

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 08-2024-OSPI-02340

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2024-SE-0119

A due process hearing was held before Administrative Law Judge (ALJ) Pamela Meotti on January 27 through 31, 2025, via videoconference. The Parent of the Student whose education is at issue<sup>1</sup> appeared and was represented by Jenna Schuenemann and Kerri Feeney, attorneys at law. The Seattle School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District were Nazik Youssef, Senior General Counsel, and Mike Bylsma, Director of Special Education.

**STATEMENT OF THE CASE**

**Procedural History**

The Parents filed a due process hearing request (Complaint) on August 29, 2024, which was assigned to ALJ Meotti. The District filed a response on September 9, 2024. ALJ Meotti issued prehearing orders on September 25 and October 1, 2024. Following briefing and argument, the ALJ issued an order denying the District's motion for summary judgment on November 8, 2024. The hearing was held on January 27 to 31, 2025, as originally scheduled. An order setting a due date for post-hearing briefs was issued on February 3, 2025.

**Due Date for Written Decision**

The deadline for a written decision was extended at the District's request, without objection by the Parents, to thirty (30) days after the record of the hearing closes. The record of the hearing closed on April 4, 2025, at 5:00 p.m., when the

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<sup>1</sup> To ensure confidentiality, names of parents and students are not used. The Student's mother was present for the hearing and is referred to as "Parent." The Student's father did not appear for the hearing. ALJs David LeMaster and Niles McDonald observed part of the hearing for training purposes.

parties timely submitted post-hearing briefs. The due date for a written decision is May 4, 2025.

On April 8, 2025, the District objected to consideration of the Parents' post-hearing brief, which exceeded the page limit. On April 10, 2025, the ALJ issued an order granting the objection in part. In keeping with that order, the ALJ considered the Parents' post hearing brief and Exhibit A, but did not consider Exhibits B-D.

### **EVIDENCE RELIED UPON**

#### **Exhibits Admitted:**

District's Exhibits: D1-D5; D7-D59.

Parents' Exhibits: P3-P4; P6-P7; P9-P10; P16-P17; P20-P23; P25; P28-P36; P39-P54; P58-P71; P77.<sup>2</sup>

#### **Witnesses Heard (in order of appearance):**

Laura Petrie, District Consulting Teacher in Special Education

Krista Brown, District General Education Teacher

Evan Perkiss, District General Education Teacher

Caitlin O'Shea, District Student Support Supervisor

Parent

Ronda Barnes, District Special Education Teacher

Ashley Bellamy, District General Education Teacher

Joseph Zimmerman, District General Education Teacher<sup>3</sup>

Annemarie Hutson, District School Psychologist

Heather Hall, District School Psychologist

Josh Phillips, Head of Middle School, Hamlin Robinson School

Edward Kuh, Teacher, Hamlin Robinson School

Jenny Gruenberg, Teacher, Hamlin Robinson School

Meredith Atkins, Speech Language Pathologist, Owner of Language & Learning Arts

Dr. Christine Clancy, Licensed Clinical Psychologist and Board-Certified Neuropsychologist

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<sup>2</sup> Citations to the exhibits of record are by party (P for the Parent; D for the District) and page number. For example, a citation to P6p1, refers to page 1 of Parents' Exhibit 6. Citations to the transcript of record are to "T" followed by the page number. For example, a citation to T214, refers to page 214 of the transcript. Citations to Exhibits P40 and P47, which are video recordings, include a timestamp.

<sup>3</sup> The parties did not complete cross-examination and redirect examination of Mr. Zimmerman when he appeared on January 28, 2025; however, they opted not to recall him at a later time. T1042.

## ISSUES

1. The issues for hearing<sup>4</sup> as set forth in the Parents' Complaint are as follows:

Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) from March 2022 to the present by:

- (1) Predetermining the eligibility decision in April 2022 by telling the Parents that the Student would not qualify for specially designed instruction (SDI) in reading before conducting an evaluation;
- (2) Failing to conduct an appropriate initial evaluation of the Student in May 2022 by:
  - a. Failing to appropriately consider the evaluative data and recommendations from the independent evaluation conducted in March 2022;
  - b. Failing to conduct appropriate assessments in reading;
  - c. Failing to conduct appropriate assessments to determine if the Student had a specific learning disability;
  - d. Failing to follow additional procedures for identifying students with specific learning disabilities in violation of WAC 392-172A-03045 through WAC 392-172A-03080;
  - e. Failing to find the Student eligible for SDI in reading;
  - f. Failing to find the Student eligible for SDI in study/organizational skills;
- (3) Failing to develop an appropriate individualized education program (IEP) in June 2022 that was reasonably calculated to confer meaningful educational benefit to the Student by:
  - a. Failing to provide SDI in reading;

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<sup>4</sup> The ALJ does not have jurisdiction over allegations that the District violated the Washington Law Against Discrimination, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Accordingly, these allegations are not included in the issue statement. Likewise, because the ALJ does not have authority to award costs and attorneys' fees, they are not included in the requested remedies.

- b. Failing to offer sufficient SDI in writing;
  - c. Failing to include measurable and appropriate goals;
- (4) Significantly impeding the Parents' right to participate in the educational decision-making process by:
- a. Failing to provide procedural safeguards in March and April 2022 when the Parents requested an initial special education evaluation and during the initial evaluation process;
  - b. Failing to properly document the District's decision to refuse to reevaluate the Student in October 2022;
  - c. Failing to provide the Parents with procedural safeguards in October 2022 when the District denied the Parents' request for early reevaluation;
  - d. Failing to provide the Parents with procedural safeguards when the Parents requested a reevaluation in June 2023;
  - e. Failing to provide the Parents with procedural safeguards until November 10, 2023;
  - f. Failing to timely provide the Parents with special education progress reports for the 2023-2024 school year;
- (5) Failing to draft an appropriate IEP in May 2023 that was designed to confer meaningful educational benefit to the Student by:
- a. Failing to provide sufficient SDI;
  - b. Failing to include progress reporting on the Student's annual goal;
  - c. Failing to include measurable and appropriate annual goals;
- (6) Failing to implement the Student's May 26, 2023 IEP with fidelity by failing to deliver all of the Student's SDI in written language from September 6, 2023, through December 2023;
- (7) Failing to conduct an appropriate reevaluation of the Student in the Fall of 2023 by:
- a. Failing to conduct comprehensive assessments in the areas of reading and written language;

- b. Failing to evaluate the Student in the area of social/emotional/behavior;
- c. Failing to evaluate the Student in the area of study skills/organization;
- d. Failing to incorporate teacher feedback in the evaluation;
- e. Failing to conduct an observation of the Student;
- f. Failing to follow additional procedures for identifying students with specific learning disabilities in violation of WAC 392-172A-03045 through WAC 392-172A-03080;

(8) Failing to develop an appropriate IEP in November 2023 that was designed to confer meaningful educational benefit to the Student by:

- a. Failing to include positive behavioral interventions and supports to address the Student's behaviors that were impeding his access to his education;
- b. Failing to include appropriate measurable goals to address the Student's deficits in reading and written expression;
- c. Failing to offer sufficient SDI;

(9) Failing to initiate a functional behavior assessment (FBA) and determine whether the Student required a behavioral intervention plan (BIP) in the Fall of 2023 when the Student was demonstrating behaviors that impeded his access to his education;

(10) Failing to conduct an appropriate evaluation in June 2024 by:

- a. Failing to appropriately consider the evaluative data and recommendations from the independent evaluation conducted in May 2024;
- b. Failing to conduct an observation of the Student;
- c. Failing to follow additional procedures for identifying students with specific learning disabilities in violation of WAC 392-172A-03045 through WAC 392-172A-03080;

(11) Failing to develop an appropriate IEP in June 2024 that was reasonably calculated to confer meaningful educational benefit to the Student by:

- a. Failing to specify that the Student required targeted reading intervention in the form of an evidence-based structured literacy curriculum designed for students with dyslexia in order to access his education;
- b. Failing to include appropriate, measurable annual goals;
- c. Failing to offer sufficient SDI; and

Whether the Parents are entitled to their requested remedies:

- (1) Declaratory relief that the District violated the IDEA and that its actions denied the Student FAPE;
- (2) An updated IEP that specifies that the Student requires an evidence-based structured literacy curriculum for students with dyslexia in order to access his education and contains appropriate annual goals in all areas required for the Student to access his education;
- (3) Reimbursement of tuition and related costs for placement at Hamlin Robinson School for the 2024-2025 and 2025-2026 school years at public expense;
- (4) Reimbursement for private tutoring with Language & Learning Arts from July 2022 through August 2024;
- (5) Compensatory education and supplemental services in an amount and in areas to be determined at the due process hearing, with transportation provided or funded by the District if required to access such services; and
- (6) Other equitable remedies, as appropriate.

### **FINDINGS OF FACT**

1. The Student is currently [REDACTED] and attends a private school, Hamlin Robinson. T.824. He qualifies for special education services under the disability category of specific learning disabilities. D53p6.

#### **2021-2022 School Year – 3rd grade**

2. In February 2022, when the Student was [REDACTED], the Parents contacted clinical psychologist Caitlin Ames, Psy.D., L.P., to assess the Student's cognitive and academic functioning. P6pp15, 30. At that time, the Student was in 3<sup>rd</sup> grade at Orca

K-8 School (Orca) in the District. P6 p3. Dr. Ames assessed the Student in these areas along with oral language, attention and executive functions, behavior, and anxiety. P6pp19-29.

3. Dr. Ames diagnosed the Student with Specific Learning Disorder, with impairment in reading and written expression; attention-deficit/hyperactivity disorder, combined presentation, mild (ADHD); and “Other Specified Anxiety Disorder, with insufficient symptoms.” P6p31.

4. Dr. Ames administered the Weschler Intelligence Scale for Children, Fifth Edition (WISC-V) to measure the Student’s cognitive development. The Student’s overall intellectual ability fell within the average range for his age with low processing speed as an area of relative weakness. P6pp15, 21.

5. Dr. Ames used the Wechsler Individual Achievement Test, Fourth Edition (WIAT-4) to measure academic performance. The Student’s written language scores were in the below average range for most measures. P6p24. Math scores were average for his grade. P6p25. Many of the Student’s reading scores were within the average range, including reading comprehension and dyslexia index. P6p23. However, his ability to read sight words (orthographic fluency -4<sup>th</sup> percentile) and passages (oral reading fluency – 6<sup>th</sup> percentile ) was much lower than expected for his grade and overall ability. “Fluency in reading allows a reader to process a text quickly and automatically in order to focus on the deeper meaning of the text.” P6p23-24. Word reading and orthographic choice, both 9<sup>th</sup> percentile, were also below average. P6p23-24; T32.

6. Dr. Ames recommended “targeted reading intervention . . with instruction in word reading, orthographic processing, and oral reading fluency,” and daily participation in individual or small group reading intervention. She also recommended handwriting instruction one-on-one or in small groups. With respect to ADHD, executive function, and anxiety, Dr. Ames recommended accommodations. P6pp31-33.

7. On March 25, 2022, the Parent contacted Krista Brown,<sup>5</sup> the Student’s general education teacher, about obtaining a 504 Plan or individualized education program (IEP) for the Student. D1pp3-4.

8. On April 5, 2022, the District held a special education referral meeting, and issued a prior written notice (PWN) proposing a special education eligibility evaluation

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<sup>5</sup> Ms. Brown obtained a master’s degree in special education in 2005 and is a certificated general education and special education teacher. T213. For the past three years, she has been employed by the District as an academic intervention specialist. Before that, she served as a District 3rd grade teacher for nine years. Ms. Brown was a special education teacher during her first ten years of teaching, with five of those years in the District. T215-16.

of the Student. D3p4. The PWN stated that the Student had procedural protections under IDEA that were explained in the *Notice of Procedural Safeguards for Special Education Students and Their Families* (procedural safeguards). The PWN stated that if a copy of procedural safeguards was not enclosed, a copy and help understanding the content could be obtained by contacting school psychologist Annemarie Hutson.<sup>6</sup> D3p4. There is no evidence that a copy of the procedural safeguards was, in fact, attached to the PWN.

9. After the meeting, the Parent sent an email to Ms. Hutson, who had attended the referral meeting. The Parent raised concerns that Ms. Hutson had stated the Student would not qualify for reading intervention. P3p1; T375, 777; P71p5. The email stated the Parents strongly believed the Student qualified for reading and writing intervention based on Dr. Ames' evaluation. P3pp1-2.

10. On April 5, 2022, the Parents provided consent for the District to evaluate the Student in reading, written language, study/organizational skills, and medical-physical. The Parents did not request assessments in other areas. D7pp1-2; D2.

#### **May 2022 Initial Evaluation and IEP**

11. Ms. Hutson conducted the Student's evaluation. She reviewed Dr. Ames' report and considered the Parents' concerns. P6pp3, 7, 9, 10-11. Ms. Hutson also considered input from Ms. Brown that the Student had great ideas for writing, enjoyed reading, was a hard worker and easily motivated, but was also easily distracted and required directions and tasks to be repeated often. P6pp3, 9; T230-31.

12. Because the Student's written language scores on the WIAT-4 in Dr. Ames' evaluation indicated below average writing abilities, Ms. Hutson recommended SDI in writing. P6pp10-11. In reading, Ms. Hutson considered the Student's scores on the WIAT-4 and administered the Kaufman Test of Education Achievement, Third Edition (KTEA-3). Ms. Hutson also considered her observation of the Student during the assessment. P6p10.

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<sup>6</sup> Ms. Hutson has an education specialist degree and has been a nationally certified school psychologist since 2005. T577, 559-60. She has been employed by the District as a school psychologist for ten years and previously worked for two other school districts in Washington state. T560-61. Ms. Hutson conducts more than 60 evaluations each year, and has experience evaluating students diagnosed with specific learning disability, anxiety, and ADHD. T562.

13. Ms. Hutson administered two subtests of the KTEA-3.<sup>7</sup> The Student scored in the average range (50<sup>th</sup> percentile) on the letter and word recognition subtest, which measures the same skills as the word reading subtest of the WIAT-4 administered by Dr. Ames (9<sup>th</sup> percentile). P6pp8-9, 23; T709. The Student scored in the high average range on the phonological processing subtest (88<sup>th</sup> percentile), which measures the same skills as the phonemic proficiency subtest of the WIAT-4 (50<sup>th</sup> percentile, average range). T710; P6pp8-9, 23.

14. Ms. Hudson also considered the Student's Fountas and Pinnell Literacy Scores (F&P). The F&P is a one-on-one assessment given by the teacher in the classroom.<sup>8</sup> T237, 268. The Student's score (level O) in the fall of 2021 and April 2022 indicated he was reading on par with his 3<sup>rd</sup> grade peers. P6p9. Ms. Hutson also considered the Student's scores on the Measure of Academic Progress (MAP)<sup>9</sup> over time:

Fall 2021 11<sup>th</sup> percentile  
Winter 2020 78<sup>th</sup> percentile  
Spring 2019 56<sup>th</sup> percentile  
Winter 2019 26<sup>th</sup> percentile  
Fall 2018 67<sup>th</sup> percentile.

P6p9.

15. Based on review of multiple data points (Dr. Ames' data, F&P scores, MAP scores over time, KTEA-3 results), Ms. Hutson concluded the Student was able to access the general education curriculum within the range of his same-aged peers, despite having a disability. T572, 731. Therefore, Ms. Hutson did not recommend SDI in reading. T572; P6p10.

