testimony that it would be helpful for an evaluator to be trained in dyslexia before administering the CELF, a speech and language assessment. Because Ms. Anthony is not an SLP, has not herself administered the CELF, and only stated that it would be "helpful" rather than necessary in order to evaluate a student with dyslexia, it has not been established that it is a violation of the IDEA that the individuals who evaluated the Student were not specifically trained in evaluating dyslexic students.

"Biased Tests" and "Skewing Results"

17. The Parents have not explained how they believe the District's tests were biased tests or in what way the District skewed the results.

Explaining Tests to Parents

18. The Parents argue that the District did not explain to them the tests it administered to the Student. The District prepared a thorough evaluation report, which explained each of the tests and provided it to the Parents in advance of the evaluation meeting. Ms. Heras also produced a separate four-page document that summarized the testing results in a different format, and the testing was discussed at an evaluation team meeting at which the Parents were present. There is no evidence that the Parents asked questions or expressed confusion and were not provided additional information. Accordingly, no violation of the IDEA is found with respect to this issue.

User Qualifications

19. The Parents argued that Ms. Heras and Ms. Schoot did not meet the user qualifications for the administration of the BASC. As set forth in the findings of fact, Ms. Heras did meet the user qualifications and the qualifications did not apply to Ms. Schoot. Accordingly, no violation is found with respect to user qualifications.

Incomplete Tests

20. The Parents have not identified any tests that were incomplete in a way that would be inconsistent with the instructions for completing the test. Accordingly, no violation is found with respect to incomplete tests.

Appropriateness of the District's Evaluation for Purposes of IEE

21. With respect to the evaluation procedures set forth in WAC 392-172A-03020, the Parents were provided with prior written notice of the evaluation. The evaluation team was composed of qualified professionals. It used a variety of assessment tools and strategies to gather relevant information about the Student, including multiple standardized assessment tools appropriate to the areas evaluated as well as reviewing records, observing the Student in her classroom, and obtaining information from the Student's teacher and Parents. Accordingly, the team did not use any one measure as the sole criterion to determine the Student's eligibility. The team used technically sound instruments or measures to evaluate the Student that were varied and reliable. The measures were administered by trained and knowledgeable personnel in accordance with the instructions provided. The District assessed the Student in all areas related to her suspected disability and the Parents did not suggest any other areas of evaluation. Similarly, the evaluation was sufficiently comprehensive to identify all the Student's special education and related services needs. After consideration of the record, it is concluded that the District's evaluation of the Student met the requirements of WAC 392-172A-03020.

22. It is also concluded that the District complied with the requirements of WAC 392-172A-03025. Ms. Heras observed the Student twice in the classroom and reviewed existing data on the Student, including information from the Parents and from District standardized testing.

23. Likewise, the District's evaluation report complied with WAC 392-172A-03035. The District has met its burden of proving its evaluation was appropriate.

2016 Math Assessment Revision

Testing Areas

24. A District must conduct a reevaluation when requested by a parent when more than a year has passed since the prior evaluation. WAC 392-172A-03015. This does not mean that a district must assess the student in all areas requested by the parents. As part of a reevaluation, a district must review existing data and determine, based on that review and input from the parents, what additional data, if any, is needed to determine whether the student continues to meet eligibility, and whether any additions or modifications to the special education and related

services are necessary to meet the student's IEP goals and to participate, as appropriate in the general education curriculum. WAC 392-172A-03025.

25. The Parents argue the District should have reevaluated the Student in writing, spelling, language, grammar, math, and social. The District did evaluate the Student in math. The Student had been initially evaluated just a year before and there is no evidence that anyone, including the Parents, believed that assessments in writing, spelling, or grammar were necessary to inform the writing services she was receiving. Nor is there evidence that anyone, including the Parents, identified social concerns or a need to reevaluate in that area.

26. In response to the Parents' request that the Student be reassessed in speech and language, the District had the school's new SLP review the initial evaluation report. She determined it had been done correctly and that the Student's score would need to drop significantly before she would be eligible for SLP services. Additionally, the Student's teacher reported that the Student did not have communication issues within the classroom. Accordingly, assessments in areas other than math were not necessary to determine whether additions or modifications to the Student's special education and related services were needed.

