

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

IN THE MATTER OF:

OSPI CAUSE NO. 2019-SE-0197

OAH DOCKET NO. 12-2019-OSPI-00960

NORTHSHORE SCHOOL DISTRICT

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Courtney E. Beebe via video conference, on September 28, 29, and 30, 2020, and October 1, 2, 5, and 6, 2020. The Parents of the Student whose education is at issue (both the Mother and the Father)<sup>1</sup> appeared and represented themselves. The Northshore School District (District) was represented by Carlos Chavez, attorney at law. Adra Davy, Director of Special Education, appeared as the District Representative. The following is hereby entered:

**STATEMENT OF THE CASE**

The Parents filed a due process hearing request on December 12, 2019. The District filed a response on December 19, 2019. The parties appeared for multiple prehearing conferences to address 1) the Parents' request for a suitable representative, 2) the Parents' requests for accommodations, and 3) the logistics of conducting the hearing during the Covid-19 public health emergency. The Sixth Prehearing Order issued August 14, 2020, set forth the agreed upon issues for hearing. At the August 26, 2020, prehearing conference the Parents requested to proceed to hearing via video conference. The District objected. Over the objection of the District, the ALJ granted the Parents' request to proceed to hearing via video conference.

As per the First Prehearing Order issued January 15, 2020, the decision due date in this matter was continued to thirty (30) days after the close of the record. The record in this matter closed on December 31, 2020, with the filing of the parties' post-hearing briefs. The decision due date is therefore January 30, 2021.

**EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Parent Exhibits: P1; P2, pp.4-29; P3, pp.3-24; P4, pp. 9,14; P6, pp.1-31; P8; P9, pp.6-9; P10, pp.1-5, 5-15; P11; P12, pp.7, 9-17, 20-29, 31-37; P13; P-14, pp.1-4, 6-12; P16; P17; P18; P19, pp.1-15, 18-27; P21; P22, pp.1-6, 8-17, 22; P23, pp.1-17; P24; P25; P31, pp.1-25; P33, pp.1-10; P34, pp.1-8, 24-44; P35; P38, p.1; P47; P49; P50; P51; P52; P54; P57;

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

P63, pp.1-23; P64; P68; P69; P70, pp.27-29, 33; P73, pp.11-12; P77; P85; P86; P87; P88; P89; P90; P91, pp.1-5; P92; P94; P99; P100; P101; P102; P103.

District Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, D14, D1, D16, D17, D18, D19.

All other exhibits were excluded or not offered for admission.

The following witnesses testified under oath. They are listed in order of appearance: The Mother of the Student; Heather Schwindt; Stacy Turner; Chantel Porter; Dr. Ruth Hilsman; Adra Davy, Desiree Dutt, Charlene Coughlin, Patricia Brown, Steve Hopkins, Gretchen Colonius, the Father of the Student, Becky Anderson, William Harvey, Tina Gibson, and Lindsay Rogers.

### **ISSUES AND REMEDIES**

The Parent presented the following issues for resolution:

- a. *Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) from December 11, 2017 through December 11, 2019 by:*
  - i. *Failing to meet its child find obligation by identifying and evaluating the Student in the area of reading fluency, communication, dyslexia, and motor skills (WAC 392-172A-02040(1));*
  - ii. *Failing to identify the primary (instead of just secondary) educational impacts of the Student's reading fluency and communication disabilities (WAC 392-172A-03005-03080);*
  - iii. *Failing to evaluate the Student in the areas communication, dyslexia, and motor skills as requested by the Parents (WAC 392-172A-03005-03080);*
  - iv. *Failing to provide the Student with an Individualized Education Program ("IEP") that was reasonably calculated and appropriately ambitious in light of the Student's circumstances (WAC 392-172A-03110);*
  - v. *Failing to provide the Parents with a meaningful opportunity to participate in the evaluation of the Student or the development of an IEP (WAC 392-172A-01040);*
  - vi. *Failing to correct the Student's educational records as per WAC 392-172A-05215 and 05220;*
  - vii. *Failing to provide appropriately trained special education teachers as required by WAC 392-172A-02090;*
  - viii. *Failing to place the Student in the appropriate educational placement (WAC 392-172A-02060 and 03115);*

- ix. *Failing to provide appropriate related services to the Student;*
- x. *Failing to issue timely and appropriate prior written notices to the Parents (WAC 392-172A-05010);*
- xi. *Failure to use technically sound evaluation instruments to evaluate the Student;*

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

- i. *Tuition reimbursement for the Student's enrollment at the private institution Hamlin Robinson for the 2018 and 2019 school year and the 2019-2020 school year, and prospectively;*
- ii. *Transportation reimbursement costs for transporting the Student to and from Hamlin Robinson;*
- iii. *Reimbursement for costs of attendance and transportation for enrolling the Student with the Wired for Reading tutor;*
- iv. *Reimbursement for costs and transportation for the Student's speech and language pathologist, occupational therapist, and physical therapist;*
- v. *Reimbursement for time and expenses the Parents incurred educating themselves to meet the Student's needs and provide the Student with support;*
- vi. *Or other equitable remedies, as appropriate.*

See Sixth Prehearing Order, (August 18, 2020).<sup>2</sup>

### **FINDINGS OF FACT**

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

#### **August 31, 2017 Initial Evaluation**

1. The Student attended Sunrise Elementary in the Northshore School District during the 2017-2018 academic year. (D2, p.1; P3, p.3; Tr., pp.801 (Brown).) The Student was a seven-year old second grader. (*Id.*)

2. Previously, during the Student's first grade year, the District issued a "Notification of Special Education Referral" on April 16, 2017, notifying the Parents that a "referral meeting" was scheduled to review the Student's performance on May 2, 2017. (P1, p.5; Tr., pp.71-73, 170-171)

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<sup>2</sup> The issue statements are edited to reflect that both "Parents" appeared at the hearing and participated in this matter.

(Mother).) On May 3, 2017, the Parent submitted a “Consent of Initial Evaluation” to the District, seeking to have the Student evaluated in the areas of: medical-physical, behavior, motor, observation, general education, cognitive, social/emotional, academic, vision & mobility, reading, spelling, and math facts. (D1, p.22; P1, pp.1-2, 7-8; Tr., pp.1304-1305 (Mother); 706 (Dutt).) The Parents submitted a two page written description of “[The Student’s] Development,” describing the Parents’ concerns. (D1, pp.23-24; Tr., pp.71-73, 170-171 (Mother).) The District received the documents on May 12, 2017. (*Id.*)

3. The District determined that an evaluation of the Student was appropriate and initiated the evaluation in June 2017. (D1, pp.1-21; P2, pp.4-30; Tr., p.706 (Dutt).) The District issued a Notice of Meeting to the Parents on June 27, 2017, giving the Parents notice of an “evaluation team meeting” on August 31, 2017. (D1, p.25; Tr., pp.706-707 (Dutt).) The purpose of the meeting was to review the evaluation and make an eligibility determination. (*Id.*)

4. The evaluation team (“2017 Evaluation Team”) consisted of the following individuals: the Parents; Melissa Ward, school psychologist; Desiree Dutt, school psychologist; Gretchen Colonius,<sup>3</sup> District’s occupational therapist; Chantel Porter,<sup>4</sup> special education teacher; Krista Vetterlien, general education teacher first grade; Patricia Brown,<sup>5</sup> general education teacher second grade; and Andrea Thompson, District vision specialist. (D1, p.4; P2, p.4; Tr., pp.172-174, 1303-1305 (Mother); 423, 551-552 (Porter); 706-707 (Dutt).) The Student was evaluated in all areas of concern identified by the Parents. (*Id.*)

5. The 2017 Evaluation Team, including the Parents, met on August 31, 2017, and reviewed the following information: report from the Student’s first grade general education teacher, the Student’s vision screening results and vision/orientation and mobility assessment, the Student’s medical information, reports from the Student’s Learning Assistance Program (“LAP”), Social Skills Improvement System (“SSIS”) results, Behavior Assessment System for Children – Third Edition (“BASC -3”) results, Differential Ability Scales – Second Edition (“DAS-II”) results, Kaufmann Test of Educational Achievement Third Edition (“KTEA-3”) results, motor skills assessment, and the school psychologist’s observations of the Student in the general education classroom. (D2, pp.1-27; P2, pp.4-30; Tr., pp.172-174, 1303-1305 (Mother); 706-707(Dutt).) The Parents also submitted, and the 2017 Evaluation Team reviewed, information about the Student’s abilities and medical conditions, as well as their observations of the Student. (D1, pp.1-21; P1, pp.1-2; Tr., pp.71-72 (Mother).)

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<sup>3</sup> Gretchen Colonius has been a licensed occupational therapist since 1995. (Tr., pp.961-963 (Colonius).) Ms. Colonius earned an undergraduate degree in geology, master’s degree in environmental engineering, and a master’s degree in occupational therapy from the University of Puget Sound. (*Id.*)

<sup>4</sup> Chantel Porter has a bachelor’s degree in elementary education from Seattle Pacific University and a master’s degree in education from City University. (P57, pp.5-6; Tr., pp.549-50 (Porter).) Ms. Porter is a certificated teacher and holds an English Language Learners Endorsement from Pacific Lutheran University. (*Id.*) Ms. Porter also holds a Special Education Endorsement. (*Id.*)

<sup>5</sup> Patricia Brown received a bachelor’s degree in psychology from Western Washington University and a master’s degree in technology from City University. (Tr., pp.817-818 (Brown).) Ms. Brown has a reading endorsement from Seattle Pacific University and is a certificated teacher in the State of Washington. (*Id.*)

6. The 2017 Evaluation Team determined that the Student:

*meets eligibility for specific learning disability by demonstrating a disorder in one or more of the processes involved in understanding or using spoken or written language which prevents the student from achieving commensurate with her age and ability levels in one or more of the following areas listed when provided with learning experiences appropriate to the student's age and ability levels:*

*A. Oral expression, B. Listening comprehension, C. Written expression, D. Basic reading skill, E. Reading comprehension, F. Mathematics calculations, G. Mathematics reasoning.*

*. . . [The Student's] disability adversely impacts her ability to access the general education setting in the areas of basic reading, reading comprehension, math calculation, math reasoning, written language, and motor.*

*. . . [The Student] demonstrates below average performance in the areas of basic reading, reading comprehension, math calculation, math reasoning, written language, and motor compared to same aged peers. Special education services in the areas of basic reading, reading comprehension, math calculation, math reasoning, written language, and motor are recommended at this time.*

(D1, p.2; P2, p.7.) The 2017 Evaluation Team recommended that an Individualized Education Program ("IEP") team be convened to create the Student's initial IEP to deliver special education services, including specially designed instruction ("SDI") in reading, math, written language, and social emotional, with occupational therapy (OT or motor skills) as a related service. (D1, p.3.)

7. The 2017 Evaluation Team members, including the Parents, signed the "Evaluation Summary" ("2017 Initial Evaluation") on August 31, 2017. (D1, p.4; P2, p.4.; Tr., pp.551-552 (Porter); 706-707 (Dutt).) The Parents noted on the form next to their signatures: "have not read document yet." (*Id.*) On August 31, 2017, the District issued a Prior Written Notice ("PWN") "proposing to initiate an eligibility category" for the Student because she "has a handicapping condition, demonstrates an adverse educational impact, and a need for specially designed instruction." (D1, p.27; D4, p.25; Tr., pp.706-707 (Dutt).) The Parents were provided a copy of the 2017 Initial Evaluation at the August 31, 2017, meeting. (Tr., pp.1307 (Mother).)