16. In the area of study/organizational skills, Ms. Hutson noted that this area had been formally evaluated by Dr. Ames using the Behavior Rating Inventory of Executive

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<sup>7</sup> Ms. Hutson administered the letter and word recognition subtest of the KTEA-3 because the Student's very low score on the word reading subtest seemed to be an outlier. T708; P6pp8-9. She did not question the Student's fluency scores in Dr. Ames' evaluation because they aligned with his processing speed scores. T710, 712. It is unclear why she administered the phonological processing subtest. Because the score increases on the KTEA-3 subtests were statistically significant, Ms. Hutson noted that a practice effect may have occurred. However, she believed the KTEA-3 scores were valid and reflected the Student's skills. T712-13.

<sup>8</sup> To administer the F&P, the teacher sits next to the student, who reads from a very short book that can be completed in 10 to 15 minutes. The student then answers comprehension questions, with literal to inferential questions that become progressively more difficult. T237. A Student's F&P score can vary depending on the student's familiarity with and/or interest in the subject of the text. T269.

<sup>9</sup> The MAP assessment measures reading and math ability and can be taken up to three times per year. T233.

Function, Second Edition. (BRIEF-2). The results of the BRIEF-2 indicated that the Student had difficulty initiating tasks and activities and problem-solving approaches. Ms. Hutson suggested accommodations, as recommended by Dr. Ames, and did not recommend SDI in this area. P6pp10, 33.

17. By email on May 24, 2022, Ms. Hutson provided the Parents with a draft evaluation report to be discussed at the evaluation meeting. D5p3; T698. The next day the Parent responded that she was still concerned that the Student required reading intervention and questioned how reading had been tested. D5p3.

18. The evaluation meeting took place on May 31, 2022. P6p3. The Parent and Ms. Hutson attended, along with special education teacher Karen Deeter and the principal of ORCA. P6p6. The evaluation team found the Student eligible for special education services under the Other Health Impairment disability category and recommended SDI in written language with focus on paragraph structure and building to essay writing. P6pp3-5, 11.

19. On May 31, 2022, the District issued a PWN proposing to initiate special education services. The PWN contained the same language about procedural safeguards as the PWN sent on April 5, 2022; the record does not establish if a copy of the procedural safeguards was attached to the PWN. P6p12.

20. After the evaluation meeting, Ms. Deeter prepared a draft IEP. D10p1. The Parent provided information to Ms. Deeter about the Student's diagnoses and private evaluation and stated her firm belief that the Student needed reading assistance. D10pp1-2. In an email to the Parent on June 7, 2022, Ms. Deeter stated: "As for reading, I incorporate it in with the writing. We read a book and then we write about it. I also do spelling and grammar." D10p1. The Parent responded, "This is fantastic to hear, thank you Karen!" D10p1.

21. Later in the day on June 7, 2022, the Student's IEP team met to develop an IEP. D9p1; D8p1. The Parents attended, along with Ms. Deeter, the school principal, and the Student's substitute general education teacher. D9p3.

22. The team considered the Student's behaviors and noted they did not impede his learning or that of others. The team also considered the Parents' concerns, which centered on the Student's academic performance and the fact that he did not qualify for reading SDI. D9p4. During the meeting, the Parents voiced their disagreement with the fact that the IEP did not provide SDI in reading. T386.

23. The team considered the Student's present levels of performance in writing and set a goal to improve his ability "to write an essay at the fourth-grade level (topic

paragraph, factual information, well planned transitions and concluding paragraph)” from 0/5 opportunities to 4/5 opportunities. D9p6. The team also provided 150 minutes per week of SDI in written language to be delivered in the special education setting. D9p9.

24. The IEP provided multiple accommodations, such as extra time to complete assignments; short directions; repeat of directions and checks for understanding; and use of fidgets and manipulatives. D9p6.

25. The District issued a PWN on June 7, 2022, proposing to initiate the IEP. It advised the Parents of their procedural safeguards consistent with previous PWNs; the record does not establish if a copy of the procedural safeguards was attached to the PWN. D9p13.

26. About a week after the IEP team meeting, the Parents received a copy of the final IEP indicating that the Student would receive SDI in writing but not in reading. T388-89. The Parent continued to send emails questioning why the Student wasn’t qualified in reading and stating that he needed reading instruction. T389.

#### **Progress During the 2021-2022 School Year**

27. Ms. Brown addressed social-emotional learning with the Student’s class on a daily basis. T221-22. During the fall and winter of the 2021-2022 school year, the Student received marks of “E” (emerging) and “D” (developing) on his report card, for all skills under the category of “Social Emotional Skills and Learning Practices.” By spring 2022, the Student had improved all skills to “S,” meaning “strength, consistently uses skills across subjects and settings.” P52pp1, 6. By spring of 2022, the Student was meeting performance expectations (code 3) for most skills in each academic area, including all skills in English Language Arts (ELA). P52pp2-6.

28. On July 6, 2022, the Student started to receive reading intervention from Language & Learning Arts, a speech pathology business that works with children who have learning disabilities, including dyslexia. T1063-64, P58p2.

29. After the school year ended, the Parents received the Student’s score on the “Smarter Balanced” (SBA) statewide assessment. P71p10; P7p3. The Student’s “L2” score for “ELA- grade 3” meant he was below grade level and did not meet the standard. P7p3; P71p10. The record does not establish precisely when the Parents received the SBA results. Based on the Parent’s use of the language “after the school year ended,” in her declaration, it is found that the Parents received the SBA results within several weeks to a month after the school year ended on June 17, 2022. D58p1; P71p10.

## 2022-2023 School Year – 4th grade

30. The 2022-2023 school year started on September 14, 2022. D58p2. Ashley Bellamy (Teacher Ash), and Evan Perkiss (Mr. Perkiss or Mr. Evan), were the Student's 4th grade general education teachers.<sup>10</sup> D11p5; D26pp1, 4. Mr. Perkiss taught math and science, and Teacher Ash taught ELA and social studies. T468. Ms. Deeter was the Student's special education teacher. T495.

31. Teacher Ash frequently worked one-one-one with the Student to help him with writing. T497. The Student got into spirals where he felt like he couldn't write, and Teacher Ash would help build his confidence to encourage him to try. T476. The Student did not have these difficulties with reading. T508. With accommodations such as scribing and allowing the Student to dictate, the Student was able to excel in ELA. T471-72. Teacher Ash believed the Student made progress in his classes and showed growth during his 4th grade year, including in writing. T477, 475-77; D27p2.

32. All students received lessons in social-emotional skills throughout the school year. D26pp4-57; T246-47. The Student did "really great" during social emotional instruction. He listened and participated appropriately. T473. The Student had social challenges during unstructured time such as recess or lunch that were typical of other students his age. T499-500. He also had challenges with lack of self-awareness and self-management. T264-65. The Student was unaware that he made noises in the classroom—primarily drumming noises on the table—that sometimes led to peer conflict. T251, 262, 266, 486. Mr. Perkiss and Teacher Ash addressed this by teaching students how to respectfully ask the Student not to make noise, and how the Student could respectfully respond. T259. The teachers also found ways for the Student to release excess energy. T474.

33. Because the Student had difficulty focusing and listening to instruction, Mr. Perkiss did a lot of one-on-one reteaching and provided supports aimed at building confidence, such as partnering the Student with a student he worked well with, giving him a strategy for adding numbers, and checking whether he understood material or wanted help. T256-58. Mr. Perkiss believed these strategies worked and allowed the Student to access the 4th grade curriculum, but he worried they would not be maintainable in 5th grade and middle school. T276.

34. On October 12, 2022, the Parent provided Teacher Ash and Mr. Perkiss a copy of the evaluations conducted by the District and Dr. Ames in the spring of 2022. The Parent asked: "Do we have a new school psychologist? If so should we re-test at the

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<sup>10</sup> Evan Perkiss has a bachelor's degree and certification in elementary education. He has taught at the elementary school level for fifteen years. T245. Ashley Bellamy, who has a master's degree in education and certification in elementary education, has been teaching for three years. T467-68.

school?” D12p6. Mr. Perkiss copied the new school psychologist, Deanna Sanekane, on the email, and stated he did not believe the District would re-test the Student so quickly after initial testing. He recommended collecting more data. D12p5. Ms. Sanekane confirmed Mr. Perkiss’s response about re-testing and also recommended continued data collection on reading. D12p1. The Parent thanked Mr. Perkiss and Ms. Sanekane for their thoughtful feedback. D12p1. The District did not issue a PWN or provide procedural safeguards in connection with the inquiry about whether to re-test.

35. During the fall of 2022, the Parents submitted an application and toured Hamlin Robinson, a private school that serves students with dyslexia and other language-based learning differences. D12p5; T391, 803.

36. On November 19, 2022, the Parent attended a Parent/Teacher conference with Mr. Perkiss. D13p1. With respect to reading, a conference report indicated:

MAP Score Fall 2022–18% | LEXILE LEVEL (MAP)– 225L-375L | F and P conversion–K.

D13p12. Lexile level indicates the difficulty of the text; higher scores reflect greater difficulty. T270, 488-89, 506-507. At the time of the conference, the Student was reading below a 4th grade level, although the record does not indicate the precise level. T488, 270. It is unclear whether the Student’s reading level was discussed during the conference. T272. However, Teacher Ash talked with the Parents about the Student’s reading assessment scores outside of the conference process. T489.

37. As of November 18, 2022, the Student had made significant progress toward his IEP goal (code 3). A comment noted that the Student had been working on the mechanics of writing until early November. When asked to write a paragraph, the Student initially stalled but when given the chance to write a fantasy, ultimately wrote “an amazing story with dialogue.” D15p2. Because the Student was sick and did not attend school in late November 2022, his progress report was available for the Parent to pick up in the office. D14. On January 5, 2023, Ms. Deeter sent the Parents an electronic copy of the progress report. D15p1; T652.

38. On January 5, 2023, the Parent and Teacher Ash exchanged emails about Hamlin Robinson. D16. The Parent was “unsure if Hamlin is overkill for his depth of dyslexia. It’s not overpowering from what we can tell but definitely something he needs support with.” D16p1. The Parent noted it would be difficult to remove the Student from Orca, where he was happy and had friends, and mentioned that middle school might be a better transition point. D16p1. Ultimately, when the Hamlin Robinson application process ended in early 2023, the Student was not accepted. T392-93.

39. On April 5, 2023, Ms. Deeter provided the Parent with the Student’s IEP progress report. As of March 27, 2023, the Student was making some progress toward

his IEP goal (code 2). A comment noted: “Although [the Student] has proven to be a great writer when he wants to be, he needs to be able to write to a prompt from his teacher. I asked him to read a book and write a report about it, he stalled and did not complete the assignment . . .” D19p2.

40. By email in late April, the Parents informed Teacher Ash and Ms. Deeter that they did not object to the Student missing time with Ms. Deeter so that he could participate in a special public speaking program. T658-59. The Parent stated it was not necessary to make up any missed special education sessions. D20pp1-2. In connection with this exchange, Ms. Deeter again noted that the Student “can write, it is a matter of getting him to do it.” D20p1.

41. On May 9, 2023, the Parent informed Ms. Deeter and Teacher Ash that when Ms. Deeter had a substitute teacher, she wanted the Student to stay in his general education class rather than receive “pull out” special education services from the substitute. The Parent stated it was not necessary to make up for that time. D21p1.

#### **May 2023 IEP**

42. On May 23, 2023, the Student’s IEP team met to develop his annual IEP. D23p1. The Parent, Ms. Deeter, Teacher Ash, and a District administrator attended. D23p3. The team considered the Student’s behaviors and determined they did not impede his learning or that of others. D23p4. The team also considered the Parent’s concerns about the Student’s reading, writing, ability to focus, concentration, and motivation. D23p4.

43. The team considered the Student’s SBA score from the spring of 2022 indicating he was below grade level and standard. They also considered his MAP reading scores:

2022-2023 Winter RIT: 192 Percentile: 28 Lexile 535L  
2022-2023 Fall RIT: 181 Percentile: 18 Lexile 325L  
2021-2022 Fall RIT: 166 Percentile: 8 Lexile 35L

D23p4. The change from Lexile 35L to 325L to 535L between Fall 2021-2022 (3rd grade) to Winter 2022-2023 (4th grade) indicated significant growth. T507. The IEP did not discuss the Student’s progress toward his IEP goal. D23p6.

44. Ms. Deeter and Teacher Ash reported on the Student’s writing skills. D23p6. The Student was creative and had great ideas but resisted putting thoughts down on paper. Although the Student had made lots of improvement with spelling and conventions, his determination to spell every word correctly sometimes prevented him from completing a draft. The Student was able to dictate a story with organized

thoughts and proper sequence and wanted to dictate another story. The challenge was getting him to write on his own. D23p6. Ms. Deeter thought a goal that allowed him to use the computer with word prediction and spell check might be worth trying. D23p6.

45. The team developed a writing goal that the Student, given a prompt, would

type a 5 paragraph essay with proper conventions, grammar and spelling improving writing skills from not being able to put words on paper (1/5 attempts dictated to another person to type) to producing a well written 5 paragraph essay on a subject of his choice that contains proper conventions, grammar and spelling, in 4/5 attempts on his own. [sic] as measured by Writing samples.

D23p7. At that time, the Student could not write a 5-paragraph essay on his own without supports, such as dictation or typing instead of handwriting. T493-94. In Teacher Ash's experience, handwriting was difficult for the Student because "a pencil had to be just right" and the Student was worried about spelling. Allowing the Student to type eliminated those barriers. T494. At hearing, the Parent indicated she was not sure whether the Student would be dictating to someone else or writing on his own, but she did not discuss these concerns at the meeting. T884-85.

46. The IEP stated the District would provide written progress reports documenting the Student's progress toward his goals each trimester. D23p7.

47. The IEP continued to provide multiple accommodations. D23p8. New accommodations included "Read-Aloud – English" and "Speech to Text" during testing. D23pp8, 10.

48. The IEP provided 150 minutes per week of SDI in written language in the general education setting. D23p11. The Parent voiced disagreement that the IEP did not provide SDI in reading. T666.

49. The District issued a PWN on May 25, 2023, proposing to initiate the new IEP on May 31, 2023. The PWN stated that procedural safeguards had been "provided to parents/guardians." D23p14. It is unclear how procedural safeguards were provided.

50. By email on June 8, 2023, the Parent informed school psychologist Deanna Sanekane that she and Ms. Deeter had agreed the Student needed to be reevaluated for reading and writing in the fall. Ms. Sanekane agreed to schedule a meeting in September. D24p2. There is no evidence a copy of procedural safeguards was provided to the Parents at this time.

51. By email on June 29, 2023, Ms. Deeter sent the Parent a copy of the Student's IEP progress report. D25p1. The report stated that as of May 31, 2023, the Student had met the annual writing goal adopted in the May 2023 IEP, which had a start date of May 31, 2023. D25p2. The IEP progress report is not found credible because there is no evidence that the Student could have met his annual IEP goal on the same date that it was set to be implemented. Moreover, the report is inconsistent with Teacher Ash's credible testimony that the Student could not have written a five-paragraph essay on his own in late May 2023.

52. There is no evidence in the record as to whether the Student ever met the writing goal from his prior IEP (May 2022), or whether he made any progress toward that goal after the progress reported for March 27, 2023. D56p1.

53. The Student's 4th grade report card indicated that he met performance expectations in the eleven skills listed under "Reading Comprehension," and "Reading Foundational Skills." The Student showed growth in writing. As to the five skills listed under "Writing" and "Language," he met performance expectations for one skill and was approaching performance expectations for the remaining four. P53pp2-3, 6. As to social emotional skills, the Student received marks of "Strength, consistently uses skills across subjects and settings" with respect to four skills. For two skills, he was marked as "Developing, applies skills in most subjects and settings." P53p1.