Explaining Tests to Parents

27. The Parents assert that the District did not appropriately explain the tests to them. However, they were provided the evaluation report and declined to attend the evaluation team meeting at which the math assessment revision was discussed. There is no evidence they requested and were denied any information about the testing. Accordingly, no violation is found with respect to this issue.

Parents' Other Arguments

28. The other issues raised by the Parents are the same as those raised with respect to the initial evaluation in 2015 and the conclusions set forth above with respect to those issues apply here as well. Accordingly, no violations of the IDEA are with respect to those issues for the 2016 math assessment revision.

Appropriateness of Evaluation for Purposes of Request for IEE

29. The District met its burden to prove that it complied with WAC 392-172A-03020, WAC 392-172A-03025, and WAC 392-172A-03035, except that the evaluation report was not fully compliant because it was not signed and dated by each professional member of the group certifying that the report represents his or her conclusion. This minor procedural violation does not render the evaluation inappropriate for purposes of the Parents' request for an IEE. WAC 392-172A-05105(2).

INDIVIDUALIZED EDUCATION PROGRAMS (IEPS)

Development of IEPs

30. As noted above, an IEP is appropriate if it is developed through the IDEA's procedures and is reasonably calculated to enable the child to receive an educational benefit. *Rowley*, 458 U.S. 176. Whether an IEP is reasonably calculated to provide educational benefit is measured

at the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

31. An IEP team must review a student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved and must revise an IEP, as appropriate, to address 1) any lack of expected progress toward annual goals and in the general education curriculum, 2) the results of any reevaluations, 3) information about the student provided to or by the parents, 4) the student's anticipated needs, and 5) other matters. WAC 392-172A-03110(3).

2015 IEP

Not Basing IEP on Student's Individual Needs or Providing Appropriate Differentiation

32. Presumably this issue is about the Parents' desire that the District use the Orton-Gillingham curriculum with the Student. 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. 2010). For that reason, IEPs need not address the instructional method to be used unless a specific methodology is necessary for a student to receive an appropriate education. See *id.* at 1039; see also *Department of Education, Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46665 (2006) (specific methodology may only be incorporated in an IEP if it is "necessary for the child to receive FAPE"). The Parents have not proven that only the Orton-Gillingham curriculum could provide the Student a FAPE. Accordingly, the Parents have not demonstrated that the IEP is not reasonably calculated to provide an educational benefit because it does not require the District to use the Parent's preferred methodology or curriculum.

Goals

33. An IEP must include a statement of measurable 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 the student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b)(i). 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.

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

35. Two of the Parents' issues relate to the Student's IEP goals. The first is that the goals were vague. Their concern appears to be that the goals cannot be independently measured by the Parents because they include terms such as "a text at her instructional reading level," or "as measured by classroom data," or by "weekly writing assignments." The purpose of IEP goals is not for parents to be able to replicate the results at home. The Parents have not proven that the goals are so vague that District staff could not implement them consistently or that they are not measurable by District staff. Accordingly, the Parents have not demonstrated a violation in this regard.

36. The other issue related to goals is the District's failure to provide social goals for the Student. Social skills was not identified as an area of need for the Student through the evaluation process, either as a result of the BASC or by input from the Student's teacher or the Parents. Because this was not an area of demonstrated need, it was not a violation of the IDEA to not provide a goal in that area.

Parental Participation in IEP process

37. Procedural safeguards are essential under the IDEA:

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

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

38. The IDEA requires that parents have the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child." WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings, but must also have the opportunity for "meaningful participation in the formulation of IEPs." *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

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

40. Two of the Parents' issues are related to parental participation - not allowing the Parents to appropriately participate in meetings and not considering the Parents' concerns, advice, and insight. The Father attended the IEP meeting for the initial IEP in 2015. He was new to the IEP process and may not have participated to the same extent the Mother would have if she were

there, but there is no evidence that he was denied the opportunity to meaningfully participate or that the District did not consider his concerns, advice, or insight.

One-on-one Instruction or Tutoring

41. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, and 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).

42. The Parents argue that the 2015 IEP should have provided instruction for the Student or tutoring on a one-on-one basis by someone trained to work with dyslexic students. There is no evidence that the evaluation team, Ms. Gorsuch, or the Parents recommended or requested one-on-one instruction at the time the initial IEP was developed, or that the Student's needs warranted this level of intervention in order to obtain a FAPE. Accordingly, the Parents have not proven that the IEP was inappropriate in this regard.