**Initial IEP September 16, 2017 through December 15, 2017**

8. On September 16, 2017, the District emailed the first proposed draft of the Student's initial IEP to the Parents. (D2, p.1; P3, pp.3-24; Tr., pp.172-175, 348-354 (Mother); 423 (Porter).) The first draft of the initial IEP provided:

Concurrent	Service(s)	Service Provider for Delivering Services	Monitor	Frequency	Location (Settings)	Start Date	End Date
Related							

No	Motor	OT/PT	OT/PT	30 minutes / 1 times weekly	Special Education	09/26/2017	09/25/2018
Special Education							
No	Social Emotional	Special Ed Classroom Staff	Special Education Teacher	40 minutes / Weekly	General Education	09/26/2017	09/25/2018
No	Reading	Special Ed Classroom Staff	Special Education Teacher	120 Minutes / Weekly	Special Education	09/26/2017	09/25/2018
No	Math	Special Ed Classroom Staff	Special Education Teacher	80 Minutes / Weekly	Special Education	09/26/2017	09/25/2018
No	Written Language	Special Ed Classroom Staff	Special Education Teacher	100 Minutes / Weekly	General Education	09/26/2017	09/25/2018

(P3, p.18; Tr., pp.172-175; 348-354 (Mother).) The IEP also included accommodations for the Student. (P3, pp.15-16.)

9. On September 21, 2017, the District convened an IEP team (“IEP Team”) consisting of the following members: the Parents, Ms. Porter, Ms. Brown, Ms. Colonius, and Steve Hopkins, Principal / District Representative.<sup>6</sup> (D2, p.1; P3, pp.4-24; Tr., pp. 423, 553 (Porter); 889-890 (Hopkins).) The IEP Team members, including the Parents, signed the September 21, 2017, IEP. (D2, p.1; D4, p.3; Tr. pp.425 (Porter); 691 (Davy).) The IEP was scheduled to begin five days later on September 26, 2017. (*Id.*) The Parents did not sign the “Written Parental Consent for Initial Special Education Services Form” at the September 21, 2017, IEP meeting because they requested more time to process the information. (D4, p.28.) On September 21, 2017, the District issued a PWN “proposing to initiate an IEP” to “initiate special education services.” (D4, p.25; P3, p.22; Tr., p.554 (Porter).)

10. On September 28, 2017, the Parent requested changes to the reading goals. (P5, p.28; Tr., pp.177 (Mother); 657-658 (Davy).) To accommodate the Parents, the District incorporated a number of the requested changes and emailed a second draft of the initial IEP to the Parents on October 9, 2017. (D4, p.26; Tr., pp.177 (Mother); 554 (Porter).) The District offered to “reconvene the IEP [T]eam to discuss” and issued a PWN. (*Id.*)

11. On October 17, 2017, the IEP Team, with the addition of Adra Davy,<sup>7</sup> Director of Special Education, reconvened and reviewed the second draft of the initial IEP. (D4, pp.28-29; Tr., pp.555-556 (Porter); 691 (Davy).) The IEP Team incorporated additional changes into a third draft of the initial IEP dated October 17, 2017. (D4, p.28; Tr., p.555 (Porter).) After the October 17,

<sup>6</sup> Steve Hopkins has acted as the principal at Sunrise Elementary School in the District for seven years. (Tr., pp.927-928.) He received an undergraduate degree from the University of Washington in history, and earned a master’s degree in teaching at City University. (*Id.*) Mr. Hopkins is a certificated teacher and earned an administrative credential from Seattle Pacific University. (*Id.*)

<sup>7</sup>Adra Davy is the director of special education for the District. (Tr., pp.689-690 (Davy).) Ms. Davy has a bachelor’s degree in elementary special education with an endorsement in psychology and she is certificated as an elementary teacher, special education teacher and Phono-Graphix trainer. (*Id.*) Ms. Davy received her master’s degree in educational leadership from the University of Portland and an advanced degree in administration from the University of Washington. (*Id.*)

2017, meeting Ms. Davy signed the signature page from the September 21, 2017, meeting. (Tr., p.691 (Davy).) The District printed the third draft of the initial IEP and gave it to the Parents for review. (*Id.*) The District issued a PWN the same day. (D4, p.28; Tr., pp.178 (Mother); 555 (Porter).) The District subsequently changed one of the Student's "reading baselines" and provided the Parents with a copy of a fourth draft of the initial IEP on October 20, 2017, and issued a PWN the same day. (D4, p.29; P6, pp.1-28; Tr., pp.555-556 (Porter); 179-180 (Mother).)

12. The District issued a meeting invitation to the IEP Team, including the Parents, for a meeting on November 16, 2017. (D4, p.1; Tr., p.556 (Porter).) The Parents requested additional changes to the Student's fourth draft of the initial IEP. (D4, p.31.) The IEP Team, including the Parents, met on November 16, 2017, to discuss the fourth draft of the initial IEP provided to the Parents on October 20, 2017. (D4, pp.30-31; Tr., pp.556 (Porter); 641 (Davy).) After the November 16, 2017, IEP Team meeting, the IEP Team agreed to the following:

*a writing goal focusing on encoding was worded and three accommodations were added, one on using visual / auditory / kinesthetic strategies for learning, one on a visual cuing system for consonant blends / vowel combinations, and one on access to auditory books (ie: Bookshare). Also, discussed was training for the special ed teacher in a reading curriculum identified by the District, and Guided Language Acquisition Design (GLAD) training for the general ed teacher because many of the teaching and learning strategies used in GLAD will support [the Student's] learning style. The special ed teacher agreed to follow up with the librarian on audio books (Bookshare), the principal agreed to follow up on GLAD training for the general ed teacher, and the assistant director for special ed agreed to follow up on the reading curriculum training for the special ed teacher, After a follow up phone conversation on November 21, an accommodation was added to incorporate language strategies (i.e.: GLAD) in the general ed setting.*

*Additionally, both the special ed and general ed teacher have been provided the Washington State Dyslexia Resource Guide and have been invited to attend a district training on dyslexia in December.*

(D4, p.31; Tr., pp.443-445, 556-557 (Porter).) Ms. Porter created a fifth draft of the initial IEP on November 30, 2017, and sent the Parents a copy reflecting a November 16, 2017, meeting date and the changes agreed to at the November 16, 2017, IEP meeting. (D4, pp. 2, 31; Tr., p.558 (Porter); 667 (Davy).) The fifth draft of the initial IEP reflected a start date of December 5, 2017. (*Id.*)

13. The Mother met with Ms. Davy and Becky Anderson,<sup>8</sup> Assistant Superintendent for Special Services, on December 14, 2017, to discuss changing the Student's reading curriculum from Phono-Graphix to Reading Mastery Signature and using the District-wide STAR assessment tool for progress monitoring so that the Student's IEP goals were measurable. (D5, pp.1-5; P8, pp.16-17; Tr., pp.565-568 (Porter); 694-695, 782-783 (Davy); 863-864 (Mother).) The Mother signed the Written Parental Consent for Initial Special Education Services giving consent to begin the provision of services on December 15, 2017. (D4, p.23; P18, p.16; Tr., pp.185, 1308-1309

<sup>8</sup> Becky Anderson has an undergraduate degree in exceptional children and a master's degree in special education. (Tr., p.1101 (Anderson).) Ms. Anderson also earned administrative credentials from Seattle Pacific University and performed doctoral work at the University of Wyoming. (*Id.*)

(Mother).) The District issued a PWN on December 15, 2017. (D4, pp.30-31; Tr., pp.558-560 (Porter); 692-693 (Davy).) At that point, the fifth draft of the initial IEP dated November 16, 2017, sent to the Parents on November 30, 2017, and again later on January 8, 2018, with a start date of December 5, 2017, became the Student's "Initial IEP." (D4, pp.1-31; P11, p.11; Tr., pp.664-666 (Davy).)

14. The Student's "present level of educational performance" was reflected in the Initial IEP:

*[The Student] independently comprehends text at 97% accuracy at grade level 1.4 (IRR Level F\*). [The Student] currently decodes 35/44 phonemes in isolation.\*\**

*\*IRR = Individual Running Record. IRR level F is equivalent to first grade, fourth month (grade level 1.4.)*

*\*\* 35 phonemes decoded correctly: b, d, f, h, j, k, l, m, n, p, r, s, t, v, w, y, z, th (not voiced) th (voiced), sh, ch, wh, short and long vowels – a, e, i, o, u, oo (as in moon), ar (as in car), or 9 incorrect: g, ng, zh, oo (as in book), ow, oy, ar, (as in air), ir, ur.*

(D4, p.10.) The Initial IEP included the following reading goals:

*By 12/14/2018, when given independent level text [the Student] will use text based evidence to answer literal and inference questions improving reading comprehension from comprehending text at 97% accuracy at grade level 1.4 (IRR Level F) to comprehending text at a 97% accuracy at grade level 2.4 (IRR level K) as measured by IRR assessment and performance on comprehension questions.*

*By 12/14/2018, when given a list of phonemes [the Student] will apply letter sound correspondence skills to decode phonemes in isolation improving decoding skills from decoding 35/44 phonemes in isolation to decoding 44/44 phonemes in isolation as measured by phoneme assessments.*

(D4, p.13.) The Initial IEP did not include reading fluency goals. The Initial IEP reflected fifteen accommodations and supports. (D4, pp.16-15.) Regarding related services and SDI, the Initial IEP provided:

Concurrent	Service(s)	Service Provider for Delivering Services	Monitor	Frequency	Location (Settings)	Start Date	End Date
Related							
No	Motor	OT/PT	OT/PT	30 minutes / 1 times weekly	Special Education	09/26/2017	09/25/2018
Special Education							
No	Social Emotional	Special Ed Classroom Staff	Special Education Teacher	30 minutes / Weekly	General Education	09/26/2017	09/25/2018
No	Reading	Special Ed Classroom Staff	Special Education Teacher	120 Minutes / Weekly	Special Education	09/26/2017	09/25/2018
No	Math	Special Ed Classroom Staff	Special Education Teacher	120 Minutes / Weekly	Special Education	09/26/2017	09/25/2018



No	Written Language	Special Ed Classroom Staff	Special Education Teacher	120 Minutes / Weekly	General Education	09/26/2017	09/25/2018
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(D4, p.20.)

15. The District’s policy is to begin providing services to the Student in accordance with the Initial IEP within five days of the date of consent; in this case five days from December 15, 2017 was December 20, 2017. (Tr., pp.560-563 (Porter).) However, the 207-2018 academic year winter break began on December 18, 2017, and continued through January 1, 2018, and therefore the District began providing the Student with services per the Initial IEP on January 2, 2018. (D19, p.1; Tr., pp.561-562 (Porter).)

**First Assessment Revision: September 18, 2017 to January 31, 2018**

16. While the IEP Team worked to develop the Student’s Initial IEP, on September 18, 2017, Dr. Ruth Hilsman, PhD.<sup>9</sup> of Seattle Children’s Hospital performed an annual neuropsychological evaluation<sup>10</sup> (“Dr. Hilsman’s Evaluation”) of the Student at the Parents’ request. (D3, pp.1-6; P20, pp.1-10; Tr., pp.518-519 (Hilsman).) Dr. Hilsman reviewed data from her previous 2016 evaluation of the Student, as well as the District’s 2017 Initial Evaluation. (Tr., pp.534-544 (Hilsman); 1307 (Mother).) Dr. Hilsman compared the Student’s results to other students her age and concluded the following:

- Oral reading fluency (single words) is very low (less than 1<sup>st</sup> percentile).*
- Phonetic decoding efficiency is low (4<sup>th</sup> percentile).*
- Ability to read a pre-primer 1 (early kindergarten) word list is at the frustration level*
- ...*
- Ability to read and comprehend a pre-primer 1 (early kindergarten) text at (sic) is at the independent level.*
- Ability to read and comprehend a pre-primer 2 (early to mid-kindergarten) text is at the frustration level.*
- Spelling is below average (10<sup>th</sup> percentile).*
- Writing fluency is below average.*
- Math calculation is below average (12<sup>th</sup> percentile).*

(D3, p.2; P20, pp.1-3; Tr., pp.518-519 (Hilsman).) Dr. Hilsman concluded that the Student’s executive functioning skills, visual-motor skills, and emotional, behavioral adaptive functioning skills were age-appropriate, except for the area of “social withdrawal” which was “significantly elevated.” (*Id.*) Importantly, Dr. Hilsman recommended: “Reading fluency – additional practice in reading. Recent research has indicated that intervention needs to be between 30 and 60 minutes a day, four to five days a week, and delivered in a one-to-one or, at most, three-to-one setting.” (P20, p.3; Tr., pp.518-519 (Hilsman); 871-872 (Mother).)