54. The Student met grade level standards in ELA on the SBA for the spring of 2023. P7p2. In addition, his reading scores on the MAP for spring of 2023 were in the average to high average range. P7p2.

### **2023-2024 School Year – 5th grade**

55. The 2023-2024 school year started on September 6, 2023. D58p3. Joseph Zimmerman and Zachary Hoefer were the Student's general education teachers.<sup>11</sup> D28p1. Mr. Zimmerman taught math and science, Mr. Hoefer taught ELA, and they co-taught social studies. T512, 522; D57p1. All 5th grade students received instruction in social emotional learning. T520-21.

56. Orca did not have a resource teacher<sup>12</sup> at the start of the school year. Jony Phan, who was a certificated substitute teacher but was not a certificated special education teacher, served as the Student's case manager. D30p2; P21p11.; T60-61.

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<sup>11</sup> Mr. Zimmerman has a bachelor's degree and is a certificated teacher in Washington, California, and Indiana. T512. He has been teaching for 40 years, mostly at the upper elementary level. T512.

<sup>12</sup> Orca is a small school with only two special education programs – a medical/fragile program and a resource program for students with mild to moderate disabilities. T57; T400.

Mr. Phan met with the Student on a daily basis, but the record does not establish what services he delivered to the Student. D30p1; T354.

57. In October 2023, the Parents updated the Student's records for his application at Hamlin Robinson, which remained on file from the previous year. D29p1; T678.

### **Behavior in Fall 2023**

58. The Student engaged in the following behaviors in the fall of 2023:

-September 26: the Student was talking to others during instruction on several occasions. P16p1.

-November 6: The Student said he could not do a vocabulary assignment, then balled up the paper and threw it across the room. The Student later laughed and threw the paper again. When he turned in the paper, he said it was too difficult even though he had not spent time on it. P17p1.

-November 7: The Student and others were disruptive in drama class. D32p1. When asked to write a behavior plan, the Student responded to some questions (e.g. How my actions hurt others? They didn't hurt anybody) then crumpled the paper and kicked it toward the teacher. D32pp3, 6. The Parent informed the teacher the Student was very upset and felt he had been treated unfairly. She raised concerns about inconsistent and unfair discipline. The teacher explained that other students involved had been given the same assignment. D32p8.

-November 9: the Student snatched a calculator from a student and hit her on the head then slammed the calculator to the floor when asked to leave the room. Mr. Zimmerman informed the Parents that the Student's behaviors were starting to escalate and needed to be addressed. D38p3.

### **November 2023 Reevaluation**

59. The Parents consented to a reevaluation of the Student with assessments in reading and writing on September 25, 2023. They did not raise concerns or request assessments in any other area. D30pp7-9.

60. Ms. Sanekane conducted the reevaluation and prepared a draft reevaluation report that she sent to the Parents on November 13, 2023. D33p1.

61. To assess reading, Ms. Sanekane reviewed evaluations conducted in the spring of 2022 by Dr. Ames and by the District. Ms. Sanekane noted that private testing

indicated below average word reading and reading fluency skills, and average reading comprehension skills. D35p10.

62. Ms. Sanekane also administered the KTEA-3 to assess reading comprehension, as requested by the Parents, and reading fluency, which had been an area of concern in Dr. Ames' evaluation. D35p10. The Student's scores were as follows:

Reading Fluency Composite: SS=85 (16th percentile, low average)

Silent reading fluency: SS=82 (12<sup>th</sup> percentile, below average)

Word recognition fluency: SS=95 (37<sup>th</sup> percentile, average)

Decoding fluency: SS=87 (19<sup>th</sup> percentile, average)

Reading Comprehension: SS=93 (32<sup>nd</sup> percentile, average).

D35p10. Ms. Sanekane noted that the Student was a strong reader "who can accurately decode words and understand passages he reads. He may have difficulty reading and comprehending passages in a quick and efficient manner." D35p10. Therefore, she recommended SDI in reading for the Student. D35p10.

63. To assess writing, Ms. Sanekane reviewed the evaluations conducted in the spring of 2022 by Dr. Ames and the District. She noted that the Student's scores were in the low average range and that he qualified for special education services. D35p11. Ms. Sanekane also administered the KTEA-3 to assess orthographic processing and writing fluency. The Student's scores were as follows:

Orthographic processing composite: SS=89 (23<sup>rd</sup> percentile, average range)

Spelling: SS=89 (23<sup>rd</sup> percentile, average)

Letter naming facility: SS=92 (30<sup>th</sup> percentile, average)

Word recognition fluency: SS=95 (37<sup>th</sup> percentile, average)

Writing fluency: SS=44 (less than 0.1 percentile, very low).

D35p11. Ms. Sanekane noted that the Student was a "growing writer who has good ideas for written work." She recommended continued SDI in writing. D35p11.

64. The reevaluation report does not include input from teachers or the Parents and does not include any information regarding an observation of the Student.

65. The District held an evaluation meeting followed by an IEP team meeting on November 14, 2023. D35p1; D36p1. Participants included the Parents, Ms.

Sanekane, Mr. Hoefler, Mr. Zimmerman, and Laura Petrie, who is a District Program Specialist.<sup>13</sup> D35p9.

66. The team determined that the Student was eligible for special education services in the specific learning disabilities category, a change from the previous category of other health impairment. The report reflected that the Student's disability "adversely impacts his capacity to read with appropriate fluency and decoding accuracy and organize his thoughts into a structured written composition," which prevented him from accessing the general education curriculum. D35pp6-7. There is no evidence that the reevaluation included the use of additional procedures related to identifying whether a student has a learning disability. D35p6. Additionally, there is no evidence that anyone disagreed with the Student qualifying under the specific learning disability category. T64-65.

67. All team members agreed to recommend SDI in reading and written language. D35p8; T65. No one raised concerns that the Student needed to be evaluated in the area of social/emotional/behavior or study/organizational skills. T63.

### **November 2023 IEP Team Meeting**

68. Ms. Petrie and Kati Gratz, the medical/fragile teacher at Orca, prepared an updated draft IEP for the Student. T158-59. In an email to the Parent, Ms. Petrie explained that she and Ms. Gratz had drafted the IEP because the District was still working to hire a resource teacher and Mr. Phan was "not certified to write IEPs." D34pp1-2. When the Parent asked whether a "sub" was providing services, Ms. Petrie stated generally that a substitute teacher was delivering IEP services to students, but did not provide any specific information about the Student's services. P34p1. Neither Ms. Petrie nor Ms. Gratz provided SDI to the Student. T159-60.

69. Ms. Petrie sent the Parents the draft IEP and a copy of the procedural safeguards on November 10, 2023. D34pp1, 4-45. Among other things, the procedural safeguards discussed the right to file citizen complaints and due process hearing requests and timelines for filing. D34pp21-23,30.

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<sup>13</sup> Ms. Petrie has a master's degree in education and endorsements in special education, business management, consumer technology education, ELA, and cross-curricular language. T54. In June 2021, she completed a nine month training program by the Dyslexia Training Institute and is certified as a dyslexia teacher. T54-55. Ms. Petrie has also completed several Orton-Gillingham trainings. T182. Ms. Petrie served as a special education teacher for approximately 20 years. She currently serves as a consulting teacher in special education for the District. T55-56.

70. After the reevaluation meeting on November 14, 2023, the Student's IEP team met to update his IEP. D36p1. The Parents attended, along with Ms. Sanekane, Mr. Hoefer, Mr. Zimmerman, and Ms. Petrie. D36p3.

71. Mr. Zimmerman indicated that the Student had some behaviors that were impeding his education. D36p3. However, because the behaviors were not occurring on a regular basis, the team determined that overall the Student's behaviors were not impeding his education or that of others. The team did not spend much time discussing behaviors or consider conducting a functional behavioral assessment (FBA), because behaviors were not occurring regularly. T194-95; D36p5. The team agreed to provide Tier 2 interventions,<sup>14</sup> such as counselor support and modified seating. D36pp6, 16. School counselors support both general and special education students. T74.

72. The team considered the Student's 2022-2023 SBA scores. The Student was "Meeting Standard" in ELA. D36p5. The team also considered data and assessment scores from the reevaluation in the areas of reading and writing and Mr. Hoefer's input about both subjects.<sup>15</sup> D36pp6-8. Mr. Hoefer indicated that in reading, the Student's F&P scores placed him "at or around level M, below 5<sup>th</sup> grade level typical peers."<sup>16</sup> The Student's reading fluency was slower when he read independently and he was careful to read each word correctly, which may have impacted comprehension. D36p7.

73. The team set the following reading goal:

when given a text, read independently, [the Student] will answer inferential comprehension questions pertaining to the text improving reading comprehension from 1 out of 5 correct inference questions to 4 out of 5 correct inference questions as measured by teacher data collection."

T67; D36p7. The team set this goal because the Student had below average scores in silent reading fluency. Since "reading to learn" begins in 5<sup>th</sup> grade, the team believed an inferential comprehension question was appropriate. The Student was able to answer comprehension questions directly from reading, and making inferences from text would be an area of growth. P21pp15-16.

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<sup>14</sup> Tier 2 interventions are supports provided to all students, both special and general education. For example, Tier 2 behavioral supports could include a cool down space, a visual schedule, reminders, or assigning a partner. T195.

<sup>15</sup> The IEP correctly lists the Student's reading comprehension score as SS= 93 (32<sup>nd</sup> percentile, Average), but later mistakenly states that the Student's score equals or exceeds 93 percent of his same-aged peers. D36pp6-7; T175.

<sup>16</sup> Level M equates to the end of second grade. P39p4.

74. Mr. Hoefer noted that the Student struggled with writing assignments and crafting written responses in math class. Avoidance behaviors, such as walking around the classroom and visiting with friends, impeded work production. Mr. Hoefer characterized the Student as a “growing writer that produces written work with strong conventions and sentence structure.” D36p8.

75. The IEP reported that by the end of May 2023, the Student had already met the goal set in the May 2023 IEP (focused on typing a 5 paragraph essay). D36p8. As discussed above, this report was not found credible because there is no evidence that the Student was able to meet the goal set in the May 2023 IEP as of the start date for implementing that IEP. At hearing, Ms. Petrie acknowledged it would be unusual for a student to meet a goal within such a short time frame. She could not seek clarification from Ms. Deeter, who had retired. T180-81.

76. The team set a new writing goal focused on task initiation and using a graphic organizer to brainstorm ideas:

When given a writing task [the Student] will use a graphic organizer to brainstorm ideas and develop paragraph drafts prior to writing improving written language task initiation from 0 out of 5 opportunities to 5 out of 5 opportunities as measured by student writing samples.

D36p8. No team members expressed disagreement with the Student’s goals. T67-68. The IEP stated the District would provide written progress reports on the Student’s progress each trimester. D36pp 7, 9.

77. The IEP provided accommodations for the general and special education classrooms, which included placing his desk in a place where he could stand without distracting peers, follow-up practice time, frequent checks for understanding, one-step directions, and frequent positive reinforcement of appropriate behavior. The team also provided accommodations to support the Student’s need for extra time and to use a calculator, along with accommodations for state and district-wide assessments. D36pp10, 12, 16.

78. The IEP provided the Student with 50 minutes of weekly SDI in reading and 50 minutes of weekly SDI in writing. D36p13. Because the Student did well in the general education classroom, the team wanted to minimize his time away from that setting. The team agreed that special education staff would provide the Student’s SDI in the general education setting, such as at a table at the back of the classroom. D36p13, T69-70. Ms. Petrie credibly testified that the team agreed to start with 50 minutes of SDI in writing and 50 minutes of SDI in reading per week, and to amend the minutes if

the Student required more SDI to make progress. T70. No team member disagreed with the team's decisions regarding SDI. T71.

79. During the IEP team meeting, the Parent raised concerns about executive functioning. The team agreed to implement Tier 2 interventions and to continue monitoring the Student's skills in this area. D36p16.

80. On November 14, 2023, Ms. Sanekane submitted a referral to the school counselor and social worker (wellness team) to arrange for the Student to have someone to talk to and to find ways to assist him with task initiation. P22p1; T455. Several days later, Mr. Zimmerman submitted a referral to the wellness team. P22p1.

81. Ms. Petrie sent the Parent a final draft of the IEP with procedural safeguards attached on November 15, 2023. D37pp1-2.

#### **December 2023 through March 2024**

82. On December 8, 2023, Ronda Barnes sent an email to Orca parents introducing herself as the new Resource Special Education Teacher.<sup>17</sup> D39pp1-2. Mr. Phan had left Orca on or about November 17, 2023. D37p3. Ms. Barnes worked with the Student for a limited time in December before winter break from December 18, 2023, to January 1, 2024. D58. Ms. Barnes then worked with the Student from January 2024 through the end of the school year. T409.

83. On or about January 21, 2024, the Parent asked Ms. Barnes what curriculum was used to address the Student's reading and writing challenges. P28pp1-3. Ms. Barnes responded: "We are using the curriculum/assignments he gets in both his general education classes, pushing into his classes through an inclusion model. So helping him and others with his work in class. This provides the least restrictive environment/setting for him and working with others as well, helps to negate stigma that might be associated with being in Special Education. Also, general education teachers help provide services as they work with students as well. . . ." P28p1.

84. Ms. Barnes delivered the Student's reading and writing SDI in a small group of students who also had a specific learning disability. T443, 458. She provided the Student's written language SDI by using a graphic organizer that helped him to practice

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<sup>17</sup> Ms. Barnes has a bachelor's degree in elementary education and completed a master's degree in special education in 2005. She is a certificated special education teacher with a reading endorsement. She has taught special education for 18 years and had been employed by the District in that role since December 2023. T397-400; D39p2.

planning paragraphs. She used writing assignments from his general education class to work on organizing, developing, and editing. T401-402.

85. Ms. Barnes delivered the Student's reading SDI by using a curriculum that used articles of high interest. The record does not reflect the name of the curriculum. T410. Articles of high interest is a general term that companies use to label books; it refers to reading materials of interest to students, which helps with motivation and engagement. T459. The Student would read through the article, highlight the main idea, answer questions, and write a response. T410. Ms. Barnes worked on 4<sup>th</sup> grade text with the Student. T452. Ms. Barnes also worked on vowel patterns and multi-syllabic words. T410, 459-60.

86. The Student resisted engaging in his reading and writing SDI, which largely took the form of "rude behavior" such as ignoring Ms. Barnes. T402, 444-45. When the Student resisted, Ms. Barnes gave him choices, such as whether to start with reading or writing, and offered rewards for working. T402-403. Ms. Barnes estimated the Student missed one half of his reading and writing SDI due to resistance. T443, 458. At some point, the Student's teachers and Parents agreed that Ms. Barnes would provide the Student's SDI in the resource room, rather than in the general education setting. T414-15. The Student's IEP was not amended to reflect the change in setting. T415.

87. On January 22, 2022, the Parents requested an FBA and a behavioral intervention plan (BIP). D41pp1-2; P71p14. That day, the Parents met with District teachers and staff to discuss the Student's behavior, which had been escalating. D41p5. Between December 2023 and early February 2024, the Student's behaviors included:

- ignoring classroom rules and expectations (December 1, 2023). P23p1.
- putting his hands on a peer after a soccer game, then attempting to destroy property and acting defiantly after being told he could not play soccer at recess that day (January 19, 2024). P25p2.
- hiding in the bathroom following conflict, after which the Parent called the school to have the counseling team check on him (January 19, 2024). D40p2.
- refusing to complete a behavior reflection form, even with support from Ms. Barnes (January 24, 2024). D41p5.
- engaging in aggressive behaviors toward other students, such as throwing rocks at students, threatening and cursing, chasing, hitting, and pulling a peer by the jacket causing damage (week of January 29 to February 2, 2024).