Special Education with Students with Other Disabilities

43. The Parents argue that the Student should only be educated alongside other students with dyslexia. They provided no expert opinion or legal authority for this position. Accordingly, they have not demonstrated a violation of the IDEA in this regard.

Services

44. An IEP must include a statement of the special education to 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, in the activities described in this section. WAC 392-172A-03090(1)(d); 34 CFR §300.320.

45. 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 access of the student to the general education curriculum. WAC 392-172A-01175; 34 CFR §300.39(b)(3).

46. The Parents argue that the Student should have received services in reading, spelling, language, and math. The Student did receive services in reading. The Student did receive support from Ms. Schoot in spelling through her SDI in reading and writing.

47. With respect to communication, the results of the Student's communication evaluations were within normal ranges and her teacher reported she did not have difficulty communicating in class. Accordingly, the Parents have not met their burden of proving that she required SDI in communication in order to attain her annual goals or to make progress in the general education curriculum.

48. With respect to math, the Student performed in the average range on the KTEA-III and both her teacher's report and performance on the Stanford 10 demonstrated adequate math progress. Accordingly, the Parents have not proven that the Student required SDI in math at the time of the initial IEP was developed.

2016 IEP

Accommodations

49. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, and 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).

50. The Parents argue that the 2016 IEP did not provide appropriate accommodations for the Student's dyslexia. There is no evidence that the Parents requested accommodations at the IEP meetings for the 2016 IEP that were not included. And the Parents do not in their briefing identify accommodations that should have been included as opposed to other things they wanted in the IEP, such as identification of the Orton-Gillingham curriculum, ESY, and the ability for the Parents to drop in unannounced to observe the Student's class regularly. The Parents have not demonstrated that the IEP was not reasonably calculated to provide the Student an educational benefit based on the accommodations.

Goals

51. There are two issues regarding goals with respect to the 2016 IEP. The first is, again, that it does not include social goals. As no new social needs were identified by anyone, including the Parents, the Parents have not proven the 2016 IEP was not reasonably calculated to provide an educational benefit because of a lack of social goals.

52. The Parents' second argument about goals is that they were the same as the goals in the 2015 IEP, even though the Student had not met those goals. The 2016 goals are somewhat different. The reading goals had different baselines to allow the Student to move forward. And because they were based on the Student's instructional reading level, which was increasing over time, and because the new reading comprehension goal was based on a third-grade-level story, rather than second-grade, the goals involved more challenging material. Additionally, the new writing goal relied on a paragraph-writing rubric that introduced different writing skills. Moreover, the 2016 IEP included an increase in the amount of SDI from a total of 40 minutes per day to a total of 60 minutes minutes per day. And Ms. Schoot was using a different curriculum with the Student than she had in second grade. Thus, even if the goals were similar, it did not mean everything about the Student's program was similar. Additionally, the Student made progress toward the goals in the 2015 IEP even if she did not meet them. The Parents have not proven that the 2016 IEP was not reasonably calculated to provide an educational benefit because the goals were similar to those in the 2015 IEP.

Not Basing IEP on Student's Individual Needs or Providing Appropriate Differentiation and Special Education with Students with Other Disabilities

53. As set forth above with respect to the 2015 IEP, the Parents have not proven that the IEP is not reasonably calculated to provide an educational benefit because it does not require the District to use the Parent's preferred curriculum or because the Student is not educated only with other students with dyslexia.

One-on-one Instruction or Tutoring

54. The Parents have not proven that the Student requires one-on-one instruction to receive a FAPE. She made progress on her goals receiving her SDI as part of a small group. Accordingly, the Parents have not proven that the 2016 IEP is not reasonably calculated to provide an educational benefit because it does not provide for one-on-one instruction.

Services

55. The Parents argue that the 2016 IEP should have provided for services in reading, spelling, language, and math. The IEP did provide for SDI in reading. And, as explained above, the Student received spelling support through her SDI with Ms. Schoot.

56. With respect to communication, the Student's evaluation from the prior year resulted in average scores. The Parents reported that the Student's lisp was getting worse, but the teacher reported that the Student was not having communication problems in class. Accordingly, the Parents have not proven that communication services were necessary to attain her annual goals or to make progress in the general education curriculum.