<sup>9</sup> Dr. Ruth Hilsman has a Ph.D in clinical psychology and has worked for Seattle Children’s Hospital for 22 years. (Tr., p.517 (Hilsman).)

<sup>10</sup> Dr. Hilsman’s report identifies that the Student was evaluated by Dr. Hilsman and three other providers: Dr. Charles Cowan, M.D., Joan Sato, M.Ed., and David Breiger, PhD. (D3, p.1.)

17. Dr. Hilsman recommended that the District: “Continue IEP: we strongly recommend specialized instruction in reading, math, and written expression.” (D3, pp.4-6; Tr., p.522.) Dr. Hilsman diagnosed the Student as “dyslexic.” (D3, p.3; Tr., p.519 (Hilsman).) Dr. Hilsman discussed the results and recommendations with the Mother during a feedback session on September 18, 2017. (D3, p.6; Tr., p.518, (Hilsman).)

18. The Parents provided a copy of Dr. Hilsman’s Evaluation to the District on October 31, 2017. (D3, p.1; Tr., pp. (Mother); 707-716 (Dutt).)

19. After the Parents submitted Dr. Hilsman’s Evaluation to the District, the District scheduled a meeting of the 2017 Evaluation Team on December 5, 2017, to perform an assessment revision (“First Assessment Revision”). (D6, pp.1-5; Tr., pp.282-283 (Mother); 483-486 (Porter); 707-712 (Dutt).) On December 5, 2017, the following members of the 2017 Evaluation Team met to discuss Dr. Hilsman’s Evaluation: Ms. Dutt, Ms. Brown, and Mr. Hopkins. (Tr., pp. 718, 741-742 (Dutt); 897 (Hopkins).) Based on the information provided in Dr. Hilsman’s Evaluation, the 2017 Evaluation Team members present concluded, “there is a need for SDI in the area of reading fluency.” (D6, p.2; Tr., pp.718, 721-722, 740-741 (Dutt).) The District issued an “Assessment Revision Notification / Consent” to the Parents on December 5, 2017, that stated that the District conducted an assessment revision that included a review of “existing data,” but the:

*[t]eam will not be conducting any additional assessments during this revision. The team will review the data provided from the outside report [Dr. Hilsman’s Evaluation], and provide the information to the evaluation team and IEP team to better determine how to support [the Student] with reading fluency.*

(D6, pp.4-5; Tr., pp.718, 735 (Dutt).) The 2017 Evaluation Team members concluded that: “[b]ased upon the recommendations from the recent [Dr. Hilsman’s] evaluation (sic) outside report suggests that interventions provided in a small setting work best to support the Student’s needs in reading fluency. The IEP team should consider this recommendation with moving forward with creating her IEP goal.” (D6, p.6; Tr., pp.873-874 (Mother); pp.718, 735 (Dutt).) The 2017 Evaluation Team members present signed the assessment revision (“First Assessment Revision”) On December 5, 2017. (D6, p.3.) The District issued a PWN dated December 5, 2017. (D6, pp.6-7; P17, p.3; Tr., pp.710-712, 716, 741 (Dutt)).

20. The Parents were not able to attend the December 5, 2017, meeting. (D6, pp.4-5; P12, p.9; Tr., pp. 711 (Mother); 715 (Dutt).) Ms. Dutt instead reviewed the First Assessment Revision and gave the Mother a copy on December 7, 2017, when the Mother was present to review testing protocols related to the Student’s sibling. (D6, pp.6-7; D12, p.3; Tr., pp.715-716 (Mother); 715-716, 741-742 (Dutt).)

### **Testing Protocol Viewing and Proposed Amendment of the Initial IEP December 7, 2017 through February 10, 2018**

21. The Mother did not review the Student’s testing protocols used in the 2017 Initial Evaluation on December 7, 2017. (D12, pp.13, 25; Tr., pp.850 (Mother); 716 (Dutt).) At the meeting on December 7, 2017, the Mother requested to take copies of the Student’s sibling’s and the Student’s testing protocols with her so she could review and process the information, but Ms. Dutt informed the Mother that the testing protocols were subject to a copyright and contract that

prohibited the District from releasing copies of the information. (Tr., pp.856-858 (Mother); 715-717 (Dutt).)

22. On December 8, 2017, the Parents emailed Ms. Dutt and asked to review the Student's testing protocols used in the 2017 Initial Evaluation. (D12, p.3; Tr., pp.848-850, 857-858 (Mother); 715 (Dutt).) On December 9, 2017, Ms. Dutt offered to schedule a time with the Parent to view the Student's testing protocols in January 2018, after the winter break. (*Id.*)

23. On January 8, 2018, Ms. Davy emailed the Parents another copy of the Initial IEP and offered to schedule an "informal meeting to talk about the evaluation process" with the Parents on January 10, 2018. (P11, p.1; Tr., p.675-676 (Davy).)

24. On January 11, 2018, the District offered the Parents the opportunity to come to the District and review the Student's testing protocols. (D12, p.3; Tr., pp.741 (Dutt).) The Parents did not respond. (D12, p.3.)

25. On January 12, 2018, Ms. Dutt emailed the Parents and offered to schedule a time to review the Student's testing protocols, and the Parents did not respond. (D12, p.16; Tr., pp.715-716 (Dutt).) On January 22, 2018, the Parents made a request for educational records for the Student's sibling, but not the Student. (D9, pp.1-3; D10, pp.2-3; D12, p.3.)

26. Based on the First Assessment Revision, the District proposed convening the IEP Team on January 31, 2018, in order to address adding SDI in the area of reading fluency to the Initial IEP. (D7, p.1; P10, p.7; Tr., pp.562-563 (Porter); 699 (Davy).) The Parents, via email dated January 18, 2018, initially agreed to attend the meeting. (*Id.*) Ms. Porter provided the Parents with a draft of the Proposed Amended IEP ("Proposed Amended IEP"), including a proposed reading fluency goal via email on January 26, 2018. (P12, p.22; Tr., pp.563-564 (Porter).) The IEP Team proposed the following reading fluency goal:

*By 12/14/2018, when given narrative or informational text at her independent level [the Student] will use combined knowledge of letter-sound correspondences and syllabication patterns to decode words improving reading fluency from reading at a rate of 32 words per minute to reading at a rate of 60 words per minute, as measured by fluency assessments (STAR, IRR, Reading Mastery).*

(P89, p.16; Tr., pp.677-679 (Davy); 873-876 (Mother).) On January 28, 2018, the Parents declined to attend the IEP meeting on January 31, 2018, without the full IEP Team present and without a new annual IEP. (P12, pp.12, 22; Tr., pp.563-564 (Porter); 699 (Davy).) The District issued a PWN dated January 31, 2018, "proposing to continue an IEP meeting" and rescheduling the meeting as a "new annual IEP meeting with all IEP team members present." (D7, p.1; P13, p.2; Tr., pp.675-679 (Davy).)

27. On February 2, 2018, Ms. Porter emailed the Parents and offered a meeting with the IEP Team to discuss adding a reading fluency goal to the Student's Initial IEP. (P96, p.2; Tr., pp.1310-1311 (Mother).) The Parent declined to meet with the IEP Team. (*Id.*)

28. On February 2, 2018, Ms. Porter and Ms. Colonius issued an "IEP Progress Report," noting that because of the winter break, the Student's illness, and because consent to the Initial IEP was

received on December 15, 2017, the Student had received less than one month of SDI and related services as of February 2, 2018. (D8, pp.1-3; Tr., p.568 (Porter).) The IEP Progress Report noted that the Student had not had an opportunity to work on a number of the goals in the Initial IEP. (D8, pp.1-3; Tr., pp.568-569 (Porter).) The IEP Progress Report was provided to the Parents. (Tr., p.569 (Porter).)

29. On February 10, 2018, the District offered to meet with the Parents in order to answer the Parents' questions about the Student's Initial IEP and the addition of a reading fluency goal. (D9, pp.4-5.)

30. Ms. Davy and Ms. Anderson attempted via email to 1) answer the Parents' questions about amending the Initial IEP to include a reading fluency goal, 2) clarify the Parents' requests for testing protocols and records, and 3) review the First Assessment Revision, multiple times between December 5, 2017, and March 1, 2018. (P9, P10, P12, P13; Tr., pp.699-702 (Davy); 1102, 1050 (Anderson).) Ms. Porter, Ms. Dutt, Ms. Davy, and Ms. Anderson also offered each time to schedule an IEP Team meeting or an informational meeting with the Parents to address the Parents' questions. (P9, pp.1-2, 6; P10, pp.4, 7, 9, 11, 12, 14, 15; P11, pp.27-30; P12, pp.23, 25; Tr., pp. 699-702 (Davy); 1102, 1050 (Anderson); 1311-1312 (Mother).) However, the Parents refused to schedule a meeting with the District or communicate with Ms. Davy or Ms. Anderson in person or over the telephone. (*Id.*) Ms. Anderson, Mr. Hopkins, and Ms. Davy ultimately concluded that communicating with the Parents via email was consuming staff time, was ineffective, and resulted in misunderstandings, and therefore decided that all District communications with the Parents would be directed to Mr. Hopkins or would occur in person at a scheduled meeting. (P12, pp.25-27; Tr., pp.701 (Davy); 742-743 (Dutt); 943-944 (Hopkins); 1049-1051 (Anderson).)

31. The Parents continued to email the District personnel with questions about the Student's Initial IEP and its implementation. (D9, pp.1-2.) On February 1, 2018, Ms. Anderson communicated:

*I am requesting a meeting with you and your husband and select members from the school team to hopefully get answers to all your questions. We are happy to meet with you after the school day if that works best for you and your husband and we will schedule however much time is needed. What seems to happen is that questions may get answered via email but then new questions get generated or answers are misinterpreted. Your questions below reveal that there are still misunderstandings from previous communications. Just like you the school team is very busy and the number and frequency of your inquiries is taking a toll on staff. I sincerely want to get you the information you need so you feel you have adequate knowledge by which to make the best decisions possible. A face-to-face seems to be a better mechanism by which to accomplish that and I would like both of you and your husband to attend. I also understand that you need time to process information and would like information in writing to assist you with that effort – we can write down what you need at the meeting to make sure you have the information for future reference. If you would like to bring anyone else to the meeting that would also be fine . . . .*

(D9, p.5; 715-716 (Anderson).) The Parents responded that they would “still like my child’s educational records before we meet.” (*Id.*) The District inquired about the records the Parents had requested, and verified that on January 22, 2018, the Parents had requested the Student’s sibling’s educational records and had not submitted a request for the Student’s educational records. (D10, pp.1-2.)