P30p2. On February 2, 2024, Mr. Zimmerman reported: “During recess, several students made a mock grave with [the Student] inside in [sic] throwing rocks at it because they feel nothing is being done when [the Student] physically hurts people.” P30p2.

The Parents believed behavior consequences that involved missing recess or asking the Student to complete a behavior reflection were inappropriate, given his ADHD and learning disability. D41pp2-6.

88. On January 31, 2024, the Parents requested an Independent Educational Evaluation (IEE) of the Student. P29p1.

89. The wellness team met with the Student on February 2, 2024, and on a prior occasion, to discuss strategies for when he became frustrated. They suggested a plan to prevent and address the Student’s behaviors and noted that the Student felt others were bullying him. P30p1.

90. The Parent kept the Student home from school on February 5 and 6, 2024, due to concerns that the Student was being taunted by peers and there wasn’t a plan to support him. D44p1-2. On Monday, February 5, 2024, Ms. Barnes reached out to the Parent to ask how she and teachers could help. D44p3. The Parent stated that the Student’s peers taunted him daily and that he responded by acting out inappropriately. D44p1-2.

91. On February 6, 2024, Dr. Beverly Luster, Orca Principal, notified Ms. Petrie and Ms. Barnes that the Parents had requested a BIP. P31p2; 735. In an email to Ms. Petrie, Ms. Barnes opined that a BIP was not appropriate. P31p1. At hearing, she explained that the Student was not acting out or struggling more than many general education students or students she had worked with over the years who had FBAs and BIPs. T420.

92. On February 7, 2024, Mr. Zimmerman and Mr. Hoefer informed the Parent that they had spoken with the class on February 5, 2024, and requested that the Student immediately report to them if he was mistreated. D44p1. Also on February 7, 2024, a member of the wellness team again met with the Student. D45p3.

93. On February 12, 2024, Dr. Luster presented the Parents with a comprehensive plan of success for the Student. D42p1. Orca staff agreed to provide a safe space to discuss incidents, a calming zone in class, social skills lessons, alternative seating and line position to feel safe, and quick and consistent response to incidents. Orca staff also agreed to facilitate mediations with other students as necessary, partner with the Student to develop trusting relationships, document incidents and provide access to incident reporting forms, provide the class regular lessons on bullying, increase

monitoring, initiate a no contact contract as necessary, identify goals to develop independence, responsibility and increase pro-social skills, and daily check ins with Ms. Barnes. D42p2.

94. On February 13, 2024, the Parents filed a special education community complaint with the Office of Superintendent of Public Instruction (OSPI). P36p1.

95. The Parents and District staff continued to exchange emails related to the Student's behaviors and issues with peers, as follows:

-the Student shaped his fingers as a gun and pretended to shoot a student, and attempted to pull a chair out from under a student. In conversation with Mr. Zimmerman, the Student was not willing to acknowledge his actions (February 14, 2024). D41pp9-10.

-someone took the Student's food and taunted him, resulting in a disagreement after lunch (February 15, 2024). Mr. Zimmerman informed the Father that the majority of incidents involving the Student happened during recess, lunch, or competitive activities D41p8.

96. On February 16, 2024, the District agreed to fund an IEE in all academic areas, study/organization, and social/behavior skills. P32p2; D46pp1-4; T299. Around that time, Caitlin O'Shea, a District Student Support Supervisor, and the Parents also discussed an offer of compensatory education from the District.<sup>18</sup> T301. On February 19 and 26, 2024, the Parents submitted bills for tutoring services for possible reimbursement. P32pp1-2. However, further discussion was postponed because the Parents' citizen complaint was pending before OSPI. T301-02.

97. On February 27, 2024, the Student and others continued to engage in disruptive behavior in drama class, and the Student again pulled a chair out from under a student. D43pp2-3; D41p11.

98. On March 1, 2024, Ms. Barnes sent the Parents an IEP progress report. D47p1. The progress report documented the Student's progress toward the reading goal and the writing goal developed as part of the November 2023 IEP. As of November 17, 2023, the Student was making little or no progress (code 1) toward either of the new IEP goals. As of January 31, 2024, the Student was making some progress toward his reading goal (code 2). D47p2; T411. A comment noted he:

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<sup>18</sup> Ms. O'Shea has master's degrees in special education (2009) and education policy (2015). She is a certificated special education teacher and special education administrator. T296. Ms. O'Shea has been in her current role for four years; she previously taught special education for six years and served as a program specialist for four years. T297-98.

reads aloud/decodes texts well. [The Student] is resistant to independently reading and answering questions. He is most successful when text is read aloud either independently or read to him. When he is willing, [the Student] is able to answer inferential questions; he sometimes needs prompts. [The Student] is accomplishing his goal 2/5 opportunities.

D47pp2-3.

99. The progress report did not provide a code to reflect the level of writing progress. A comment stated that the Student was accomplishing his writing goal 2/5 opportunities. It also stated he “has good ideas, he is quite capable. Getting his ideas on paper can be a struggle. When engaged and willing, [the Student] does well with a graphic organizer. He sometimes needs prompts; he is working on organizing and developing his writing.” D47p2. At hearing, Ms. Barnes noted that she inadvertently left out the code and would have entered the code that he made some progress. T406.

### **Functional Behavioral Assessment and Behavior Intervention Plan**

100. On February 27, 2024, Ms. Petrie contacted the Parent to obtain consent for an FBA. D48p5. The Parent returned the signed consent form on February 28, 2024. D48p3. Yvonne DeVita, a District special education behavior specialist, conducted the FBA. P33p1. Between late February and mid-March 2024, she spoke with the Parent, observed the Student during lunch, recess, gym class, and during class with Mr. Zimmerman and Mr. Hoefer. D48pp3, 7-8; P34p1.

101. On or about April 17, 2024, the Student’s IEP team met to review the Student’s FBA and develop a BIP. The Parents, Mr. Zimmerman, Mr. Hoefer, Ms. DeVita, Ms. Barnes, and Dr. Luster attended.<sup>19</sup> D49p2; D51p8.

102. The FBA analyzed information and data related to the Student’s behaviors. It noted the Student had instances of peer conflict, including teasing, baiting and/or bullying peers as well as responding to teasing, baiting and/or bullying by peers. The Student responded with verbal threats or gestures and physical actions such as throwing rocks, hitting, kicking, and pushing. D49p4. The FBA discussed the target behavior (unsafe physical behaviors that occurred when the Student experienced strong feelings, particularly exclusion or rejection by peers) and prior interventions that had been implemented. D49pp4-5. The FBA described the setting for the target behavior, antecedent events, and consequences that occurred afterwards that might

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<sup>19</sup> Mr. Zimmerman was present to review the FBA but not to develop the BIP. D49p4; D51p3.

encourage the target behavior. D49pp5-6. The FBA then set out a hypothesis for why the behavior was occurring and made recommendations for the IEP team. D49pp6-8.

103. Based on the FBA, the IEP team adopted a BIP that included multiple intervention strategies (setting event strategies, antecedent strategies, teaching strategies, and consequence strategies). The strategies focused on strengthening the Student's social skills and regulation skills to increase successful social interactions with peers, as a replacement for the behavior of responding with physical altercations. D51pp4-6. The BIP further included plans to reinforce positive behavior, to respond to the target behavior, to de-escalate, and to follow in the event of a crisis. Finally, it set out procedures for data collection and the individuals in charge of data collection. D51pp6-7. All team members were in agreement about the target behavior and behavioral supports in the BIP. T79.

### **OSPI Special Education Community Complaint Decision**

104. OSPI issued a decision on the Parents' community complaint on April 11, 2024. P35p1. The decision concluded that the District:

- did not respond in a timely or sufficient manner to address the Student's behavioral needs in the fall of 2023. However, the District had addressed this by granting the Parents' request for an IEE and initiating an FBA. OSPI did not substantiate the Parents' claim that the District failed to timely and sufficiently evaluate for reading. P36pp8-9.

- adequately developed an IEP to address reading but failed to timely consider conducting an FBA or developing a BIP. P36p9.

- failed to provide progress reports and ordered the District to ensure that the Parents received end of year progress reports. P36pp9-10.

### **IEE by Dr. Christine Clancy**

105. Dr. Christine Clancy conducted an IEE of the Student on May 17, 2024.<sup>20</sup> T1106; P39p1. She reviewed the Student's IEPs starting in 2021 and 2022, and

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<sup>20</sup> Dr. Clancy has a Ph.D. in school and child clinical psychology and completed a postdoctoral fellowship in neuropsychology. She is board certified in clinical neuropsychology and in pediatric clinical psychology by the American Board of Professional Psychology (ABPP). Dr. Clancy is also a licensed psychologist in Washington State. P67p1, T1100-01. Dr. Clancy has been in private practice as a pediatric neuropsychologist/clinical psychologist since 2010 and has been with her current practice since 2013. T1100-01, P67pp2-3. Prior to private practice, she worked as a pediatric neuropsychologist in a hospital setting in Washington State and in Canada. P67p3. Dr. Clancy also has extensive research and teaching experience. P67pp6-8. As part of her

evaluations conducted by the District and Dr. Ames. T1112; P39pp1-8. She did not review IEP progress reports. T1213. Dr. Clancy also reviewed the Student's scores on statewide assessments, noting that reading scores were highly variable. P39pp2-4.

106. Dr. Clancy met with the Parents for a two-hour clinical interview and observed the Student in the testing environment. T1109-11. The Parents discussed the Student's reading and writing skills and concerns that he was not receiving adequate support from the District. The Parents stated that the Student had been bullied by other students since fall 2023 and winter 2024, and that they were unhappy with how the District had addressed behavioral issues. The Parents reported that medication trials resulted in changes to the Student's mood that likely contributed to behavioral issues and increased bullying incidents at school, and that behaviors at home became more regulated after he stopped taking medication. P39pp2, 5-6.

107. Dr. Clancy did not speak with anyone at the District to get their perspective on the Parents' or Student's concerns and did not observe the Student at school.<sup>21</sup> T1199, 1205. Additionally, Dr. Clancy is not familiar with special education programming in the District and did not know what reading instruction the Student was receiving. T1204-05, 1138.

108. Dr. Clancy assessed the Student in cognitive; academic (reading, written expression, math); memory; attention and executive functioning; fine motor skills and processing speed; mood, behavior, and adaptive functioning; and adverse childhood experiences and trauma. She used direct and educational testing and questionnaires completed by the Parents, the Student, and the special education teacher. See *listing* P39p6; T1107-08. Direct testing and the Student's completion of questionnaires occurred within a six-hour period with regular breaks. T1202-03; P39p7.

109. Dr. Clancy repeated the WISC-V (cognitive) and the WIAT-4 (academic), which were administered by Dr. Ames in 2022, to provide a view of change over time. T1108.

110. On the WISC-V, the Student's general ability index score placed him in the 91<sup>st</sup> percentile (above average range), an improvement from 2022, when he was in the 79<sup>th</sup> percentile (high average range). P39p9. The Student's verbal abilities remained strong and fell in the high average range (SS=118; 88<sup>th</sup> percentile). His performance improved in visual spatial (from 77<sup>th</sup> to 87<sup>th</sup> percentile) and nonverbal fluid reasoning abilities (from 50<sup>th</sup> to 79<sup>th</sup> percentile). P39p9. The Student's scores declined as to visual working

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practice, Dr. Clancy provides counseling to children and families, conducts neuropsychological assessments of children, and conducts IEEs for school districts. P67p2, T1105.

<sup>21</sup> Ms. Barnes completed forms for the Conners 4, BRIEF-2, and BASC assessments. However, Dr. Clancy did not speak with Ms. Barnes. T1223-24.

memory (from 84<sup>th</sup> to 58<sup>th</sup> percentile) and ability to perform a mental operation and quickly write down a response (from 13<sup>th</sup> to 6<sup>th</sup> percentile). P39pp9-10; T1128-30.

111. Dr. Clancy administered the WIAT-4 to assess the Student's reading skills and compared the results to those obtained in 2022:

|                                | 2024 |      |               | 2022 |      |               |
|--------------------------------|------|------|---------------|------|------|---------------|
|                                | SS   | %ile | Descriptor    | SS   | %ile | Descriptor    |
| <b>READING</b>                 | 94   | 34   | Average       | 94   | 34   | Average       |
| Word Reading                   | 100  | 50   | Average       | 80   | 9    | Below Average |
| Reading Comprehension          | 91   | 27   | Average       | 112  | 79   | Average       |
| <b>BASIC READING</b>           | 111  | 77   | High Average  | 89   | 23   | Average       |
| Pseudoword Decoding            | 116  | 86   | High Average  | 94   | 34   | Average       |
| Phonemic Proficiency           | 123  | 94   | Above Average | 100  | 50   | Average       |
| Word Reading                   | 100  | 50   | Average       | 80   | 9    | Below Average |
| <b>DECODING</b>                | 103  | 58   | Average       | 85   | 16   | Average       |
| Pseudoword Decoding            | 107  | 68   | Average       | 94   | 34   | Average       |
| Word Reading                   | 100  | 50   | Average       | 80   | 9    | Below Average |
| <b>READING FLUENCY</b>         | n/a  | n/a  | n/a           | 79   | 8    | Below Average |
| Oral Reading Fluency           | 77   | 6    | Below Average | 77   | 6    | Below Average |
| Orthographic Fluency           | 75   | 5    | Below Average | 73   | 4    | Below Average |
| Decoding Fluency               | n/a  | n/a  | n/a           | 96   | 39   | Average       |
| <b>PHONOLOGICAL PROCESSING</b> | 116  | 86   | High Average  | 95   | 37   | Average       |
| Pseudoword Decoding            | 116  | 86   | High Average  | 94   | 34   | Average       |
| Phonemic Proficiency           | 123  | 94   | Above Average | 100  | 50   | Average       |
| <b>ORTHOGRAPHIC PROCESSING</b> | 83   | 13   | Below Average | 78   | 7    | Below Average |
| Orthographic Fluency           | 75   | 5    | Below Average | 73   | 4    | Below Average |
| Spelling                       | 94   | 34   | Average       | 87   | 19   | Average       |
| Orthographic Choice            | 91   | 27   | Average       | 80   | 9    | Below Average |
| <b>DYSLEXIA INDEX</b>          | 93   | 32   | Average       | 88   | 21   | Average       |
| Word Reading                   | 100  | 50   | Average       | 80   | 9    | Below Average |
| Pseudoword Decoding            | 107  | 68   | Average       | 100  | 50   | Average       |

22

P39p11. The Student made gains and had some "good response to intervention," but testing still showed weaknesses consistent with a pattern of dyslexia. P40 at 10:08. With appropriate remediation using structured literacy, a student can develop the reading skills to close the gap between their skill level and that of their peers. T1143, 1235. The Student's gains were not enough to close the gap, which would widen with the increasing demands of higher levels of education. T1142-43, 1234.

<sup>22</sup> At hearing, Dr. Clancy noted that the 2024 pseudoword decoding score under the phonological processing heading was incorrect; it should be 107 with a percentile of 68. T1135.

112. Between 2022 and 2024, the Student's ability to read and decode words and to manipulate sounds improved in untimed measures. T1136. However, he showed little or no improvement in areas that required him to decode quickly, such as orthographic fluency (increase from 4<sup>th</sup> to 5<sup>th</sup> percentile) and oral reading fluency (no change). T1229. These scores stayed in the below average range. P39pp10-11. Additionally, when the Student decoded words, he often corrected himself, which was not reflected in the data. P39p10.