57. With respect to math, the Student's initial evaluation produced scores in the average range. The Student's performance on standardized District testing continued to be strong, but she was only approaching grade level in math at the end of the second grade and she was struggling with math at the beginning of third grade when the IEP was developed. Nonetheless, she had been making progress in general education math. Given the information at the time the IEP was developed, the Parents have not proven that SDI in math was necessary for the Student to make progress in the general education curriculum. The District's decision not to provide SDI in the IEP but to reevaluate the Student in math, at the Parent's request, was a reasonable course of action.

Parental Participation

58. The Parents participated in a facilitated IEP meeting and an annual IEP meeting leading to the development of the 2016 IEP. The communication between the parties and the meeting notes reflect active participation by the Parents in both meetings. In some cases, the District made changes based on the Parents' requests, in others, it attempted to offer reasonable alternatives, and other requests were declined with an explanation. That the District did not agree with all the Parents' requests does not demonstrate that they were not allowed meaningful participation. The Parents have not proven a violation of the IDEA in this regard.

IEP Implementation

59. Material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). On the other hand, minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.*

"[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 and 822 (italics in original).

60. The Parents have proven only minor failures to implement the IEP – that the Student sometimes did not use the computer or Brightlines paper to complete writing assignments in class. This minor failure to consistently provide specific accommodations does not constitute a violation of the IDEA.

Ignoring Parents' Requests for IEP Meetings

61. The Parents have not proven that the District ignored any requests for an IEP meeting made by the Parents.

Student's Failure to Meet Goals

62. The Parents argue that the Student failed to meet the goals set forth in the 2015 IEP. The failure of a student to meet IEP goals is not itself a violation of the IDEA or a denial of FAPE. Rather, a student's progress is one factor considered in determining whether an IEP is appropriate. The Student's progress toward her goals is considered above with respect to the issues of whether the 2015 and 2016 IEPs were appropriate.

Allowing 2015 IEP to Expire

63. The District held the 2016 IEP meeting within a year of the 2015 IEP meeting but inadvertently did not have the new IEP go into effect until three days after the 2015 IEP had expired. This was a procedural violation of the IDEA.

64. Not all procedural errors result in a denial of FAPE. *LM v. Capistrano Unified Sch. Dist.*, 538 F.3d 1261 (9th Cir. 2008). Procedural inadequacies constitute a denial of FAPE when they impede the student's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefit. WAC 392-172A-05105(2); 34 CFR §300.513(a)(2). Here, there is no evidence to conclude that the Student being served for three days under an expired IEP impeded the Student's right to a FAPE, significantly impeded the Parents'

opportunity to participate, or caused a deprivation of educational benefit. Accordingly, there was no denial of FAPE related to the 2015 IEP expiring.

Not allowing Parents to Observe the Student in the Classroom

65. The IDEA does not provide for Parents to have unrestricted access to observe their children at school. The Parents have not demonstrated a violation with respect to this issue.

Staff Training Specific to Dyslexia

66. The Parents' expert, Ms. Anthony, acknowledged that Washington law does not require educators to be specially trained in dyslexia, although she has lobbied for such a law. Ms. Anthony opined that such training is imperative. Given Ms. Anthony's lack of expertise or certification in special education, this opinion is given little weight. Moreover, Ms. Anthony did not testify that such training was necessary for a student to obtain a FAPE. The Parents have not met their burden of proving a violation of the IDEA with respect to this issue.

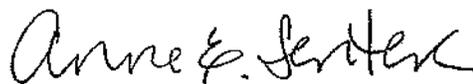
Parents' Other Arguments

67. The Parents raise a number of arguments in their briefing that were not set forth in their Complaint or in the issue statement, including that the District passed the Student from second to third grade, District staff committed "educational malpractice," Ms. Heras misrepresented herself as a psychologist in violation of state law and committed perjury with respect to her testimony about her education, and that the District has committed fraud for accepting federal funds. Because these issues were not set forth in the Complaint or in the issues statement and because the ALJ lacks jurisdiction for many of them, they are not considered.

ORDER

1. The District's 2015 evaluation of the Student and the District's 2016 math assessment revision of the Student were appropriate. The Parents are not entitled to an independent educational evaluation at public expense.
2. The District did not deny the Student a free and appropriate public education.
3. The Parents' requested remedies are denied.

Signed at Seattle, Washington on June 14, 2017.



Anne Senter
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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



Parents



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