### **Records Requests February 23, 2018 through July 3, 2018**

32. On February 23, 2018, the Parents filed a Special Education Citizen Complaint (“SEC Complaint 18-20”) with the Office of Superintendent of Public Instruction (“OSPI”). (D12, pp.1-31; Tr., pp.1102-1103 (Anderson).) SEC Complaint 18-20 addressed records requests the Parents had made for the educational records of the Student and the Student’s sibling. (*Id.*) The Parents had made three requests pertaining to the Student: 1) copies of the Student’s educational records including LAP and IRR data, requested on May 17, 2017; 2) an opportunity to view testing protocols on December 8, 2017; and 3) resolution of an undated request for all the Student’s educational records. (*Id.*) Because there was no documentation of a request made by the Parents for the Student’s educational records except for the request to view the Student’s testing protocols, OSPI considered the February 23, 2018, SEC Complaint the Parent’s request for the Student’s educational records. (D12, p.22.)

33. The District had responded to the Parents’ May 17, 2017, request on May 15, 2017, by providing the Student’s LAP and IRR data as well as the Student’s “cumulative file.” (D12, pp.24-25.) On March 13, 2018, the District provided the Parent with the educational records for the Student in response to the February 23, 2018, records request. (D12, p.3.)

34. On April 24, 2018, after a period of investigation and receiving responses from the Parent and the District, OSPI issued a decision regarding the Parent’s SEC Complaint 18-20. (D12, pp.1-26.) In the decision, OSPI concluded that the District fulfilled the Parent’s May 17, 2017, request, but should provide any documentation regarding the Student’s 2017 participation in the LAP program and IRR testing results that it had not previously provided. (D12, p.25.) OSPI also concluded: “the District has substantiated that it followed procedures for responding to the Parents’ December 8, 2017, request to review [the Student’s] testing protocols. The Parent has the right to schedule an appointment to view the testing protocols during school business hours if she elects.” (*Id.*) OSPI also concluded that the District should provide the Parent with “documentation related to staff training regarding dyslexia, as well as all emails authored by District staff in regard to [the Student]. If it has not already done so, the District will provide the Parent access to these records. It is noted, however, that the District is not required to provide the Parent with multiple copies of documents that it has already provided.” (D12, p.25.)

35. On May 14, 2018, the District issued a PWN “proposing” a meeting to review the Student’s educational records. (D13, p.1; Tr., pp.1104-1105 (Anderson).) Specifically, the District “is proposing to meet with the parents to determine that the parents are in receipt of or have had access to all educational records requested by the parents as outlined in the parent’s filing of citizen complaint SECC No. 18-20.” (*Id.*) The District provided the Parents with some additional LAP testing records for the Student. (*Id.*)

36. On July 3, 2018, OSPI issued a letter stating that the District had complied with the directives of the decision issued in SEC Complaint 18-20. (D18, p.1; Tr., pp.1106-1107 (Anderson).)

## Amendment of Initial IEP May 3, 2018 through June 2018

37. On April 20, 2018, Ms. Porter emailed the Parents and again offered to schedule an IEP Team meeting to address the reading fluency goal in the Proposed Amended IEP. (P18, p.1; Tr., pp.570-571 (Porter).) On May 3, 2018 the District issued an “Initial Individualized Education Program (IEP) Invitation (Amendment),” inviting the Parents to a meeting on May 17, 2018, to “discuss annual goal progress” and “add a reading fluency goal, add testing accommodations, [and] adjust minutes in school per week.” (D14, p.1; P90, pp.1-25; Tr., pp.574 (Porter); 1316-1317 (Mother).) The District included with the meeting invitation a copy of a Proposed Amended IEP for the Student, with an IEP meeting date of May 17, 2018, and an IEP start date of May 22, 2018. (D14, pp.3-26; P90, p.2; Tr., pp.423 (Porter); 1316-1317 (Mother).)

38. The Proposed Amended IEP included annual goals for the Student in the areas of reading, written language, social emotional, math, and motor. (D14, pp.12-13.) The Proposed Amended IEP also included two reading fluency goals:

*By 12/14/2018 when given monthly STAR testing [the Student] will read silently improving silent reading fluency from reading at a rate of 48 words per minute to reading at a rate of 80 words per minute as measured by STAR Estimated Oral Fluency (EOF) score.*

*By 12/14/2018, when given narrative or informational text at her independent level (IRR level I – GLE 1.9) [the Student] will read with accuracy, automaticity and prosody improving oral fluency from reading 17.5 words correctly per minute to reading 45 words correctly per minute as measured by IRR assessment data.*

(D14, p.14; P18, p.19; Tr., pp.228-229, 266-267 (Schwindt); 575-576 (Porter); 876-879 (Mother).) The first draft of the amended IEP included sixteen accommodations and an increase in SDI minutes:

Concurrent	Service(s)	Service Provider for Delivering Services	Monitor	Frequency	Location (Settings)	Start Date	End Date
Related							
No	Motor	OT/PT	OT/PT	30 minutes / 1 times weekly	Special Education	09/26/2017	09/25/2018
Special Education							
No	Social Emotional	Special Ed Classroom Staff	Special Education Teacher	30 minutes / Weekly	General Education	09/26/2017	09/25/2018
No	Reading	Special Ed Classroom Staff	Special Education Teacher	150 Minutes / Weekly	Special Education	09/26/2017	09/25/2018
No	Math	Special Ed Classroom Staff	Special Education Teacher	120 Minutes / Weekly	Special Education	09/26/2017	09/25/2018
No	Written Language	Special Ed Classroom Staff	Special Education Teacher	120 Minutes / Weekly	General Education	09/26/2017	09/25/2018

No	Written Language	Special Ed Classroom Staff	Special Education Teacher	30 minutes / Weekly	Special Education	05/22/2018	12/14/2018
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(D14, p.19.)

39. At the May 17, 2018, meeting the IEP Team, including the Parents, reviewed the First Assessment Revision, Dr. Hilsman’s Evaluation, testing data, parental input, teacher input, special education teacher input, and OT input, and specifically discussed the proposed reading fluency goals. (D14, p.23; Tr., pp.423; 576-578 (Porter); 686-687 (Davy); 902-904 (Hopkins); 965-966 (Colonius); 1318-1319 (Mother).) The IEP Team discussed the progress the Student had made in all areas of the IEP. (D14, pp.23-24; D17; Tr., pp. 446, 476, 494 (Porter); 808, 814-815 (Brown); 702, 787 (Davy); 965 (Colonius).) Heather Schwindt<sup>11</sup> also attended the meeting as an advocate for the Parents. (Tr., pp.227 (Schwindt).)

40. The District issued a PWN on May 18, 2018, after the IEP Team meeting. (D14, p.23; Tr., pp.577-578 (Porter).) The PWN gave notice that the Proposed Amended IEP was written to “add a reading fluency goal, add testing accommodations and change service minutes.” (*Id.*) Ms. Porter explained that the reading fluency goal was appropriate for the Student. (Tr., pp.577-578 (Porter); 701-702 (Davy).) The Parents did not agree to the Proposed Amended IEP and did not sign or provide consent. (*Id.*)

41. On May 18, 2018, Ms. Schwindt emailed the Parents and Ms. Porter a proposed reading fluency goal:

*By 12/14/2018/ when given narrative or informational text at IRR level M, [the Student] will read with accuracy automaticity and prosody improving oral fluency rate from reading 17.5 words correctly per minute at IRR level to reading 45 words correctly per minute at IRR level M as measured by IRR assessment data.*

(P18, p.13; Tr., p.229 (Schwindt); 578 (Porter).)

42. On June 15, 2018, the IEP Team received a six-page document from Ms. Schwindt. (P19, pp.2-8; Tr., pp.238-249 (Schwindt); 1326-1327 (Mother).) The purpose of the document was to facilitate further discussion of the proposed amendments to the Initial IEP at another meeting scheduled for June 19, 2018. (D16, p.1.)

43. The IEP Team, including the Parents and Ms. Schwindt, met on June 19, 2018, to discuss proposed reading fluency goals, but were not able to reach an agreement. (Tr., pp.272, 292 (Schwindt); 423, 597-597 (Porter); 1322-1323 (Mother).) The Mother informed the District she would be placing the Student in a private educational institution and “expressed that she will be filing for due process. [Ms. Davy] asked that this be send (sic) to the District in writing.”<sup>12</sup> (D-16,

<sup>11</sup> Ms. Schwindt is a tutor and advocate who does not possess a college degree but has completed a six-month Orton-Gillingham Training. (Tr., pp.216;252-253.)

<sup>12</sup> “I remember Ms. Colonius asking me where I intended to place [the Student]. And so yes, I – I believe I had told the district that I was going to place her at Hamlin Robinson and pursue reimbursement later.” (Tr., pp.1335-1339 (Mother).)

p.1; Tr., pp 924-925 (Hopkins); 1323-1324, 1335-1339 (Mother.) The Mother “contacted legal counsel who had written a letter later that day.” (Tr., p.1327 (Mother).)

44. The District issued a PWN on June 21, 2018. (D-16, p.1; Tr., pp.1323-1324 (Mother).)

### **Second Assessment Revision: April 7, 2018 through June 20, 2018**

45. On April 7, 2018, and April 12, 2018, the Parents obtained another neuropsychological evaluation of the student, this time with Dr. Philip Dunbar-Myer at the Center for Child Development. (P24, pp.1-19; Tr., pp.1313-1316 (Mother).) Dr. Dunbar-Mayer issued reports on April 13, 2018, May 15, 2018, June 2, 2018, and July 14, 2018 (“Dr. Dunbar-Mayer’s Evaluation). (P24, pp.1-13.) Dr. Dunbar-Mayer diagnosed the Student with moderate AD/HD, dyslexia, specific learning disorders in the areas of reading, written expression, and math, as well as generalized anxiety disorder. (P24, p.13.) Dr. Dunbar-Mayer’s Evaluation showed that the Student’s standard scores increased between the 2017 Evaluation and his April 2018 testing.<sup>13</sup> (P18, p.4.)

46. The Parent provided a copy of Dr. Dunbar-Mayer’s Evaluation to the District on April 27, 2018. (P24, pp.1-19; Tr., pp.681 (Davy); 729-730 (Dutt); 1044-10145 (Anderson).) The District initiated a second assessment revision to review Dr. Dunbar-Mayer’s Evaluation (“Second Assessment Revision”). (D15, pp.1-9; Tr., pp.730 (Dutt).) The District issued an “Assessment Revision Notification / Consent” to the Parents for the District to review and consider “the data provided by Dr. Dunbar-Mayer (sic) outside evaluation. The team will be adding the information to the existing reports completed in the spring of 2018.” (D15, p.7; Tr., pp.730-731 (Dutt).) The Parents signed the form on May 22, 2018. (P17, p.12; Tr., pp.188-189, 191 (Mother).) The consent form stated: “I understand that I have the opportunity to participate in the consideration of the areas to be assessed. I would suggest the following areas of need to be considered in assessing my child.” (P17, p.12.) The Parents did not identify any areas of concern on the form. (*Id.*)

47. The Parents were invited to attend, a Second Assessment Revision meeting with Ms. Davy, Mr. Hopkins, Ms. Colonius, Jessica Todd (District nurse), and Ms. Dutt on May 22, 2018, (P17, pp.2, 12; Tr., pp.735-736 (Dutt); 1321-1322 (Mother).) The Parents attended and the District provided the Parents with a copy of the Second Assessment Revision via email after the meeting. (P17, p.6; Tr., pp.736 (Dutt).) Later, the District issued a “Notice of Meeting” on May 23, 2018, giving notice of another meeting on June 5, 2018, for the purpose of allowing the Parents to review the Second Assessment Revision and to ask questions.<sup>14</sup> (D15, p.5; P17, p.14; Tr., pp.731, 736 (Dutt).)