113. Although the Student obtained an average score in reading comprehension, Dr. Clancy described his ability to comprehend what he reads as an "insecure skill." P39p10. At hearing, she explained that students are not judged on how quickly they read. T1230. The Student took a long time to read 5<sup>th</sup> grade level passages, and when asked to respond to questions, often said, "I don't know." When he looked back at the passage, he could find the answer. In her opinion, "the problem here is that it's not a measure of comprehension necessarily, it's a measure of can you find the answer in the passage." T1231; see also T1124.

114. Dr. Clancy administered the WIAT-4 to assess the Student's written expression skills and compared the results to those obtained in 2022:

|                                | 2024 |      |               | 2022 |      |               |
|--------------------------------|------|------|---------------|------|------|---------------|
|                                | SS   | %ile | Descriptor    | SS   | %ile | Descriptor    |
| <b>WRITTEN EXPRESSION</b>      | n/a  | n/a  | n/a           | 82   | 12   | Below Average |
| Spelling                       | 94   | 34   | Average       | 87   | 19   | Average       |
| Sentence Composition           | 109  | 73   | Average       | 84   | 14   | Below Average |
| Essay Composition*             | n/a  | n/a  | n/a           | 73   | 4    | Below Average |
| <b>SENTENCE COMPOSITION</b>    | 109  | 73   | Average       | 84   | 14   | Below Average |
| Sentence Building              | 100  | 50   | Average       | 84   | 14   | Below Average |
| Sentence Combining             | 118  | 88   | High Average  | 91   | 27   | Average       |
| <b>WRITING FLUENCY</b>         | n/a  | n/a  | n/a           | 98   | 45   | Average       |
| Sentence Writing Fluency       | 73   | 4    | Below Average | 83   | 14   | Below Average |
| Alphabet Writing Fluency       | n/a  | n/a  | n/a           | 115  | 84   | High Average  |
| <b>ORTHOGRAPHIC PROCESSING</b> | 84   | 14   | Low Average   | 78   | 7    | Below Average |
| Orthographic Fluency           | 75   | 5    | Below Average | 73   | 4    | Below Average |
| Spelling                       | 94   | 34   | Average       | 87   | 19   | Average       |
| Orthographic Choice            | 91   | 27   | Average       | 80   | 9    | Low Average   |

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P39p12. Between 2022 and 2024, the Student's sentence composition and orthographic processing composite scores increased, as did scores on most subtests. P39p12. However, the Student's score decreased on the sentence writing fluency subtest, which involves generating as many simple sentences as possible within a time

<sup>23</sup> Dr. Clancy was unable to provide a composite score for written expression because the Student was unable to write an essay with the minimum number of words to meet basic scoring requirements. P39p12.

limit. P39p12. The Student also made errors with spelling, capitalization, and grammar. P39p12.

115. Regarding attention and executive function, Dr. Clancy concluded from her observation of the Student, the Student's performance on assessments, and the Parent and teacher ratings, that the Student continued to meet criteria for diagnosis of ADHD, combined type, and that he showed moderate impairment in daily functioning. P39pp13-14; P39pp27-29.

116. Dr. Clancy used the Grooved Pegboard assessment, which indicated the Student's basic fine motor speed and dexterity were in the high average range. However, the Student pressed his writing utensil into the paper very hard when writing and drawing, and he was slower to complete written work than his peers, especially when timed. P39p14.

117. Dr. Clancy also assessed the Student's mood, behavior, and adaptive functioning. Rating scales completed by the Parent and Ms. Barnes reflected concerns about aggressive behavior, reduced anger control, hyperactivity, and attention problems, although Ms. Barnes assigned a lower level of concern. P39pp14, 31. Both also noted concerns related to depression and anxiety. P39pp14-15, 28-33.

118. Dr. Clancy also determined that the Student's experiences with bullying constituted adverse childhood experiences (ACEs) and that he experienced some signs of post-traumatic stress. P39p15.

119. Based on her evaluation, Dr. Clancy diagnosed the Student with:

- ❖ Attention-Deficit/Hyperactivity Disorder, Combined Type, moderate (F90.2)
- ❖ Unspecified Anxiety Disorder (F41.9)
- ❖ Unspecified Depressive Disorder (F32.8)
- ❖ Unspecified Trauma- and Stressor-Related Disorder (F43.9)
- ❖ Specific Learning Disorder with Impairment in Reading (F81.0)
- ❖ Specific Learning Disorder with Impairment in Written Expression (81.81)

P39p16.

120. Dr. Clancy made multiple recommendations for school and home. P39pp18-24. With respect to literacy skills, she recommended that the Student continue to work privately with his reading specialist weekly. P39p19. Dr. Clancy recommended SDI in reading that included targeted intervention in reading rate, fluency, and comprehension at a rate of 150 minutes per week (3 X 50 minutes) delivered by an experienced reading specialist with training and experience implementing a chosen Structured Literacy Program with fidelity. P39p18.

121. Dr. Clancy also recommended SDI in written expression for 100 minutes per week (2 X 50 minutes) by an experienced interventionist with training and expertise in remediating writing challenges. She noted that the Student needed ongoing assistance with all aspects of writing, including generating ideas, writing mechanics, formulating paragraphs, and editing. P39p19.

122. Additionally, Dr. Clancy recommended SDI in study and organizational skills and social-emotional functioning but did not specify an amount. P39p20-21.

123. Dr. Clancy recommended a number of accommodations for school. Among these were allowing and encouraging use of AI technology, dictation software, audiobooks, breaking up lengthy assignments, modifying assignments that required annotation, providing the option of oral testing or using a scribe, not penalizing for spelling errors, preferential seating, and providing extended time. P39pp19-21.

124. Dr. Clancy also recommended that the Student continue to work with a private occupational therapist. In the school setting, she recommended consultation by a school occupational therapist to the classroom teacher to ensure the Student had adequate supports to produce written work. P39pp23-24.

125. The Student's IEP team met and considered Dr. Clancy's IEE report on June 12, 2024. The Parents, Dr. Clancy, Ms. Petrie, Ms. Barnes, Ms. O'Shea, and District school psychologist Heather Hall attended. P40; D52p3.

126. In an email to Ms. Petrie after the meeting to discuss the IEE, Ms. Barnes stated:

While the report was comprehensive and matched what I'm seeing, based on [the Student's] resistance, denial, and lack of awareness/responsibility for his actions, I would question the extent to which his services have been marginal. Maturity, resilience, etc. plays in as with all kiddos as we know, he'll be fine. [sic] In my opinion, [the Student] is typically developing, within/along the continuum of expected behaviors/perceptions for his age.

P41p1. At hearing, Ms. Barnes explained that when she said she thought the Student would be just fine, she meant that they could help him work through his issues and help him build resilience and self-advocacy. T446.

### **Enrollment at Hamlin Robinson**

127. At some point prior to June 1, 2024, the Parents enrolled the Student in Hamlin Robinson for the 2025-2026 school year. T868. On June 1, 2024, the Student took a placement test. T868; P63p3. The test, known as Star, is a reading and math

assessment that is nationally-normed and indicates how a student is doing compared to peers. T869-70. The Student's scaled score of 1022 placed him in the 28<sup>th</sup> percentile. P63p3.

### **Offer of Services or Reimbursement**

128. On June 21, 2024, the District made an offer of compensatory education to the Parents, which was intended to settle any dispute over missed services between June 7, 2022 and December 31, 2023. The offer stated:

Because your student did not qualify for reading instruction at their initial [sic] in June of 2022 and was later found eligible in November of 2023 and because [the Student] did not receive all of his specially designed instructional minutes from September – December 2023 before a full-time special education case manager was hired, the District is agreeing to provide 43 hours of individual reading and written language services, which could be through a district special education teacher or a mutually agreeable provider. If reimbursement [is] through parent selected provider, total cost of services is not to exceed \$3,335.

P46p3; T304. The Parents did not accept the offer. T304.

### **June 2024 Reevaluation**

129. After the meeting to review Dr. Clancy's IEE report, all team members agreed that it was an accurate and thorough IEE. T605; P40. The team agreed that the District would "accept" Dr. Clancy's evaluation and incorporate her data into the District's reevaluation report. T602, 741. On June 13, 2024, the Parent provided consent "to open the reevaluation," meaning no new testing would be done, and the results of Dr. Clancy's IEE would be incorporated into the District's reevaluation report. D52pp1-2. The Parents did not request assessments in any additional areas. T602, 605, 628-30.

130. Heather Hall, a District school psychologist, conducted the reevaluation.<sup>24</sup> Ms. Hall completes more than 60 evaluations per school year, and has experience evaluating students who have been diagnosed with specific learning disabilities, ADHD, anxiety, depression, and trauma. T601, 634. Ms. Hall prepared a draft

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<sup>24</sup> Ms. Hall has a bachelor's degree in early education and a master's degree in school counseling. She holds school psychology certification in Washington state. T599. Ms. Hall has been a school psychologist for 17 years, and has been employed by the District in that role for the past three years. T599-600.

reevaluation report and gave the Parents a copy several days before the reevaluation meeting. P47 at 05:40.<sup>25</sup>

131. As part of the reevaluation, Ms. Hall reviewed the Student's complete special education file and Dr. Clancy's IEE report. T637, 624. Ms. Hall, who has experience administering the WISC-V, the WIAT-4, the Conners 4, the BASC3, and the BRIEF2, did not have concerns about the validity of these assessments and the scores that were obtained by Dr. Clancy's IEE. T608-10, 633.

132. The reevaluation report included a detailed description of how the Student's specific learning disability, along with ADHD, anxiety, and depression, adversely affected his academics. D53p7.

133. The reevaluation also included feedback from Ms. Barnes and the Parent. T606; D53p11. Ms. Barnes noted the Student was handling conflicts and disappointments better. He was gaining reading and writing skills but was better at demonstrating that learning on some days than others. The Student had turned a cryptic two paragraph response into a full page with paragraphs and readily accepted help with sentence structure and editing. D53p11. Ms. Hall also incorporated the Student's progress report from June 2024:

[Student] is more receptive to instruction in resource. He is willing to try and better accepts corrections/suggestions. [Student] is working on highlighting/underlining important information in texts. He readily gathers correct answers to literal questions. 4/5 opportunities. He is able to engage in the text and ask clarifying questions. While inferential questions are more difficult, with limited prompts, [Student] is able to correctly answer inferential questions 3/5 opportunities.

D53p11.

134. Ms. Hall considered the Student's scores over time on the SBA and MAP assessments and the Student's most recent general education report card (Fall/Winter 2023-2024). D53p12-13. In math, science, social studies, and fine arts, the Student was meeting or exceeding performance expectations in almost every measure. D53p14-15; D54pp3-6. In ELA, the Student had improved from below performance expectations ("1") to approaching performance expectations ("2") in some measures but was meeting expectations ("3") in only two measures. D53pp13-14; P54pp2-3.

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<sup>25</sup> At the Parents' request, Ms. Petrie recorded the June 24, 2024 reevaluation meeting and the IEP team meeting held immediately afterwards. The recording is contained in Exhibit P47. T126-27.

135. Ms. Hall did not conduct an observation of the Student because the team had agreed to use Dr. Clancy's evaluation, which included observation of the Student. T624.

136. Ms. Hall incorporated assessment data, excerpts, observation information, diagnoses, and conclusions from Dr. Clancy's IEE report in the areas of cognitive, fine motor, math, medical/physical, reading, social/behavior, study/organizational skills, and written language. D53pp15-28. For each area, she quoted extensively from Dr. Clancy's report as to the clinical findings. *Id.* Ms. Hall included all data and information from assessments the District would have administered in evaluating the Student. T615-16. Recommendations from IEE reports typically are not included in District reevaluation reports; however, Ms. Hall referred to the recommendations and attached the entire IEE report to the reevaluation report. T626; T635-36; D53p7.

137. On June 24, 2024, several days after the 2023-2024 school year ended on June 21, the team met to discuss the Student's reevaluation. D53p1; D58p3. The Parent, Ms. Hall, Ms. O'Shea, Ms. Petrie, and a parent advocate attended. P47.

138. The team discussed the Parent's concerns that the eligibility category should reflect the Student's learning disability and ultimately agreed to her preference for the specific learning disability eligibility category, rather than other health impairment. P47 starting at 00:10; D53p6. The team also agreed to provide SDI in reading, written language, study/organizational skills, and social/behavior. D53p9.

139. The team discussed the Student's SBA and MAP scores. Ms. Hall agreed to the Parent's request to include a full range of scores in the report. P47 at 20:00.

|             | MAP - Reading               | SBA - ELA                             |
|-------------|-----------------------------|---------------------------------------|
| Fall 2021   | 8 <sup>th</sup> percentile  |                                       |
| Winter 2022 | No score                    |                                       |
| Spring 2022 | No score                    | Below (Did Not Meet Standard)         |
| Fall 2022   | 18 <sup>th</sup> percentile |                                       |
| Winter 2023 | 28 <sup>th</sup> percentile |                                       |
| Spring 2023 | 55 <sup>th</sup> percentile | L3 Met (Met Standard)                 |
| Fall 2023   | 26 <sup>th</sup> percentile |                                       |
| Winter 2024 | No score                    |                                       |
| Spring 2024 | 19 <sup>th</sup> percentile | L1 Well Below (Did Not Meet Standard) |

D53p12.

140. The reevaluation report also included Dr. Clancy's discussion regarding the Student's fine motor speed and dexterity. The team considered Dr. Clancy's recommendation to consult with a school based occupational therapist and decided that the consultation would take place when school started in the fall. D53p29; T103.

141. The team discussed that the IEP team would review and would likely adopt most or all of the accommodations recommended in the IEE report. P47 at 15:20.

142. Following the meeting, the Parent identified some errors in the draft reevaluation report which Ms. Hall corrected. T743-44.

### June 2024 IEP Team Meeting

143. Ms. Petrie distributed a draft IEP and a copy of procedural safeguards by email to the Parents on June 20, 2024. P43p1; P44p2. Prior to the IEP meeting, the Parent raised questions about whether the District had adopted a specific structured literacy program for students with dyslexia or dysgraphia and what training teachers received. P45p5. OSPI dyslexia guidance defines structured literacy as

a teaching approach informed by the [science of reading](#) and [writing](#) that includes knowledge of **oral and written language** and how it is learned. It is **explicit** (direct and clear), **systematic**, **sequential**, **cumulative**, **multisensory**, **diagnostic**, and **responsive**. It focuses on both reading and writing, which are reciprocal skills. The goal of systematic teaching is **automatic** and **fluent** application of **language knowledge** and **decoding** and **encoding skills** to enable reading for meaning and writing for communication.

P77pp18-19 (emphasis in original). The OSPI guidance discusses the structured literacy teaching approach and its benefits for all students in all grades. P77p18. It notes that “intervention practices and programs must be aligned with structured literacy as required by law (RCW 28A.320.260).” P77p18. Orton-Gillingham, the best-known evidence-based structured literacy curriculum, forms the basis for multiple curricula. T97.

144. On June 21, 2024, Ms. O’Shea responded that SDI “is selected by teacher and school to meet student need. We do not list or require specific curricula in IEPs. Teachers across [the District] use a wide variety of programs that are evidence based and structured such as Wilson, Wired for Reading, Orton Gillingham, etc.” P45p1. Ms. O’Shea further explained that teachers had special education certification and the District offered professional development opportunities. Because it was too early to know who would be the Student’s case manager, Ms. O’Shea discussed that the Parent would be able to meet with the team at the beginning of the year to ask specific questions about the instruction they planned to deliver. T363; P45p1.

145. Also on June 21, 2024, the Parent asked an assistant principal at Mercer Middle School (Mercer), the District school to which the Student would transition if he

stayed in the District, to identify the special education teacher who would be providing reading and writing interventions to 6<sup>th</sup> graders and whether they were trained and certified in a structured literacy program. P48p2. The assistant principal responded that Mercer did not yet have access to the Student's IEP, staff assignments had not been finalized, staff would start making student schedules in late August, and the Student's case manager would be able to answer questions at the beginning of the school year. P48p1.

146. Following the reevaluation meeting on June 24, 2025, the Student's IEP team met to develop a new IEP. T126-27. The Student's general education teacher was excused from the meeting. T129.

147. District members of the IEP team recommended waiting until the school year started to draft an IEP because the Student was transitioning to middle school, making it difficult to determine how services would be delivered in that setting. P21p19. The Parents did not want to wait to draft an IEP; therefore, the team agreed to do so with the understanding that the Mercer IEP team would meet in the fall to determine if the IEP needed to be amended based on the Student's performance. P21p19; T152-53; T308.

148. The team considered the Student's SBA and MAP test scores. The Student met ELA standards on the 2022-2023 SBA. His MAP reading scores for 2023-2024 were: Spring; 630 Lexile; 19<sup>th</sup> percentile; Fall: 575 Lexile; 26<sup>th</sup> percentile. D54p8.

149. The team also considered input from general education teachers. Mr. Hoefer noted that the Student did well using graphic organizers to get started. He wanted to do well and could spend lots of time focusing on minute details. Mr. Zimmerman stated the Student was a conscientious worker. The Student's art teacher noted he was incredibly creative. D54p10.

150. The IEP team set goals in reading, writing, social/emotional/behavior, and study/organizational skills. D54p21. In doing so, the team reviewed the Student's progress toward his IEP goals in March and June 2024. That progress is detailed in a progress report contained in Exhibit D56 but it is unclear whether the progress report was sent to the Parents outside of the IEP process.

151. The Student made the following progress toward his reading goal on inferential comprehension:

Some Progress Made. 6/2024- [The Student] is more receptive to instruction in resource. He is willing to try and better accepts

corrections/suggestions. [The Student] is working on highlighting/underlining important information in the texts. He readily gathers correct answers to literal questions, 4/5 opportunities. He is able to engage in the text and ask clarifying questions. While inferential questions are more difficult, with limited prompts, [the Student] is able to correctly answer inferential questions 3/5 opportunities.

3/2024- [The Student] reads aloud/decodes texts quite well, he struggles with some multi-syllabic words. [The Student] is resistant to independently reading and answering questions. He is most successful when text is read aloud either independently or read to him. With prompts, [the Student] is able to most often answer inferential questions. [The Student] is accomplishing his goal 2-3/5 opportunities.

D54pp10-11.

152. Although he had made progress, the Student had not met the goal and Ms. Barnes recommended continuing it. P47 at 29:00. The team decided to continue it as follows:

when given a text at the 4th grade level and read independently, [the Student] will answer inferential comprehension questions pertaining to the text improving reading comprehension from 2 out of 5 correct inference questions to 4 out of 5 correct inference questions as measured by student work samples and teacher data collection.

D54p11; T87, 132, 135.

153. The team set a second reading goal focused on decoding multisyllabic words because difficulty decoding larger words was impeding fluency:

when given a multisyllabic word (2, 3, or 4 syllables) [the Student] will be able to identify each syllable and the corresponding vowel improving decoding multisyllabic words from 0 out of 20 random words to 19 out of 20 random words as measured by student reading samples and teacher data collection.

D54p11; T88, 139-41; P47 at 31:30. Ms. Petrie credibly explained that when the Student improved at decoding larger words, it would improve fluency. T139-40; see *also* P47 at 34:35.

154. The Student had also made some progress toward his writing goal focused on using a graphic organizer to improve his ability to get started on writing tasks:

6/2024- [The Student] is somewhat reluctant to fully plan a writing piece in a graphic organizer. With prompts/encouragement he will jot a couple of words in each space; he is more inclined to jump in without a clear plan on paper. With one-on-one support/sitting in, [the Student] recently independently turned 2 partial paragraphs into a full page story.

3/2024- [The Student] has good ideas, he is quite capable. Getting his ideas on paper can be a struggle. When engaged and willing, [the Student] does well with a graphic organizer. He sometimes needs prompts; he is working on organizing and developing his writing. [The Student] is accomplishing his goal with 2/5 opportunities.

D54p13. While the Student had made progress toward this goal, he had not met it and the team decided to continue it as follows:

when given a writing task [the Student] will use a graphic organizer to brainstorm ideas and develop paragraph drafts prior to writing improving written language task initiation from 1 out of 5 opportunities to 4 out of 5 opportunities as measured by student work samples and teacher data collection.

D54p14; P47 starting at 52:00. This goal included teaching the Student how to use a graphic organizer properly and was “taken directly from the IEE,” which recommended use a graphic organizer. P47 starting at 52:20; P39p19; T1150, 1190. The team set a second writing goal:

when given a personally created writing piece [the Student] will edit the piece for proper conventions (capitalization and punctuation) improving editing skills from 0 out of 5 opportunities to 4 out of 5 opportunities as measured by student writing samples and teacher data collection.

D54p14. This goal was focused on enabling the Student to make progress toward a middle school writing standard. T90.

155. The team set two social/behavior goals based on the FBA:

when given a triggering event (i.e. negative peer interaction, not getting preferred group, disappointment of activity, etc.) [the Student] will use a calming strategy (i.e. 4 square breathing, taking a break, positive self-

talk, etc.) to stay in emotional control improving self-regulation from 0 out of 5 opportunities to 5 out of 5 opportunities as measured by student observations and teacher data collection.

when given a triggering or teasing situation (negative peer interactions, name calling, exclusion from peer groups) [the Student] will walk away, notify an adult, or transition to another peer group improving ignoring negative peer interactions from 0 out of 10 opportunities to 9 out of 10 opportunities as measured by student observations and teacher data collection.

D54p12; T88-89.

156. The team set the following goals in study/organizational skills:

when given a school assignment or event that has a pending due date [the Student] will use a planner of his choice (calendar, student planner, electronic) to record the assignment and due date improving student organizational behaviors from 0 out of 10 assignments to 9 out of 10 assignments as measured by student observations and teacher records.

when given an instruction to start independent work [the Student] will start the assignment within 2 minutes improving independent task initiation from 0 out of 10 opportunities to 9 out of 10 opportunities as measured by student observation and teacher data collection.

D54p13.

157. The IEP provided multiple accommodations, including shared support from an instructional assistant (IA). D54p15. IAs help all students but focus on students who have IEPs. They support students in many settings, such as lunch, recess, general and special education classrooms. T91-92.

158. After spending significant time discussing the Student's SDI, the team agreed that the Student would receive reading and written language SDI in a co-taught general education ELA classroom, rather than a special education classroom. P51p31; P47 at starting 1:05:45; T94. A co-taught classroom is a general education class with a ratio of approximately 70 percent general education students and 30 percent students who receive special education services. T94-95. A co-taught class has one general education teacher and one special education teacher who develop the curriculum together and work with all students. T200; P47 at 1:30:40. Reading intervention might be given through small group instruction in the back of the classroom. P47 at 1:37:00,

1:37:20. The team discussed that teachers at Mercer would be able to answer specific questions about how SDI would be delivered. D51p21.

159. The team discussed having the Student receive additional reading and writing SDI, along with SDI in study/organization skills and behavior in a special education class referred to as “study skills” or “study org.” D54p21. A study skills class meets 240 minutes per week. T144. Students work on behavior and executive functioning, and receive instruction in other areas based on their needs. P47 at 1:12. A study skills class has one teacher generally with IA support, depending on the needs of the class. P47 at 1:16:20. There are 10 to 15 students in the class, with an average of 12. P47 at 1:06:45. Every teacher organizes the study skills class differently. P47 at 1:07:30. Since the Student’s schedule would not be set until August, the IEP team did not know who would teach the Student’s study skills class. T207-088. The initial draft IEP reflected the study skills class as 240 minutes for social/behavior SDI, but did not indicate how the minutes would be allocated. P43p15.

160. The Parent did not believe a format with students focusing on different tasks would work for the Student, given his ADHD. P47 at 1:14:25. She wanted to know how he could get the best reading and writing support that did not make him feel different and that did not make his ADHD symptoms worse. P47 at 1:14:45. Ms. Hall explained that study skills classes are highly individualized for each student and noted that if the Parent waited to talk with the instructor, she believed the Parent would find it to be a very beneficial class for the Student. P47 starting at 1:16:08.

161. The Parent was also concerned that because the IEP team didn’t know who would be teaching the class, what curriculum they would use, or the class size or number of teachers, it would not be possible for the team to guarantee the number of minutes the Student would receive in reading and writing instruction during the study skills class. P47 at 1:09:55. However, Ms. Petrie clarified that if the IEP provided a certain number of minutes, the case manager and the study skills teacher would know that the student required explicit instruction in those areas. Therefore, the study skills teacher would know that they were required to deliver that SDI in the study skills class. P47 at 1:10:43. Ms. Petrie clarified that if the Student required reading and writing SDI, “we can guarantee” he will get it in that class. P47 at 1:13:45.

162. The Parent was also concerned about the credentials of the teachers providing reading intervention. P47 at 1:31:56. The team discussed that all special education teachers must meet state requirements for certification, and that instruction about dyslexia and teaching reading is part of the coursework required to become a certificated special education teacher in Washington state. P47 starting at 1:32:15. Additionally, special education teachers participate in professional development to meet student needs. T103-104.

163. Team members did not reach an agreement on the number of minutes of SDI to be provided. D54p21. The IEP team agreed that the Student's IEP team at Mercer would meet in the fall after the Mercer team had 30 days to get to know Student or earlier if the Parents requested it. P47 at 1:08:45. They could provide answers to the Parents' questions and amend the IEP if necessary. P47 at 1:39. The team discussed that an amendment to the number of minutes could be done quickly based on the Student's progress. P47 at 1:05:10.

164. On June 24, 2024, the team also developed a BIP focused on the target behavior of "unsafe physical behaviors such as grabbing, hitting or throwing items" that occurred when the Student was experiencing strong feelings, especially when he felt excluded or rejected by peers. D55pp1-2. The BIP provided intervention strategies that focused on decreasing the likelihood of the target behavior, teaching the Student to strengthen social and regulation skills to improve his ability to interact successfully with peers, and reinforcing the use of positive behaviors. D55pp2-4.

#### **Hamlin Robinson**

165. On July 2, 2024, the Parents sent a letter notifying the District that they intended to withdraw the Student from the District and to seek reimbursement from the District for tuition at Hamlin Robinson, which is a nonpublic agency school (NPA).<sup>26</sup> P50pp1-2.

166. At that point, the Parents and the District were still exchanging emails about changes to the draft IEP and were still planning that the Mercer IEP team would meet when school resumed. T349-50; D54p21-22. The District felt that it could appropriately serve the Student in middle school and had developed an IEP addressing concerns about reading, writing, study/organization, and behavior. Additionally, the District determined that no data indicated that the Student required a more restrictive NPA placement. T312.

167. On July 9, 2024, Ms. O'Shea sent the Parents PWN that the District:

- was denying the Parents' request for NPA placement;
- did not believe NPA placement was the Student's least restrictive environment;
- was willing to honor the offer of compensatory services from June 21, 2024;
- sent a final IEP to the Parents after the notice of unilateral placement because it had been responding and working to address the Parents' concerns about the IEP until late June.

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<sup>26</sup> As an NPA, Hamlin Robinson is authorized by OSPI to contract with school districts in Washington to provide special education services. P50p3.

-recommended that the IEP team meet to make changes when school resumed if the Parents decided to re-enroll the Student.

P51pp1-4. Sent with the PWN was a copy of the final IEP, procedural safeguards, and the Student's BIP. P51p1.

168. The finalized IEP offered the following SDI:

**Services 09/04/2024 - 09/03/2025**

| Concurrent               | Service(s)                | Service Provider for Delivering Service | Monitor                   | Frequency           | Location (setting) | Start Date | End Date   |
|--------------------------|---------------------------|-----------------------------------------|---------------------------|---------------------|--------------------|------------|------------|
| <b>Special Education</b> |                           |                                         |                           |                     |                    |            |            |
| No                       | READING                   | Special Education Staff                 | Special Education Teacher | 80 Minutes / Weekly | General Education  | 09/04/2024 | 09/03/2025 |
| No                       | WRITTEN LANGUAGE          | Special Education Staff                 | Special Education Teacher | 80 Minutes / Weekly | General Education  | 09/04/2024 | 09/03/2025 |
| No                       | SOCIAL/BEHAVIOR           | Special Education Staff                 | Special Education Teacher | 60 Minutes / Weekly | Special Education  | 09/04/2024 | 09/03/2025 |
| No                       | STUDY/ORGANIZATION SKILLS | Special Education Staff                 | Special Education Teacher | 60 Minutes / Weekly | Special Education  | 09/04/2024 | 09/03/2025 |
| No                       | WRITTEN LANGUAGE          | Special Education Staff                 | Special Education Teacher | 60 Minutes / Weekly | Special Education  | 09/04/2024 | 09/03/2025 |
| No                       | READING                   | Special Education Staff                 | Special Education Teacher | 60 Minutes / Weekly | Special Education  | 09/04/2024 | 09/03/2025 |

**Total minutes per week of building instructional time available for this student (excluding lunch):**

1825 minutes per week

**Total minutes per week student is served in a special education setting:**

240 minutes per week

**Percent of time in general education setting:**

86.85% in General Education Setting

D54p18. It also included regular parent-staff meetings as an accommodation in response to an email from the Parent on June 27, 2024. D54p21.

169. The PWN, dated July 9, 2024, confirmed that the team had not agreed on the number of minutes of SDI and recommended an IEP team meeting within 30 days of the start of school so the Mercer team could answer specific questions, assess baseline reading levels, and make recommendations about the number of minutes. It also confirmed that the Mercer team would be able to "review curriculum scope and sequence as well as how [SDI] is delivered." The PWN documented that the District would schedule an occupational therapy consultation when the school year resumed. D54p21.

170. Ms. Petrie believed that the IEP team adopted Dr. Clancy's recommendation to provide targeted reading intervention, although the team couldn't answer all of the Parents' specific questions until the Student's teachers were assigned at the start of the school year. P21p19 (page 71 of deposition transcript at line 7).

## 2024-2025 School Year at Hamlin Robinson

171. Josh Phillips is the head of the Hamlin Robinson middle school, which enrolls approximately 216 students in grades six to eight.<sup>27</sup> T803, 812-13. All students at Hamlin Robinson have dyslexia or language based learning differences. T803; 840.

172. Hamlin Robinson has a strategic partnership with the Slingerland Literacy Institute. T806; P64p4. The Slingerland method is an adaptation of the Orton-Gillingham structured literacy method. While Orton-Gillingham is designed to provide one-on-one intervention for students, Slingerland is intended to provide whole class intervention. T807. Slingerland is a teaching method, not a curriculum. Teachers develop a curriculum in response to the Student's writing needs. T850.

173. Hamlin Robinson requires all teachers to be certified Slingerland instructors. It does not require teachers to have certification in Washington state, and some teachers do not hold that credential. T839. In addition to academic instruction, students learn about social-emotional topics. T815. Students also participate in a study skills class. T855.