48. On June 4, 2018, Ms. Dutt emailed Mr. Hopkins, Ms. Porter, Ms. Colonius, Ms. Todd, Ms. McCoy and Kim Durkin (district representative) (P17, p.23; Tr., pp.1263-1264 (Mother)) (“Second

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<sup>13</sup> The Student’s score on the KTEA-3 in the 2017 Evaluation when compared with the WIAT-III performed by Dr. Dunbar-Mayer showed multi-point improvement. (P19, pp.18-19; Tr., pp.540-542 (Hilsman); 13429-1330 (Mother).)

<sup>14</sup> The PWN issued on May 17, 2018, after the IEP amendment meeting with the IEP Team set forth: “[t]he evaluation team will meet on May 22, 2018, at 8:00 a.m. to consider findings of an outside evaluation. This will be done through the assessment revision process, since the Parent and District agree to this process as being an appropriate manner in which to consider this information.” (D14, p.24.)



Assessment Revision Team”) including the Parents, an agenda and description about what to expect at the meeting:

*As an evaluation team, we will be considering the outside report that you provided the school. Since the team will be discussing the outside report, I will print off the assessment revision paperwork at the completion of the meeting for you to be able to sign, if you so choose.*

*During an assessment revision the team must consider if the outside report data suggests a change in eligibility, change in specially designed instruction, and/or change in supports / accommodations, modifications in regards to the active IEP. Placement, goals and service minutes are determined by the IEP team, which will schedule a meeting following our meeting tomorrow morning.*

(P18, p.13; Tr., pp.189-190 (Mother).) The agenda stated that the assessment revision meeting would be for the purpose of considering the outside evaluation from Dr. Dunbar-Mayer and that the assessment revision would “1) determine if there is a change in eligibility category based upon outside report,” and “2) based upon the outside report does the team feel there are any changes to current areas of SDI.” (P18, pp.15-16; Tr., pp.189-190 (Mother).) Ms. Dutt also included excerpts of the goals from the Student’s Initial IEP. (*Id.*) Ms. Schwindt responded to Ms. Dutt’s email by providing information about the Initial IEP reading goals and the Proposed Amended IEP reading fluency goals discussed at the May 17, 2018, IEP meeting and proposed in Ms. Schwindt’s May 18, 2018, email. (P19, p.1; Tr., pp.234-23 (Schwindt).) Ms. Dutt updated the agenda with the information. (P18, pp.17-19; Tr., pp.260-261 (Schwindt).)

49. The Second Assessment Revision Team convened on June 5, 2018, to discuss the Second Assessment Revision a second time. (D15, p. 9; P17, pp.19-20; Tr., pp.738-739 (Dutt).) The Second Assessment Revision Team discussed Dr. Dunbar-Mayer’s Evaluation and the impact on the Student’s Initial IEP and eligibility for special education. (D15, p.2; Tr., pp.966-967 (Colonius).) The Second Assessment Revision Team added some data points to the Second Assessment Revision regarding the Student’s motor skills and concluded that the Student remained eligible for SDI, related services, and accommodations. (D15, pp.1-9; Tr., pp.738-739 (Dutt).) Ms. Colonius, after reviewing Dr. Dunbar-Mayer’s report, explained that the OT methodology she used was appropriate to deliver the related services and address the Student’s motor skills disability. (Tr., pp.963-970 (Colonius).)

50. The District issued an Assessment Revision PWN<sup>15</sup> on June 5, 2018 “proposing to continue an IEP” and that “no additional supports and accommodations will be added at this time. The areas of SDI will remain the same as presented within the current IEP.” (D15, p.9; P17, pp.25-27; Tr., pp.738-739 (Dutt).)

51. The Student enrolled in Hamlin Robinson for the 2018-2019 school year and continues to attend Hamlin Robinson. (Tr., pp.316-317 (Turner).)

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<sup>15</sup> Ms. Dutt explained that she had completed a PWN for the June 5, 2018, meeting with incorrect dates and times, and that she had incorrectly dated the consent form signed by the Parents on May 29, 2018. Ms. Dutt provided the Parents with an amended consent form and PWN with the correct dates on June 5, 2018 after the Second Assessment Revision meeting. (P17, p.25; Tr., pp.739-740 (Dutt).)

## CONCLUSIONS OF LAW

### The IDEA and Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Procedural Issues**

**The Parent's Claims in Issues (i), (iii), (v), (xi), and (x) Arising Prior to December 11, 2017, are Barred by the Statute of Limitations.**

6. The Washington regulation concerning the IDEA statute of limitations provides:

*The due process hearing request must be made within two years of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:*

*(a) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process hearing request; or*

*(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.*

WAC 392-172A-05080(2). The Washington regulation is substantially similar to the statute of limitations in the IDEA. See 20 United States Code (USC) §1415(b)(6)(B) and §1415(f)(3)(C); 34 Code of Federal Regulations (CFR) §300.507.

7. In *Avila v. Spokane School District 81*, 852 F.3d 936 (9<sup>th</sup> Cir. 2017), the Ninth Circuit Court of Appeals interpreted the statute of limitations set forth in the IDEA. In a question of first impression for the Ninth Circuit, the court held that "the IDEA's statute of limitations requires courts to bar only claims brought more than two years after the parents...`knew or should have known' about the actions forming the basis of the complaint." *Id.* at 937. Under this standard, known as the "discovery rule," a claim is timely "so long as the complaint is filed within two years of the known or should have known ("KOSHK") date." *Collette v. D.C.*, 2019 U.S. Dist. LEXIS 128520 (D.D.C., August 1, 2019).

8. Determining the KOSHK date, or the date when the two-year statute of limitations begins to run, is a fact-specific inquiry and courts must make findings regarding when parents knew or should have known about the actions forming the basis of the complaint. *Avila*, 852 F.3d at 945. In determining the KOSHK date, the inquiry focuses on when a parent comes to believe, or

reasonably should have come to believe, that their child has been hurt *and that the school is responsible for the injury*, regardless of whether the parent yet knows that the injury is legally actionable. *Vandell v. Lake Wash. Sch. Dist.*, 2019 U.S. Dist. LEXIS 39747, at \*11-12 (W.D. Wash., March 12, 2019) (by late August 2014, Parents knew or should have known that Students were not receiving FAPes for the 2013-14 school year and that the District could be faulted for that failure); *see also Draper v. Atlanta Independent Sch. System*, 518 F.3d 1275, 1288 (11<sup>th</sup> Cir. 2008) (“[U]ntil 2003, Draper’s family did not know enough to realize that Draper had been injured by his misdiagnosis and misplacement by the School System. We decline the invitation of the School System to conclude, as a matter of law, that Draper’s family should be blamed for not being experts about learning disabilities”); *M.D. v. Southington Bd. of Educ.*, 334 F.3d 217, 221 (2<sup>nd</sup> Cir. 2003) (IDEA claim accrued when Parent knew of the “injury” to her child, i.e., the “inadequate education;” Parents’ claims were time-barred where they knew or had reason to know of student’s injury when they withdrew her from the school system because they believed it was not providing her with an appropriate education).

9. Inherent in any legal standard that incorporates a known-or-reasonably-should-have-known element is the legal construct of the “reasonable person,” or in this case, the “reasonable parent.” A parent cannot prevail simply by asserting they were unaware that a school district was responsible for harming a student – it is not a completely subjective standard, personal to a particular set of parents. The reasonable-parent construct requires an examination of all the objective facts to determine whether a belief is reasonable to the average parent. As the district court articulated in *Avila v. Spokane School District 81*, 2018 U.S. Dist. LEXIS 14152 (E.D. Wash., January 29, 2018), on remand from the Ninth Circuit, it is often difficult for a court, from its retrospective position, to determine the date on which a parent knew or should have known about the alleged action that forms the basis of the complaint:

On the one hand, parents should not be “blamed for not being experts about learning disabilities.” . . . On the other hand, statutes of limitations “serve the policies of repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and a defendant’s potential liabilities.” (citations omitted).

*Avila* at \*21-22.

10. Five of the issues in the Parents’ due process hearing request are impacted by the two-year limit in WAC 392-172A-05080:

*i. Failing to meet its child find obligation by identifying and evaluating the Student in the area of reading fluency, communication, dyslexia, and motor skills (WAC 392-172A-02040(1));*

. . . .

*iii. Failed (sic) to evaluate the Student in the areas communication, dyslexia, and motor skills as requested by the Parent (WAC 392-172A-03005-03080);*

. . . .

*v. Failure (sic) to provide the Parents with a meaningful opportunity to participate in the evaluation of the Student . . . (WAC 392-172A-01040);*

.....

*x. Failure to issue timely and appropriate prior written notices to the Parent (WAC 392-172A-05010);*

.....

*xi. Failure to use technically sound evaluation instruments to evaluate the Student;*

(Sixth Prehearing Order, August 18, 2020.)

11. The Parents filed the due process hearing request on December 11, 2019, and therefore as per WAC 392-172A-05080(1) the Parents claims that arose prior to December 11, 2017, are time barred by the two-year statute of limitations. Specifically, the Parents' claims listed above as they pertain to the 2017 Initial Evaluation and the December 5, 2017, First Assessment Revision are time barred by the statute of limitations because the District's actions and any potential injury to the Student occurred prior to December 11, 2017.

12. Next, the tribunal must consider whether the exceptions of subsection 2(a) and 2(b) of WAC 392-172A-05080 apply. The Parents have not specifically identified nor presented evidence, that the District misrepresented that it had otherwise resolved the problems that form the basis of the five issues listed above as they pertain to the 2017 Initial Evaluation or the December 5, 2017, First Assessment Revision. In fact, the record reflects that the District engaged in a pattern of accommodation, explanation, and communication with the Parents to ensure that the Parents received all the documentation and information requested, an opportunity to meet with the District multiple times, and that the Parents understood the District's decisions and proposals. Therefore, the exception of subsection 2(a) of WAC 392-172A-02040 does not apply.

13. With respect to subsection 2(b) of WAC 392-172A-0580, the Parents have generally asserted that between April 16, 2017, and December 11, 2017, the District withheld documents and/or information that it was required to provide the Parents as part of the 2017 Initial Evaluation and the December 5, 2017, First Assessment Revision. The Parents claims, however, are reflective of a general mistrust of District personnel and it is not discernable from the available evidence which specific documents or information the Parents did not have that the District was required to provide between April 16, 2017, and December 11, 2017. Certainly, the Parents identified that they requested the Student's testing protocols on December 8, 2017, but there is no statute or rule that required the District to provide the testing protocols prior to the Parents making the request. Even so, as discussed below, the District gave the Parents multiple opportunities to view the testing protocols after December 9, 2017. The record supports a conclusion that the District provided the Parents with all documents it was required to provide. Because the Parents have not carried their burden and have not shown that the District withheld documents and / or information that it was required to provide the Parents, it is concluded that the exception to the statute of limitations in WAC 392-172A-02040(2)(b) does not apply.

14. As per the *Avila* decision, the tribunal must enter specific findings and conclusions regarding whether the Parents “knew or should have known” prior to December 11, 2017, the alleged actions that form the basis of their complaints in the five issues noted above, as well as whether the District was responsible for the alleged injury.

15. First, in regards to the 2017 Initial Evaluation, the Parents were aware of the areas of concern that the District evaluated between April 16, 2017 and August 31, 2017, when they received, reviewed, and signed the 2017 Initial Evaluation and received the August 31, 2017, PWN. As of August 31, 2017, the Parents knew that the District did not evaluate the Student in the areas of communication or dyslexia, and that the District had evaluated the Student in the areas of reading and motor skills. The Parents’ also knew that the 2017 Evaluation Team had not made a determination regarding whether the Student was eligible for SDI in the area of reading fluency. Moreover, the Parents had an opportunity to participate in the 2017 Initial Evaluation meetings from April 16, 2017 through August 31, 2017. Also, on August 31, 2017, the Parents were provided with a list of assessments and instruments used to evaluate the Student. The Parents, then, knew or should have known the District actions that formed the basis of issues (i), (iii), (v), (xi) and (x), as they pertain to the 2017 Initial Evaluation. Additionally, the Parents would have known as of September 18, 2017, when they reviewed Dr. Hilsman’s Evaluation that the Student may have been harmed by the 2017 Evaluation, because Dr. Hilsman informed the Parents that the Student had a disability in the area of reading fluency.