174. The Student has had issues with behavior and lack of impulse control at Hamlin Robinson. T1010; P62pp2, 5. He received an in-school suspension because he continued using a fake accent in a mocking way after being told to stop multiple times. T827. Other behaviors included calling out in class; blocking a student's view of the board after being told to sit down, making noises in class, initiating conversations during instruction, calling out to people across the room, and difficulty paying attention. D59pp2, 4, 7, 10, 14-15, 17; T1026-27. On several occasions, the Student was asked to complete a respond and repair form (R&R) as a consequence for inappropriate behavior. D59pp2-3,15; T754-57.

175. The Student does not have an IEP in place at Hamlin Robinson, and does not receive special education services. T763; 841. He is in a class called "Reading Level 6," which had an instructional level of 4, meaning the text is at a 4th grade Lexile level and that students practice 4th grade reading skills. T852; 1025-26. Jenny Gruenberg<sup>28</sup> teaches the Student's reading and writing classes. The Student's "Writing Level 6" class refers to 6th grade level material. T1019-20. In writing, there is an emphasis on handwriting and the Student has learned cursive. T996. Students also work on spelling and sentence composition, and, at the time of hearing, were working on writing a

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<sup>27</sup> Mr. Phillips had a master's degree in education in literacy and is a certificated teacher with endorsements in ELA, grades 6-12, and reading, K-12. P68p1; T805. He has taught at the middle school and high school levels in private schools but has not taught in a public school setting. T805, 838.

<sup>28</sup> Ms. Gruenberg received a master's degree in education in 2023 and has a secondary ELA certification. She is not a certificated special education teacher. P70; T1018.

personal narrative. T996. Reading includes work on decoding, fluency, and comprehension skills. T997-98. The Student's reading and writing classes each last 50 minutes per day. There are 15 students in writing and 11 students in reading. T998-99.

176. The Student is in Edward Kuh's science class and advisory group.<sup>29</sup> T913. Students go to advisory for 20 minutes at the start of the day, 30 minutes in the middle of the day, and 10 minutes at the end of the day for social-emotional lessons, silent reading, study hall, and social time. T914. The amount of reading and writing required in the Student's "Science Level 6" is at a 4th grade level. T943-44.

177. Hamlin Robinson does not administer state assessments. T841. It uses the nationally-normed Star assessment to monitor for growth. T842; 1004. Star assigns a score of red (level 1—below grade level), yellow (level 2—approaching grade level), blue (level 3—grade level), or green (level 4—above grade level) to scores. T1006. The Student's Star reading scores were as follows:

| Test Date | Scaled Score | Percentile | Level                                       |
|-----------|--------------|------------|---------------------------------------------|
| 6/1/24    | 1022         | 28         | not indicated in report                     |
| 9/19/24   | 950          | 10         | Level 1 - 3 <sup>rd</sup> grade             |
| 10/22/24  | 1070         | 64         | Level 3 - 6th grade                         |
| 11/21/24  | 990          | 20         | Level 1 - 4th grade                         |
| 12/12/24  | 1009         | 27         | Level 2 - approaching 6 <sup>th</sup> grade |

P63pp1-6. Star scores compare students to others in their grade level. T1019. For example, the Student's score on November 21, 2024, was higher than 20% of his 6<sup>th</sup> grade peers. P63p2. Variation in test scores is not unusual. T856-57.

178. In his report card for the first trimester at Hamlin Robinson, the Student met expectations ("3") in 7 of 10 writing skills and approached expectations ("2") or approached expectations with growth ("2+") for the remaining skills. In reading, the Student earned grades of 2 or 2+ for all skills. P62p4; T836-37.

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<sup>29</sup> Mr. Kuh has a master's degree in education and has extensive experience as a teacher and school administrator. P69pp1-3. Mr. Kuh is a certificated general education teacher but is not a certificated special education teacher. T936.

## Tutoring and Expenses

179. Between July 6, 2022, and June 3, 2024, the Student met with Lauren Graham, a speech-language pathologist (SLP) at Language & Learning Arts, to build his reading skills. T967; P58p2. Language & Learning Arts provides one-on-one speech-language therapy to students, most of whom have a diagnosis of dyslexia. T1063-65. All therapists at Language & Learning Arts are SLPs licensed nationally and in Washington and take continuing education courses in literacy and dyslexia. T1065.

180. On or about June 3, 2024, Ms. Graham prepared a report of the Student's progress during the 55 sessions he attended between July 6, 2022, through June 3, 2024. P58p1. Sessions are 50 minutes long. T1065. As of June 2024, a session cost \$120.00. P59p7. The report stated most sessions were attended online, whereas the Parent estimated she transported the Student to in-person sessions for 12-15 months. T967. The record does not contain sufficient evidence to determine how many sessions were attended in person.

181. When Ms. Graham tested the Student's reading skills in July 2022, November 2022, and December 2022, most of his scores were in the average range. However, the Student showed relative weakness in rapid letter and rapid digit naming in July 2022, and in generating multiple meanings for words in November 2022. To address these areas, the Student worked on six goals with Ms. Graham. He met four goals and made progress toward the remaining two. P58pp2-4. A summary stated: [The Student] has made demonstrable progress in his reading accuracy, fluency, spelling, and suffix knowledge. He met his long-term goals. [The Student] would continue to benefit from instruction in more complex suffix rules and encoding words with irregular spelling." P58p4.

182. The Student also received occupational therapy from a private provider in 2024, as recommended by Dr. Ames and Dr. Clancy. T969.

183. The Parents' insurance covered some of the Student's occupational therapy and therapy by Language & Learning Arts. The Parents paid \$1,515.00 for occupational therapy, and \$4,806.00 to Language & Learning Arts. T1164-65; P60; P59.

184. Tuition at Hamlin Robinson for the 2024-2025 school year is \$34,640. The invoice submitted by the Parents indicated they had made payments totaling \$16,083.00, between March 29 and November 18, 2024. P61pp1-2; T1166-67.

## Credibility Determinations<sup>30</sup>

185. Dr. Clancy has extensive education, training, and experience as a neuropsychologist and her thorough IEE report was adopted by the District in the June 2024 reevaluation. P67; T602, 741. Therefore, Dr. Clancy's testimony and report regarding her assessments and evaluation of the Student are highly credible, with the following exception. Dr. Clancy's knowledge of the Student's special education programming is informed solely by her review of records and information she received from the Parents and the Student. She did not speak with District staff to learn their perspective, has never observed the Student in an educational setting, is not familiar with and has no knowledge of the District's special education programming, has no personal knowledge of the Student's educational programming, and did not know the Student when he was evaluated by the District in 2022 and 2023. T1138, 1199, 1204-05. Additionally, she does not have expertise in instructional methodology for students in a K-12 setting and is not an educator. T1198-99, 1200. This impacts the reliability of her opinion testimony regarding the appropriateness of the District's prior evaluations of the Student, the adequacy of the District's services to the Student, and the appropriateness of the Student's goals, which is therefore given little weight.

186. There was conflicting testimony about delivery of structured literacy instruction. SLP Meredith Atkins, owner of Language & Learning, does not believe structured literacy instruction can be delivered within a general education classroom and does not believe the Student's special educational programming in the District was appropriate. T1076, 78-81.<sup>31</sup> Dr. Clancy also does not believe it is possible to teach the Student a structured literacy program with fidelity in a general education setting, noting that such instruction requires a small group setting and a skilled special educator. T1191-92. She also thought it would be difficult for the Student to stay on task in a general education setting given his ADHD. T1192-93. Ms. Atkins' testimony on both of these points is not found to be reliable because she does not have a teaching certificate, works with students using a one-on-one model exclusively, has not been in a general education classroom for years, is not familiar with special education programming in the District, has never worked with or attended an IEP meeting for the Student, and has not spoken to any of his teachers. T1064, 1078, 1084-87. Similarly, as found above, Dr. Clancy does not have knowledge of the District's services or

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<sup>30</sup> In addition to the credibility findings made above, these longer and more involved credibility determinations have been set out in a separate section for convenience.

<sup>31</sup> Ms. Atkins earned a master's degree in speech-language pathology in 1997. P66. She is a licensed SLP in Washington and is nationally certified by the American Speech-Language-Hearing Association. Ms. Atkins is a member of the International Dyslexia Association. T1063-1064. She has been the owner of Language & Learning Arts for 19 years and previously served as Executive Director for Educational Tutoring & Consulting, now Yellowwood Academy. P66

programming on which to base an opinion. In contrast, Ms. Petrie taught special education for approximately 20 years, is a certified dyslexia teacher, has completed several Orton-Gillingham trainings, has written IEPs for the Student and attended IEP meetings for him, and has a deep knowledge of the District's special education programming. T54-56, T182. Therefore, Ms. Petrie's testimony that targeted structured literacy instruction can be delivered within the general classroom, particularly in small groups through the co-taught model, is highly credible and given more weight, as is her testimony regarding instruction and programming provided to and offered to the Student. T182-83.

187. The Parent's declaration stated that if she had received a copy of her procedural safeguards prior to November 10, 2023, she would have learned about her right to file a due process hearing request and would have requested a hearing much sooner. P71p11. This is not found to be credible because the Parents waited until August 29, 2024, almost nine months, to file a due process hearing after they received the procedural safeguards. Similarly, the Parent's statement in her declaration that she believed Ms. Deeter was providing reading SDI to the Student is not found credible. See P71p9. The Parent's statement is inconsistent with testimony establishing that the June 2022 IEP meeting occurred after Ms. Deeter made this statement, and that the Parents stated their disagreement with the lack of reading SDI at the meeting. D9p1; D8p1; T386. If the Parents had believed Ms. Deeter was going to provide reading SDI, there would have been no reason to disagree with the IEP due to its failure to provide reading SDI.

## **CONCLUSIONS OF LAW**

### **Jurisdiction and Burden of Proof**

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).
2. The District bears the burden of proof in this matter. RCW 28A.155.260(1). In a due process hearing, the burden of proof is a preponderance of the evidence. RCW 28A.155.260(3). Because the Parents seek reimbursement for a unilateral parental placement, the Parents bear the burden of proof as to the appropriateness of such placement. RCW 28A.155.260(2).

## The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” *Rowley*, 458 U.S. at 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent’s right to be involved in the development of their child’s educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

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

6. “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.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs. *Id.* at 400. The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* at 399. Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique

needs of a particular child.” *Id.* at 391. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances . . .” *Id.* at 402.

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* at 999 (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

### Statute of Limitations

8. The Parents filed their Complaint on August 29, 2024. The District contends that the statute of limitations bars claims prior to August 29, 2022.

9. The Washington regulation concerning the IDEA statute of limitations provides in relevant part:

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 USC §1415(f)(3)(C) and (D).

10. 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 and concluded that it requires courts to apply the discovery rule. In *Avila*, 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’ [KOSHK] about the actions forming the basis of the complaint.” *Id.* at 937.

11. Determining the KOSHK date, or the date when the two-year statute of limitations begins to run, is a fact-specific inquiry. The inquiry focuses on when a parent comes to believe, or reasonably should have come to believe, that the Student is not receiving FAPE, and that the school district is responsible for that failure. *Vandell v.*

*Lake Wash. Sch. Dist.*, 2019 U.S. Dist. LEXIS 39747, at \*11-12 (W.D. Wash., March 12, 2019).

12. In *Vandell*, the parents filed their complaint on December 6, 2016, alleging that the district failed to provide the students with FAPE during the 2012-2013 and 2013-2014 school years. *Id.* at \*9. The District Court concluded that the ALJ properly determined that before December 6, 2014, the parents knew or should have known that the district had failed to provide the students with FAPE. With respect to the 2012-2013 school year, the court noted that by August 2013, the parents believed the district was “out of compliance” because it refused to reevaluate the students, who were not progressing in class. *Id.* at \* 10. Thus, the KOSHK date for 2012-2013 was no later than August 2013. *Id.* At the start of the 2013-2014 school year, the district stated it did not recognize dyslexia as a learning disability, leading the parents to consider a private school. In April 2014, the parents acknowledged the district had a limited curriculum that might not enhance the students’ education. In late August 2014, the parent stated that district personnel had admitted to him that they did not have resources for specialized instruction. The court determined that by late August 2014, the parents “know or should have known that the [s]tudents were not receiving FAPes for the 2013-2014 school year and that the [d]istrict could be faulted for that failure.” *Id.* at \*11-12.

13. Here, the Parents allege four issues based on events that occurred prior to August 29, 2022: 1) the District predetermined that the Student would not be eligible for reading services; 2) the May 2022 evaluation was inappropriate; 3) the June 2022 IEP was inappropriate; 4) the District impeded the Parents’ participation by failing to provide them with information regarding procedural safeguards in March and April of 2022. A review of the evidence makes clear that all four claims are barred by the statute of limitations.

14. As of the April 5, 2022, referral meeting, the Parents believed Ms. Hutson had predetermined that the Student would not qualify for SDI in reading, despite Dr. Ames’ evaluation recommending reading intervention. The Parents questioned the May 2022 evaluation immediately after they received a draft copy and continued to voice their disagreement with the evaluation. At the June 2022 IEP meeting, the Parents disagreed with the IEP because they thought the Student needed reading SDI but was not receiving it.<sup>32</sup> Thus, the Parents were aware of the basis for these three claims before the 2021-2022 school year ended. Moreover, as found above, within several weeks to a month after the school year ended on June 17, 2022, the Parents received

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<sup>32</sup> Although the Parent now claims she thought Ms. Deeter would provide reading SDI, that claim was found not to be credible as discussed above.

the Student's SBA scores indicating that he was performing below grade level in ELA and failed to meet state reading standards. At that point, the Parents were aware that Dr. Ames recommended reading intervention for the Student, that the District refused to include reading SDI in the IEP, and that assessment scores were consistent with Dr. Ames' recommendation. Thus, by mid-July 2022, the Parents became aware that the alleged inadequacy of the Student's education was denying him a FAPE. *Hathaway v. Santa Barbara Unified Sch. Dist.*, No. 24-1457, 2025 U.S. App. LEXIS 3517, \*3 (9th Cir. Feb. 14, 2025).

15. The Parents argue that the Student's teachers and District staff continued to reassure the Parents that the Student was doing great. They appear to argue that they did not realize that the District was unable to meet the Student's needs until June of 2024. Parent's Brief at p.7. The evidence does not support this assertion. As discussed above, by mid-July 2022, the Parents had received the SBA score indicating the Student was not meeting state standards, which was consistent with Dr. Ames' evaluation indicating the Student required reading intervention and the Parents' continued belief that such intervention was essential. Accordingly, by mid-July 2022, the Parents knew or should have known that the Student was not receiving FAPE and that the District could be at fault.

16. Additionally, by then, the Parents knew or should have known the basis of their claim that the District's failure to provide a copy of their procedural safeguards impeded their participation. They had received three PWNs (4/5/22, 5/31/22, 7/7/22), each of which advised that the IDEA provided procedural safeguards and stated that if a copy of the procedural safeguards was not enclosed, they could contact Ms. Hutson to obtain one. Thus, by mid-July 2022, the Parents were aware of the alleged actions that form the basis for their Complaint.

17. A preponderance of the evidence indicates that no exception to the statute of limitations applies. The evidence does not support a conclusion that the District's failure to provide the Parents with a copy of their procedural safeguards prevented them from requesting a due process hearing. The terms "prevented from" and "due to" denote a causal connection between the failure to receive required information and the failure to request a due process hearing. In her declaration, the Parent contends that she would have filed a due process hearing sooner had she received a copy of the procedural safeguards. However, after the Parents received a copy of the procedural safeguards on November 10, 2023, they waited more than nine months before they filed a due process hearing request. The procedural safeguards advised the Parents of the two-year time limit for filing due process hearing requests. Thus, even if the Parents had received the procedural safeguards earlier, the evidence

establishes that it would not have prompted them to file their due process hearing request in a timelier manner.