16. The Parents similarly knew or should have known about the District’s actions that form the basis of their claims (i), (iii), (v), (xi), and (x) as the claims relate to the December 5, 2017, First Assessment Revision. The District invited the Parents to the December 5, 2017, meeting, issued the Parents an Assessment Revision Notification Consent, Assessment Revision Prior Written Notice, and the Assessment Revision on December 5, 2017. Further, Ms. Dutt met with the Mother and reviewed the First Assessment Revision on December 7, 2017. The Parents, then, knew that 1) the District agreed with Dr. Hilsman’s diagnosis of dyslexia, 2) the District determined the Student was eligible for SDI in the area of reading fluency, 3) the District believed the 2017 Initial Evaluation and Dr. Hilsman’s Evaluation were consistent as to the Student’s motor skills, and 4) the District would not evaluate the Student in the area of communication. The Parents, then knew or should have known of the District’s actions that formed the basis of the issues in (i), (iii), (v), (xi) and (x), as they relate to the December 5, 2017, First Assessment Revision. Further, as of December 5, 2017, the Parents knew or should have known that the Initial IEP did not include a reading fluency goal and that the Student at that point had suffered some harm by the District’s actions.

17. Importantly, the Parents knew that they had the right to file a due process hearing request at least as early as June 19, 2018, because they verbally informed the District that they intended to file a due process hearing request and had consulted legal counsel.

18. The Parents, then have not carried their burden and cannot overcome the two-year statute of limitations in WAC 392-172A-05080. The Parents claims set forth in issues (i), (iii), (v), (xi), and (x) as they pertain to the 2017 Initial Evaluation and December 5, 2017, First Assessment Revision for the period prior to December 11, 2017, are time barred.

**The District did not Fail to Evaluate the Student in the Areas of Communication, Dyslexia, and Motor Skills as Requested by the Parent.**

19. After a District completes an initial evaluation of a student, a parent who disagrees with the evaluation process or results may: 1) “file a due process hearing request on any of the matters relating to the . . . evaluation . . . ,’ within two years of . . .the date the parent . . .knew or should have known about the action [evaluation]” (WAC 392-172A-05080); or 2) request an independent educational evaluation at public expense (WAC 392-172A-05005). However, as found and concluded above, the Parents did not timely file a due process hearing request and did not request an independent educational evaluation (“IEE”) at public expense on any of the matters related to the 2017 Initial Evaluation or the December 5, 2017, First Assessment Revision.

20. In issue (iii), the Parents have alleged that the District failed to reevaluate the Student in the areas of communication, dyslexia, and motor skills after the District received Dr. Dunbar-Mayer’s Evaluation on April 27, 2018. Essentially, the Parents argue that the Second Assessment Revision was a reevaluation conducted pursuant to WAC 392-172A-03015 through 03080 and it did not result in the Student being evaluated in all areas of suspected disability.<sup>16</sup>

21. While the District referred to the process as an “assessment revision,” it is clear that the District conducted a reevaluation of the Student as per WAC 392-172A-03015 and WAC 392-172A-03020 through 03080. When a district determines that a student should be reevaluated, it must provide prior written notice to the parents that describes all of the evaluation procedures that the district intends to conduct. WAC 392-172A-03020. The district must obtain the parent’s consent to conduct the reevaluation. WAC 392-172A-03015(3). The district must convene a group of qualified professionals and this reevaluation team determines whether the student continues to be eligible for special education and the content of the Student’s IEP. WAC 392-172A-03020 and 03040. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student’s special education needs and any necessary related services. WAC 392-172A-03020. The reevaluation must also include a review of existing data. WAC 392-172A-03025.

22. The record shows the District’s Second Assessment Revision complied with the reevaluation procedures of WAC 392-172A-03020 through 03080. The District provided the

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<sup>16</sup> A Parent may also obtain an IEE at private expense and a district must consider the results “in any decision made with respect to the provision of FAPE to the Student; . . .” (WAC 392-172A-05005(5).) Reevaluation requests are addressed by WAC 392-172A-03015, which states:

- (1) *A school District must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 when:*
  - (a) *the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or*
  - (b) *if the child’s parent or teacher requests a reevaluation.*

WAC 392-172A-03015(1). However, a reevaluation cannot occur more than once per year, unless the parent and the school district agree otherwise, and must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2). Here, the District agreed the reevaluation was necessary and reevaluated the Student.

Parents with two PWNs describing the reevaluation procedures and these procedures did not include assessments in the areas of communication, dyslexia, and motor skills. The District obtained the Parents' consent to the reevaluation, but the Parents did not identify communication, motor skills, or dyslexia as areas of concern on the consent form for additional assessments. The District convened a group of qualified individuals, including Ms. Colonius, Ms. Dutt, Ms. Porter, Mr. Hopkins, Ms. Durkin, and Ms. Todd, as well as the Parents, to form the Second Assessment Revision Team. The Second Assessment Revision Team, including the Parents, met May 22, 2018, and June 5, 2018, to conduct the reevaluation.

23. The Second Assessment Revision Team reviewed and compared Dr. Dunbar-Mayer's Evaluation, the 2017 Initial Evaluation, the Initial IEP, Dr. Hilsman's Evaluation, and the First Assessment Revision. Importantly, the District agreed with Dr. Dunbar-Mayer's diagnosis of dyslexia because it was consistent with Dr. Hilsman's diagnosis and the First Assessment Revision. The Second Assessment Revision Team also accepted Dr. Dunbar-Mayer's Evaluation regarding the Student's motor skills because it was consistent with the information from Ms. Colonius, the 2017 Initial Evaluation, the Initial IEP, and the First Assessment Revision. Also, the Second Assessment Revision Team agreed with Dr. Dunbar-Mayer's and Dr. Hilsman's conclusions that the Student did not require evaluation in the area of communication. As a result, the Second Assessment Revision Team determined that the Student remained eligible for special education services in the area of motor skills.

24. The evidence in the record shows the Second Assessment Revision met the requirements of WAC 392-172A-0320 through 03080 because the Student was reevaluated in all areas of suspected disability and the process identified all of the Student's special education needs or related services. The Parents have not carried their burden and have not shown that the District failed to meet its obligations to reevaluate the Student in the areas of dyslexia, motor skills, and communication when it performed the June 5, 2018, Second Assessment Revision.

### **The District Met its Child Find Obligation During the Period of December 11, 2017, Through December 11, 2019.**

25. All school districts in Washington "shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating, and identifying students who are in need of special education and related services, regardless of the severity of their disability." WAC 392-172A-02040. Methods of locating students with a suspected disability include: ". . . (f) using internal district child find methods such as screening, reviewing district wide test results, providing in-service education to staff, and other methods . . . including a systemic, intervention based, process within general education for determining the need for a special education referral." (*Id.*)

26. The Parent asserts that beginning December 11, 2017, the District violated the "child find" requirement of WAC 392-172A-02040 because the District was on notice of the Student's suspected disabilities in the areas of reading fluency, communication, dyslexia, and motor skills, and was required to evaluate the Student. The District argues that it was not under any obligation to initiate an evaluation or further evaluation of the Student in these areas.

27. The "child find" requirement does not require school districts to conduct a formal evaluation of every student who is struggling, but instead the duty to make a decision to evaluate a student is "triggered when the [state or local educational agency] has reason to suspect a



disability, and reason to suspect that special education services may be needed to address that disability.” *Dept’t of Educ., State of Hawaii v. Cari Rae S.*, 158 F.Supp2d 1190 (D. Hawaii 2001). Once a district is on notice that a student may have a disability that requires special education services, a district must decide whether to evaluate a student within a reasonable time. See *W.B. v. Matula*, 67 F.3d 484, 501 (3<sup>rd</sup> Cir. 1995). A parent or district personnel may make a written request for an initial evaluation or further evaluation to determine if a student is eligible for special education services. WAC 392-172A-03005(1). Once a request is received, the District must “make a determination whether or not to evaluate the student” “within twenty-five days after receipt of the request.” WAC 392-172A-03005(2)(c).

28. A disability is “suspected,” “when the district has notice that the child has displayed symptoms of that disability.” *Timothy O v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9<sup>th</sup> Cir. 2016). Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not “exclusively in hindsight.” *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3<sup>d</sup> Cir. 1993)). However, some consideration of subsequent events may be permissible if the additional data “provide[s] significant insight into the child’s condition, and the reasonableness of the school district’s action, at the earlier date.” *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1006 (9<sup>th</sup> Cir. 2011) (quoting *Adams*, 195 F.3d at 1149).

29. The Parents’ child find claims cover four distinct areas of suspected disability. First, the Parents assert that the District failed to meet its child find obligation to the Student in the areas of motor skills and reading fluency. The Parents argue that when they provided the District with Dr. Hilsman’s Evaluation on October 31, 2017, and Dr. Dunbar-Mayer’s Evaluation on April 27, 2018, the District was on notice that the Student had a suspected disability in the areas of motor skills and reading fluency, and was obligated to evaluate the Student. However, as shown in the 2017 Initial Evaluation, the December 5, 2017, First Assessment Revision, and the June 5, 2018, Second Assessment Revision, the District had 1) evaluated the Student in the areas of motor skills and reading, 2) determined the Student was eligible for special education and related services in motor skills and reading fluency, and 3) provided related services to the Student in the areas of motor skills and reading. As discussed below, the District also attempted to include a reading fluency goal in the Student’s IEP and deliver specially designed instruction in the area of reading fluency. Based on the record available, then, it is concluded that the District met its child find obligation in the areas of motor skills and reading fluency as it in fact identified the Student as requiring services in these areas.

30. The Parents’ third claim that the District failed to meet its child find obligation in the area of communication similarly fails. The District did not specifically evaluate the Student in the area of communication because neither the Parents, the 2017 Evaluation Team, Dr. Hilsman, nor Dr. Dunbar-Mayer identified communication as an area of concern. Notably, the District did conclude that the Student was eligible for special education in the areas of oral expression and listening comprehension, and as described below, the Student was provided SDI in these areas. Given that there is no evidence that the District’s personnel, nor the Student’s private providers, identified any suspected disability in the area of communication after three evaluations were performed within a one-year period, it must be concluded that the District did not fail to meet its child find obligation in the area of communication.

31. Lastly, the Parents' assertion that the District failed to meet its child find obligation in the area of dyslexia is also unproven. There is no statute or rule that requires a District to medically diagnose a child with dyslexia. Only medical professionals can make a clinical diagnosis of dyslexia. Even so, the District did evaluate the Student in the areas of medical-physical, cognition, academic, reading, math, spelling, and written expression, and the District accepted both Dr. Hilsman's and Dr. Dunbar-Mayer's diagnoses of dyslexia in the December 5, 2017, First Assessment Revision and June 5, 2018, Second Assessment Revision. Thus, the record reflects that the District did not fail in its child find obligation in the area of dyslexia.

32. The Parents, then, have not carried their burden and have not shown by a preponderance of the evidence that the District violated the child find obligation as per WAC 392-172A-02040 in the areas of reading fluency, dyslexia, communication, and motor skills after December 11, 2017.

**The District Provided the Parent with a Meaningful Opportunity to Participate in the Development of the Student's Initial IEP and Proposed Amended IEP.**

33. The Parents claim that they did not have a meaningful opportunity to participate in the development of the Initial IEP and the Proposed Amended IEP because 1) the District did not provide educational records and testing protocols, 2) the District made changes to the Initial IEP without input from the Parents, and 3) because the Parents disagreed with the proposed reading fluency goals.

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

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

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

35. 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). Also, 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.

36. In regards to IEP meetings, WAC 392-172A-03100 requires Districts to provide parents with an opportunity to participate in the IEP meeting:

*A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:*

*(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and*

*(2) Scheduling the meeting at a mutually agreed on time and place.*

*(3) The notification required under subsection (1) of this subsection must:*

*(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and*

*(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student,*

*.....*

*(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.*

*(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:*

*(a) Detailed records of telephone calls made or attempted and the results of those calls;*

*(b) Copies of correspondence sent to the parents and any responses received; and*

*(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.*

*.....*

*(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.*

37. The record shows that the District provided the Parents with an extensive opportunity to meaningfully participate in the development of the Student's Initial IEP. The Parents attended Initial IEP meetings on September 21, 2017, October 19, 2017, and November 16, 2017. The District met informally with the Parents on December 14, 2017, to answer questions and agree on a curriculum. The District provided the Parents with five drafts of the proposed Initial IEP and made modifications to goals, training, and measurability criteria after receiving parental input. The Parents ultimately consented to the Initial IEP on December 15, 2017, and were provided with two copies of the Initial IEP on December 15, 2017, and January 8, 2018. Conversely, the Parents presented evidence that reflects a general distrust and dislike of District personnel, as well as a misunderstanding of the IEP development process. The Parents, then, have not carried their burden and have not shown how the Districts extensive efforts to inform and meet with the Parents over a four month period was not meaningful or negatively impacted the Parents' ability to participate in the development of the Initial IEP.

38. The Parents also claim that they were not given an opportunity to meaningfully participate in the development of the reading fluency goals for the Student's Proposed Amended IEP. Again, the record shows that beginning on January 8, 2018, the District attempted to schedule an IEP Team meeting with the Parents for January 10, 2018, and January 31, 2018, and provided the Parents with a proposed reading fluency goal on January 26, 2018. The evidence also shows that the District continued to offer to meet with the Parents and conduct a full IEP Team meeting and annual IEP review between January 31, 2018 through April 27, 2018, but the Parents refused to participate in an IEP Team meeting. The District thereafter met with the Parents on May 17, 2018, and June 19, 2018, provided the Parents with multiple copies of a Proposed Amended IEP with reading fluency goals, and modified the goals after receiving input from Ms. Schwindt and the Parents. Conversely, the Parents' evidence reflects a general distrust of District personnel and an inability to agree on a final reading fluency goal. The Parents, then, have not carried their burden and have not shown how the District's extensive efforts to inform and meet with the Parents over a six month period was not meaningful or negatively impacted the Parents' ability to participate in the development of the Proposed Amended IEP.

39. Lastly, the Parents assert that because they did not have copies of the Student's educational records and testing protocols used in the 2017 Evaluation, the Parents could not meaningfully participate in the development of the Initial IEP or the Proposed Amended IEP. The District counters that the Parents were provided with all educational records and an opportunity to review the Student's testing protocols.

40. Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained or used by the district. WAC 392-172A-05190. "The school district shall comply with a request promptly and before any meeting regarding an individualized education program or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student." *Id.* A school district must respond within forty-five (45) calendar days. *Id.* The right to inspect records includes a right to an explanation and interpretation of the records, the right to copies of the records "if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent review the records." *Id.*

41. A school district must share educational testing data with parents. *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842 (9th Cir. 2014). The failure to do so constitutes a procedural violation of the IDEA. Failure to provide information prevents parents from meaningfully participating in the creation of the IEP, thereby denying the Student a FAPE under the IDEA. *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842 (9th Cir. 2014). As a general rule, however, parents do not have a right under FERPA to review and inspect documents that are not education records. 20 U.S.C. Section 1232(g)(a)(4); 34 CFR Section 99.3. Since the IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, copyright law and contract terms with publishers regarding test protocols generally should not be implicated under disclosure regulations. *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (2007).

42. The Parents did not request to view the Student's testing protocols until December 8, 2017, and Ms. Dutt informed the Mother on December 9, 2017, that she could view the testing protocols after January 1, 2018, because of the winter break. The Parents then signed the Initial IEP on December 15, 2017, knowing that they could not access the testing protocols until after

January 1, 2018. Because the Parents chose to sign the Initial IEP before viewing the testing protocols and declined to view the testing protocols thereafter, it cannot be said that the District denied the Parents the information needed to meaningfully participate in the development of the Student's IEP. Moreover, the Parents did not request the Student's educational records until February 23, 2018, well after they signed the Initial IEP. As demonstrated by the April 24, 2018, OSPI decision in response to the Parents' SEC Complaint 18-20, and July 1, 2018, letter from OSPI, the District provided the Parents with all available educational records as per the Parents' May 17, 2017, and February 23, 2018, records requests. The Parents had those documents when they participated in the development of the reading fluency goals for the Proposed Amended IEP in May and June 2018.

43. The record contains a substantial amount of evidence that the District provided the Parents with all educational records requested and that the District disclosed the records when required. Further, the Parents were provided the opportunity to view the Student's testing protocols. The Parents have not carried their burden and have not shown that they could not meaningfully participate in the development of the Student's Initial IEP and Proposed Amended IEP because they lacked access to the Student's educational records and testing protocols.

**The Process for Correction of the Student's Educational Records is Governed by WAC 392-172A-05215 and 05220.**

44. The Parents have specifically alleged that the Student's first semester report card from Ms. Brown reflected inappropriate grades and that the Student's special education records may be inaccurate or misleading as a result. Generally, the Parents dispute a number of the Student's IRR testing scores and assessment scores and argue that the Student's baselines in the Initial IEP and amended proposed IEP are therefore misleading.

45. "A parent of a student who believes that information in educational records collected, maintained, or used under [WAC 392-172A] is inaccurate, misleading or violated the privacy or other rights of the student, may request that the school district which maintains the information amend the information." WAC 392-172A-05215(1). Thereafter, the school district will make a determination to amend or deny the request, and provide the parent with an opportunity for a hearing to challenge information. WAC 392-172A-05215 and 05220.

46. The Parents' request to amend the Student's report card and testing data cannot be addressed through the due process hearing procedures of WAC 392-172A-05080 through 05125.<sup>17</sup> Should the Parents' specifically identify report card information or testing data they wish to see corrected, they must obtain relief via the procedure set forth in WAC 392-172A-05215 and 05220. This tribunal does not have the authority to order the District to amend the Student's report card as requested and therefore the Parents are not entitled to the relief requested.

47. Regardless, the Parents' claims that the Student's testing data is inaccurate amount to a general misunderstanding the purpose of the testing and the meaning of the data, not specific allegations of inaccurate or misleading testing data such that the Student's special education records are incorrect. Therefore, the Parents have not carried their burden and have not shown that the Student's testing data was inaccurate or provided an inaccurate baseline for the goals in

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<sup>17</sup> Notably, Mr. Hopkins and Ms. Brown met with the Parent and resolved the Parents concerns with the Student's report card. (Tr., pp.937, 939-41 (Hopkins); 1111, 1114 (Anderson)).

the Student's IEP. The Parents, therefore, have not shown that a violation of the IDEA occurred, or that they are entitled to the relief requested.

**The District Issued Timely and Appropriate Prior Written Notices Between December 11, 2017 and December 11, 2019.**

48. A district must provide a PWN to the parents of a child eligible or referred for special education a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student, or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. WAC 392-172A-05010; 34 CFR 300.503(a). The PWN must include:

- (a) A description of the action proposed or refused by the agency;*
- (b) An explanation of why the agency proposes or refuses to take the action;*
- (c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;*
- (d) A statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;*
- (e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;*
- (f) A description of other options that the IEP team considered and the reasons why those options were rejected; and*
- (g) A description of other factors that are relevant to the agency's proposal or refusal.*

(WAC 392-172A-05010(2)). Moreover, written notice must be provided "a reasonable time" prior to the effective date. WAC 392-172A-05010(1); 34 CFR §300.503(a); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). "The purpose of the notice is to provide sufficient information to protect the parents' rights under the Act." *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992).

49. The Parents have generally asserted that the District did not issue timely and appropriate PWNs as required, but the Parents have failed to identify which PWNs were not timely and / or which PWNs they did not receive. According to the record, when the District took any action regarding the Student in regards to the 2017 Evaluation, the First Assessment Revision, the Initial IEP, the Second Assessment Revision, record disclosure, or the Proposed Amended IEP, the District issued a PWN the same day or within one day. The evidence presented by the Parents seems to conflate this issue with the disclosure of the Students' educational records.

50. Because the Parents have not identified an instance with the District did not issue a PWN as required, and the Parents have not presented any evidence that the PWNs the District issued were untimely, they have not met their burden and have not shown by a preponderance of the evidence that the District violated WAC 392-172A-05010.

## Substantive Issues

### **The District Provided the Student with an IEP That was Reasonably Calculated and Appropriately Ambitious in Light of the Student's Circumstances.**

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

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

Subsection (2)(a) of the rule requires the IEP team to consider special factors unique to a student:  
. . . (v) Consider whether the student needs assistive technology devices and services.

52. An IEP Team must "revise the IEP, as appropriate, to address: (i) Any lack of progress toward the annual goals . . . ; (ii) the results of any reevaluations; (iii) information about the student provided to, or by the parents, as described under WAC 392-17A-03025." WAC 392-172A-03110.

53. Specially designed instruction (SDI) 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).

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

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

56. The Parents assert that the Initial IEP was not appropriate because it did not include a reading fluency goal, the District's teaching methodology was ineffective, and the Student was not making progress due to the incorrect testing baselines in the IEP reading goals. The District argues that the Parents have not met their burden and have not identified that the Initial IEP, at the time it was completed and consented to, was inappropriate.

57. No witness except the Parents provided any testimony that the Initial IEP was inappropriate or that the goals contained incorrect baseline information. In fact, Dr. Hilsman agreed that the Initial IEP was appropriate. According to Ms. Porter and Ms. Colonius, the Student's test scores demonstrated progress and all the Student's instructors agreed she made progress after implementation of the Initial IEP. In contrast, the Mother presented her own testimony that reflected a misunderstanding of the Student's baseline testing data and a lack of acknowledgement that the Student made progress. The Parents have not carried their burden and have not shown that the Initial IEP was not reasonably calculated or appropriately ambitious in light of the Student's circumstances.

58. Certainly, the Parents are correct that the Initial IEP did not contain a reading fluency goal. However, the Student's eligibility for SDI to address reading fluency was not determined until December 5, 2017. The District informed the Parents that it agreed to add a reading fluency goal to the Initial IEP by conducting an IEP Team meeting with the Parents. The Parents nevertheless consented to the Initial IEP on December 15, 2017, prior to such a meeting with the understanding that the reading fluency goal would be added later.

59. Regarding the Proposed Amended IEP, Ms. Porter and Ms. Davy testified that the Proposed Amended IEP contained reading fluency goals that were measurable, reasonable, appropriate, and based on the information from Dr. Hilsman and Dr. Dunbar-Mayer. Ms. Porter testified that the reading fluency goals were reflective of the Student's progress and ambitious in light of her circumstances. Conversely, the Parents did not provide any testimony or evidence that the goals drafted and proposed by Ms. Schwindt and the Mother were measurable, appropriate, or reasonable. However, Ms. Schwindt has no education or training upon which to base an opinion of the Student's needs or progress and could not identify how the Initial IEP was inappropriate. Again, when weighing the evidence available in the record, it must be concluded that the Parent has not carried her burden and has not shown that the reading fluency goals in the Proposed Amended IEP were not reasonably calculated and appropriately ambitious given the Student's circumstances.

60. The Parent also presented testimony and documentary evidence that compared the District's use of Reading Mastery Signature as a curriculum to the Orton-Gillingham, multi-sensory methodology used at Hamlin-Robinson. However, school districts are generally entitled to deference in deciding what programming is appropriate for a student. *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1031 n.5 (9th Cir. 2009). For that reason, IEPs need not address the instructional method to be used unless a specific methodology is necessary for a student to receive an appropriate education. *See id.* at 1039; see also *Department of Education, Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46665 (2006) (nothing in IDEA requires IEP to include specific methodology; methods may be addressed in IEP if necessary for child to receive FAPE). The District, then, was not required to use the teaching curriculum or methodology the Parent requested. However, Ms. Porter, Ms. Davy, and Ms. Anderson all met with the Parents and accepted her input when selecting select Reading Mastery as the appropriate curriculum for the Student.

61. The Parents have the burden to show that the Initial IEP was unreasonable or inappropriate given the Student's circumstances. The Parents have not met their burden based on the record available. Therefore, it is concluded that the District provided the Student with an Initial IEP and Proposed Amended IEP that were reasonably calculated to ensure the Student made progress, and appropriately ambitious given the Student's specific circumstances.



## **The District Did Not Fail to Provide Related Services as Per the Student's Initial IEP**

62. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d); 34 CFR §300.320. Related services are transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, including speech language pathology SLP and OT services and parent counseling and training. WAC 392-172A-01155(1).

63. The Student's Initial IEP provided that the Student would receive 30 minutes per week of OT as a related service. The Parents generally assert that they disagreed with Ms. Colonius' methodology and that they believed the Student should receive increased minutes to address the Student's disability in the area of motor skills. However, the Parents did not present any evidence regarding why Ms. Colonius' methodology was inadequate or that the Student was not making sufficient progress in the area of motor skills. In contrast, Ms. Colonius credibly testified regarding the methodology she used with the Student and the Student's progress in the area of motor skills between January 1, 2018, and June 19, 2018. Further, Ms. Colonius credibly testified that she was implementing the recommendations of the 2017 Evaluation, the Initial IEP, and the evaluations from Dr. Hilsman and Dr. Dunbar-Mayer.

64. Ms. Colonius has presented credible testimony based on her training and experience in the OT field and the Student's progress, but the Parents have not presented evidence that demonstrates that the related services provided to the Student in the area of motor skills was anything other than reasonably calculated to ensure the Student's progress and appropriately ambitious in light of the Student's circumstances. Therefore, it must be concluded that the Parents have not carried their burden and have not shown that the District failed to provide appropriate related services to the Student in the area of motor skills.<sup>18</sup>

## **The District Selected the Appropriate Educational Placement for the Student**

65. The IDEA requires that school districts educate students with disabilities in the least restrictive environment, with removal from regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. Section 1412(a)(5)(A). "The IDEA's preference for mainstreaming is not an absolute commandment, and must be balanced with "its requirements that schools provide individualized programs tailored to the specific needs of each disabled child[.]" *Poolaw v. Bishop*, 67 F.3d 830, 836 (9<sup>th</sup> Cir. 1995).

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<sup>18</sup> The Parents presented the testimony of William Harvey, the Student's private OT. However, Mr. Harvey did not treat the Student during the period between December 11, 2017 and June 19, 2018, when the Student was enrolled at the District and did not review the methodology used by Ms. Colonius or review the Student's progress reports. Therefore, Mr. Harvey's testimony is irrelevant.

66. A student eligible for special education shall receive those services “to the maximum extent appropriate in the general education environment with students who are non-disabled.” WAC 392-172A-02050. Further, “special classes, separate schooling or other removal of students eligible for special education from the general educational environment [shall] occur only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.*

67. WAC 392-17A-02060(1) and (2) requires that an IEP team, including the parents, make a decision about the educational placement of a student after formulating the IEP and based on the following criteria:

- (a) the Student’s IEP;
- (b) the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070 . . .;
- (c) the placement option(s) that provide a reasonably high probability of assisting the student to attain his or her annual goals; and
- (d) a consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

See 34 CFR 300.116(b)(2).

68. In *Sacramento City Unified School District Bd. of Education v. Rachel H.*, 14 F.3d 1398 (9<sup>th</sup> Cir.1994) the Ninth Circuit concluded that school districts must consider four factors when making a decision about a student's least restrictive environment:

- 1) *the educational benefits of placing a student with a disability in regular classrooms,*
- 2) *the nonacademic benefit of such placements,*
- 3) *the effect that the presence of students would have on teachers and other children in the general education class,* and
- 4) *the cost of inclusionary placements.*

See *Clyde K. v. Puyallup School Dist. No. 3*, 35 F.3d 1396 (9<sup>th</sup> Cir. 1994) adopting the four part *Rachel H.* test. “While every effort is to be made to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child’s IEP goals.” *City of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458, 1468 (9<sup>th</sup> Cir. 1996).

69. Whether an IEP placed a student in the least restrictive environment is subject to the “snap shot” rule of *Adams* that an IEP is “not retrospective” and reasonableness is determined at the time of the development of the IEP. 195 F.3d at 1149. Additionally, the *Rowley* rule that a District is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity” also applies. 458 U.S. at 206-07.

70. The Parents have not articulated the basis for this allegation beyond a general disagreement with the Initial IEP and proposed reading fluency goals in the Proposed Amended IEP. Even then, it is not discernable from the record whether the Parents believe the Student should receive more special education services minutes or less, or if the Student was or was not placed in her least restrictive environment while attending the District. The District, on the other hand, presented testimony from Ms. Porter, Ms. Davy, and Ms. Brown that the Initial IEP and the Proposed Amended IEP place the Student in her least restrictive environment at Sunrise

Elementary. Given the circumstances, it is concluded that the Parent did not carry her burden and has not shown by a preponderance of the evidence that the District failed to select the appropriate placement for the Student.

**The District Provided Appropriately Trained Special Education Teachers as Required by WAC 392-172A-02060 and 03115.**

71. District personnel who provide special education services and/or related services shall meet the following qualifications:

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

*(b) In addition . . . all special education teachers providing, designing, supervising, monitoring, or evaluating the provision of special education shall possess "substantial professional training" . . . [which] shall be evidence by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI professional education and certification section.*

....

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

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

WAC 392-172A-02090.

72. It is important at the outset to note that WAC 392-172A- 02090(4) "notwithstanding any other individual right of action that a parent may maintain under this chapter (WAC 392-172A) . . ." WAC 392-172A-02090 does create any right of action on behalf of an individual student or class of students to challenge the credentials required of persons who teach special education or general education. The Parents may file a state citizen complaint with the Office of Superintendent of Public Instruction to address this issue. (WAC 392-172A-05025 through 05040.)

73. There is no statute or rule in the State of Washington that requires Districts to train special education or general education teachers in specific strategies or methods to teach dyslexic students. The relevant inquiry is whether District personnel assigned to instruct the Student are

sufficiently trained to teach special education and general education, and sufficiently trained to implement the Student's IEPs. *LC v Issaquah Sch. Dist.*, 2019 US Dist. LEXIS 77834 (W.D. Wash., May 8, 2019).

74. Regardless, Ms. Porter possesses graduate level degrees in special education, is certificated to teach special education in the State of Washington, and has substantial teaching experience. The record also shows that Ms. Porter had specific expertise in using the Reading Mastery curriculum. Additionally, all of the District's general education teachers and paraprofessionals assigned to teach the Student also possessed the education, substantial experience, and certification to teach the Student. Finally, Ms. Colonius also possessed the education, certifications, and licenses required to provide the Student with OT services.

75. The Parents have failed to show that the Student's educators are anything but qualified and experienced in their respective fields to teach the Student and deliver the SDI and related services described in the Initial IEP or Proposed Amended IEP. The Parents have not met their burden to show otherwise.

**The District Identified the Primary Educational Impacts of the Student's Reading Fluency and Communication Disabilities During the Period of December 11, 2017, and December 11, 2019.**

76. The Parents raised the following as a separate issue:

*Failing to identify the primary (instead of just secondary) educational impacts of the Student's reading fluency and communication disabilities (WAC 392-172A-03005-03080);*

77. This issue was raised by the Parents in the original due process hearing request, and attempts to clarify the issue were made at the prehearing conferences in this matter. The Parents have not identified or clarified what they mean by the primary versus secondary educational impacts of the Student's reading fluency and communication disabilities, or how the Student was denied FAPE as a result of any failure of the District to identify the primary educational impact of the Student's reading fluency and communication disabilities.

78. This issue appears to be a reiteration of the Parent's claim that the District's 2017 Evaluation did not identify that the Student had a disability in the area of reading fluency. As found and concluded above, the Parent's claims regarding the 2017 Evaluation are barred by the statute of limitations and nevertheless, the District accepted Dr. Hilsman's Evaluation and attempted to include a reasonably calculated and appropriate reading fluency goal in the Proposed Amended IEP.

79. This issue also appears to be a continuation of the Parents' claim that the District did not evaluate the Student in the area of communication and therefore failed in its child find obligation and failed reevaluate the Student in the area of communication. As found and concluded above, the District's personnel and the Student's private providers did not identify that the Student has a communication disability or any need for additional evaluation in that area despite three evaluations in a nine month period.

80. Given the issue presented, and the record in this case, it must be concluded that the Parents have not shown that the District had an obligation that it did not fulfill, and therefore it is concluded that the District did not violate the IDEA or deny the Student FAPE.

### Remedies

81. Because the Parents did not prevail on any of the issues raised in the due process hearing request, the Parents are not entitled to any of the remedies requested.

### ORDER

Based on the findings and conclusions above, it is hereby ordered that the District did not violate the IDEA and did not deny the Student a FAPE between December 11, 2017 and December 11, 2019, because:

1. The Parent's claims in issues (i), (iii), (v), (xi), and (x) arising prior to December 11, 2017, are barred by the statute of limitations in WAC 392-172A-05080;
2. The District did not fail to evaluate the Student in the areas of communication, dyslexia, and motor skills as requested by the Parent;
3. The District met its child find obligation during the period of December 11, 2017, through December 11, 2019;
4. The District provided the Parent with a meaningful opportunity to participate in the development of the Student's Initial IEP and Proposed Amended IEP;
5. The process for correction of the Student's educational records is governed by WAC 392-172A-05215 and 05220;
6. The District issued timely and appropriate PWNs Between December 11, 2017 and December 11, 2019;
7. The District provided the Student with an IEP that was reasonably calculated and appropriately ambitious in light of the Student's circumstances;
8. The District provided appropriate related services to the Student;
9. The District selected the appropriate educational placement for the Student;
10. The District provided appropriately trained special education teachers as required by WAC 392-172A-02060 and 03115; and
11. The District identified the primary educational impacts of the Student's reading fluency and communication disabilities during the period of December 11, 2017, through December 11, 2019.
12. Therefore, the Parents' are not entitled to the relief requested.

Served on the Date of Mailing.



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COURTNEY E. BEEBE  
Administrative Law Judge  
Office of Administrative Hearings

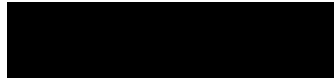
**Right To Bring A Civil Action Under The IDEA**

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

**DECLARATION OF SERVICE**

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

Parents



Adra Davy  
Michael Tolley  
Northshore School District  
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Bothell, WA 98021

Carlos Chavez  
Pacifica Law Group LLP  
1191 Second Avenue, Suite 2000  
Seattle, WA 98101

Dated January 29, 2021, at Seattle, Washington.

*lan*

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Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101

cc: Administrative Resource Services, OSPI