18. Additionally, Ms. Deeter's statement about reading SDI cannot be considered a specific misrepresentation that prevented the Parents from filing a due process hearing request. The "majority view is that the alleged misrepresentation or withholding of information must be intentional or flagrant." *Evan H. by Kosta H. and Laura H. v. Unionville-Chadds Ford School District*, 51 IDELR 157 (E.D. Pa. 2008); *Seattle School Dist.*, 113 LRP 8150 (WA SEA 2012). Ms. Deeter stated in an email "As for reading, I incorporate it in with the writing. We read a book and then we write about it." This does not constitute an intentional or flagrant misrepresentation that the District would, in fact, provide SDI in reading. If the statement caused confusion, the Parents had an opportunity to clarify when the IEP team met later that day. However, at the meeting, the Parents voiced their belief that the IEP should have provided SDI in reading. This is inconsistent with any claim that they believed reading SDI was, in fact, being provided. There is no evidence that the District misled the Parents about resolving their alleged claims or that a misrepresentation prevented them from filing a due process hearing request.

19. In conclusion, because the "knew or should have known" date is mid-July 2022, and no exception to the statute of limitations applies, events that precede August 29, 2022, are not at issue in this case and are not considered.

20. Therefore, the following issues are barred by the statute of limitations and are not addressed: Issue 1, Issue 2(a)-(f), Issue 3(a)-(c), Issue 4(a).

**Issue 4(b)-(e) The District was not required to send PWN to the Parents in October 2022, and its failure to provide a copy of procedural safeguards in October 2022, June 2023, and prior to November 10, 2023, did not significantly impede parental participation.**

21. Under WAC 392-172A-05015,

(1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education services one time a school year, and:

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

A school district may not satisfy its obligation to provide a copy of procedural safeguards by directing parents to a website. *Charlotte-Mecklenburg Cty. Bd. of Educ. v. Brady*, 66 F.4th 205, 213 (4th Cir. 2023), quoting 71 Fed. Reg. 46693 (August 14, 2006).

22. In addition, a district must provide PWN to the parents of a child eligible or referred for special education a reasonable time before it:

a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) 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).

23. Among other things, the PWN must include:

(d) A statement that the parents of a student eligible or referred for special education services 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 . . .

WAC 392-172A-05010(2).

24. The Parents claim that the District was required to send PWN documenting its refusal to reevaluate the Student in October 2022. At that point, the Parent sent an email asking: “Do we have a new school psychologist? If so should we re-test at the school?”

25. The first issue is whether the Parent's email was a request for an evaluation. "Magic words" are not required to request an evaluation. *Brady*, 66 F.4th at 212. In *Brady*, the parent sent an email that clearly advised the district that they wanted to discuss a psychologist's conclusion that the student would qualify for an IEP and what services would be covered by an IEP. *Id.* at 210, 212. The Fourth Circuit Court of Appeals agreed with the District Court's conclusion that "This is, at a minimum, an evaluation request because for [the district] to respond to this letter—which asks what services are available to [the student] under the IDEA—it must first determine whether [the student] is eligible." *Id.* at 212.

26. In contrast to *Brady*, where an evaluation was a predicate to answering questions about available services, the Student had just been evaluated and found eligible for special education services. On its face, the Parent's email was seeking an opinion about whether to retest approximately 6 months after the initial evaluation. When Mr. Perkiss responded that he did not think the District would retest so quickly, and Ms. Sanekane confirmed that, the Parent thanked them for their thoughtful feedback. These facts are inconsistent with the claim that the Parent was actually requesting a reevaluation.

27. Because the Parent did not request a reevaluation in October 2022, the District was not required to issue a PWN documenting its refusal to reevaluate. Even if the inquiry could be considered a request for a reevaluation, the Parent knew that a reevaluation was not underway. The response from Mr. Perkiss and Ms. Sanekane made clear that they recommended further collection of data and neither thought the District would reevaluate so quickly after the initial evaluation. Accordingly, to the extent that the failure to send PWN constitutes a procedural violation of the IDEA, the lack of formal documentation in a PWN did not impede the Student's right to a FAPE, significantly impede the Parents' participation, or deprive the Student of educational benefit.

28. The next claim is whether the District's failure to provide the Parents a copy of the procedural safeguards in October 2022 and June 2023 and prior to November 2023, significantly impeded their participation.

29. Under WAC 392-172A-05010(2) and -05015, the District was required to provide the Parents with a copy of the procedural safeguards once each school year and when the Parents requested that the District evaluate the Student. The plain language of WAC 392-172A-05010(2) and -05015 makes clear that in some instances the District must provide a copy of the procedural safeguards, whereas in other instances it is sufficient to state how to obtain a copy. Accordingly, simply advising a

parent of procedural safeguards in a PWN does not satisfy the obligation to provide a copy of the procedural safeguards.

30. A preponderance of the evidence indicates that the District first provided the Parents with a copy of the Student's procedural safeguards in November 2023. The District did not provide a copy of procedural safeguards at any point during the 2022-2023 school year. The Parents argue that if they had learned about their right to participate in formal dispute resolution procedures and to file a special education community complaint or due process hearing request, they would have done so much sooner. They argue that the District's failure to provide a copy of procedural safeguards until November 10, 2023, resulted in a denial of FAPE and lost educational opportunity for the Student, and impeded the Parents' participation.

31. The District argues that even if it was required to provide procedural safeguards in October 2022 or June 2023, the failure to provide them did not impede participation. The District notes that the Parents routinely communicated with staff about educational programming and attended IEP meetings for the Student. Additionally, the District contends that the Parents' participation did not change after they received the procedural safeguards in November 2023.

32. Because the Parents requested a reevaluation in June 2023, the District's failure to send a copy of procedural safeguards at that time violated the procedural requirements of the IDEA. WAC 392-172A-05015(2). To the extent the Parent's question about retesting in October 2022 can be considered a reevaluation request, the failure to provide a copy of procedural safeguards at that time also was a procedural violation. Regardless, the District's failure to send procedural safeguards at least once during the 2022-2023 school year was a procedural violation.

33. A preponderance of the evidence establishes that the District's procedural violations in failing to provide a copy of the procedural safeguards did not significantly impede the Parents' right to participation, impede the Student's right to FAPE, or deprive the Student of educational opportunity. Although the Parents did not receive a copy of the procedural safeguards until November 2023, they received multiple PWNs before then advising them of the procedural safeguards and who to contact to obtain a copy. After the Parents received a copy of the procedural safeguards in November 2023, they waited more than nine months to file a due process hearing request. This is inconsistent with the Parent's declaration stating she would have requested a hearing earlier if she had received the procedural safeguards, which was found not to be credible. Notably, the Parent's declaration did not state that she would have filed a citizen complaint or requested an IEE earlier if she had received a copy of the procedural safeguards.

34. Because the District's procedural violation did not significantly impede the Parents' participation or deny the Student a FAPE or educational benefit, no remedy is warranted. WAC 392-172A-05105(2).

**Issue 4(f) The District's failure to provide the Parents with timely special education progress reports for the 2023-2024 school year prevented them from meaningful participation in the IEP process and denied the Student a FAPE.**

35. The Parents claim that the District's failure to provide timely progress reports prevented them from meaningful participation in the educational decision-making process. A student's IEP must contain a description of how the district will measure the student's progress toward meeting annual goals, and when the district will provide periodic reports on the student's progress toward meeting their annual goals. WAC 392-172A-03090(c). A district's failure to provide progress reporting data can be a procedural violation that results in a denial of FAPE. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 855-856 (9<sup>th</sup> Cir. 2014).

36. The Student's May and November 2023 IEPs each required the District to provide written progress reports documenting the Student's progress toward his goals each trimester. The District has not met its burden to establish that it timely provided the Parents with such reports during the 2023-2024 school year. A preponderance of the evidence indicates that the District first sent the Parents a progress report for the 2023-2024 school year on March 1, 2024, when the school year was more than halfway complete. Moreover, the information in the report was no longer current, because it discussed the Student's progress as of November 17, 2023, and January 31, 2024.

37. The District argues that the November 2023 IEP discussed the Student's progress. That is true, but the progress reported in the IEP was inaccurate. It stated that the Student had met his May 2023 IEP goal before the implementation date for the May 2023 IEP, which was found not to be credible. The District also points to the fact that the June 2024 IEP contained progress information. However, providing information at the end of the school year did not make up for the failure to provide timely information earlier in the year.

38. Sending a first progress report when the school year was more than halfway complete deprived the Parents of information they needed for meaningful participation in the Student's educational programming. This procedural violation cannot be considered harmless in view of the Parents' longstanding concerns about the Student's needs and how to address them. Without timely information, the Parents could not raise concerns at a time when changes could be effective. On top of that, the

inaccurate information in the November 2023 IEP reassured the Parents the Student had made progress that he had not actually made.

39. The failure to provide timely progress reports during the 2023-2024 school year significantly impeded the Parents' participation in the Student's education and denied the Student a FAPE. A remedy is discussed below.

#### **Issue 4(g)**

40. The Parents contend, for the first time, that the District impeded their participation by unilaterally changing the Student's least restrictive environment (LRE) in January 2024. Parents' Brief at p.19. This issue was raised in the Parents' post-hearing brief and was not raised in the Complaint or included in the issue statement.

41. A party may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). "Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise." *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 \*34-35 (W.D. Wash. May 8, 2019), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (upholding ALJ's refusal to address claims raised for first time in post-hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing). This is consistent with Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130. An exception may apply when an issue was actually tried by the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d 1198, 1196 (9th Cir. 2017); *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 \*15-16, 19 (E.D. Cal. Mar. 7, 2019), *aff'd* 810 Fed. Appx. 588 (9th Cir. 2020).

42. The District did not agree to add any new issues to the issue statement and the Parents have not articulated why this issue should be heard despite not having been raised. Moreover, while Ms. Barnes provided some testimony about where the Student received his SDI, that testimony was incidental to the issues for hearing. No exception applies here because an issue related to a unilateral change to the Student's LRE was not "actually tried" at the hearing. Thus, even if the ALJ were inclined to address this unraised issue, the record does not provide sufficient information to do so.

43. Issue 4(g) was not raised by the Parents and is not considered.

**Issue 5(a)-(c) The May 2023 IEP was appropriate.**

44. The Parents argue the May 2023 IEP was inappropriate because it did not include progress reporting on the Student's annual goal, or measurable and appropriate annual goals, and did not provide sufficient SDI.

45. In developing an IEP, a student's IEP team must consider the student's strengths, the parents' concerns for enhancing their student's education, the most recent evaluation results, and the student's academic, developmental, and functional needs. WAC 392-172A-03110(1). The team must also consider special factors unique to the student. WAC 392-172A-03110(2). If a student's behavior impedes their learning or that of others, the IEP team must consider the use of positive behavior interventions and supports to address behavior. WAC 392-172A-03110(2)(i).

46. An IEP must contain a statement of a student's present levels of academic and functional performance, including how the student's disability affects involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a). In addition, an IEP must include a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from their disability to enable them to be involved in and make progress in the general education curriculum and to meet each of the student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b). There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001). Moreover, goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals.

47. In addition, an IEP must include a statement of the special education and related services 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 non-academic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d).

48. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. See, e.g., *Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student's deficits in attending to group instruction). An IEP need not contain every goal requested by a parent or recommended by the parent's experts. See *G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student's

significant needs while excluding those it deemed unnecessary or not age appropriate).

49. The May 2023 IEP included the Student's statewide assessment scores and input from Teacher Ash and Ms. Deeter. This input addressed the Student's strengths—he was a solid writer with creative ideas, proper sequencing, and sentence structure. He had made improvements in spelling and conventions. It also addressed his weaknesses—it was difficult for him to actually put words on paper, but he was able to dictate a story and wanted to dictate another story. His determination to spell every word correctly sometimes prevented him from completing a draft. The challenge was getting the Student to write on his own. The IEP did not report on the Student's progress toward his goal set in the June 2022 IEP. However, even without that specific information about the Student's goal performance, the IEP clearly identified the Student's resistance to writing as the key issue that needed to be addressed. The IEP team had sufficient information about the Student's present levels of performance to enable them to determine appropriate goals for the future.

50. The team set a goal focused on typing “a 5-paragraph essay with proper conventions, grammar and spelling improving writing skills from not being able to put words on paper (1/5 attempts dictated to another person to type) to producing a well written 5 paragraph essay on a subject of his choice that contains proper conventions, grammar and spelling, in 4/5 attempts on his own. [sic] as measured by Writing samples.” This goal was clear and measurable, and set out how progress would be measured.

51. The goal was appropriate because it focused on addressing his primary challenge—a resistance to writing on his own—as identified by the present levels of performance. Ms. Deeter believed that allowing the Student to use a computer with word prediction and spell check might be worth trying to encourage the Student to write on his own. Teacher Ash, who worked closely with the Student throughout the year, believed typing would eliminate barriers to writing, such as worries about spelling and needing to hold the pencil just right when handwriting. No one disagreed with the goal at the IEP meeting. To the extent that Dr. Clancy did not agree with this goal, she did not know the Student at the time and has never worked with him in an educational setting. More weight is given to the testimony of Teacher Ash, who worked very closely with the Student to meet his writing needs throughout the 2022-2023 school year.

52. The Parents now contend that rather than addressing foundational issues, the IEP team changed the Student's goal to add technology supports. They rely on *William A. v. Clarksville-Montgomery Cty. Sch. Sys.*, 127 F.4th 656 (6th Cir. 2025), which involved a student who was unable to write his own name and used technology to mask

reading and writing difficulties. When the student in *William A.* had a writing assignment, he would dictate his topic into a document using speech-to-text software, then paste the written words into AI software. He would then use the AI software to generate a paper on that topic and paste the paper back into his own document. Finally, he would use a program to reflect an appropriate writing style. *Id.* at 660. In this case, unlike in *William A.*, the Student *had* developed some core skills, including creative thinking, proper sequencing, structure, and conventions. This case must be distinguished from *William A.*, in which the student had no foundational skills and technology enabled him to bypass learning any skills. That is not the case here, where the team believed technology could help the Student overcome resistance to using his skills. Teacher Ash credibly testified that the Student excelled in ELA with her efforts to build his confidence to encourage him to try writing and with supports such as scribing and allowing him to dictate to get his ideas down on paper. Given that the Student's primary challenge was overcoming resistance to writing and that he had shown success when he was able to dictate a story, a goal that allowed him to type an essay on his own was a logical next step. A preponderance of the evidence indicates that the Student's goal was both appropriate and measurable.

53. In May 2023, the District provided 150 minutes per week of SDI in writing to be delivered in a general education setting. There is no evidence that the Parents or anyone else believed the Student required additional SDI at that time. In the month preceding the IEP meeting, the Parents informed the District that they did not object to the Student missing SDI to participate in a public speaking program and wanted him to stay in general education rather than receive special education services from a substitute. The Parents further stated the Student did not need to make up missed services. In sum, the Parents were not concerned that the Student required more SDI at that time.

54. The Parents now contend that the IEP did not provide sufficient SDI to enable the Student to advance appropriately toward attaining his annual goals. The Student's progress report establishes that he varied between making "significant progress" and "some progress" toward his IEP goal. The evidence further demonstrates that the Student was able to write when he wanted to. Likewise, Teacher Ash, who worked with the Student extensively, observed growth in writing. On balance, the District has met its burden to show that the May 2023 IEP provided an appropriate amount of SDI.

55. To the extent the Parents now suggest that the Student should have received his SDI in the special education setting, they did not raise that issue in their Complaint, and it is not a part of the issue statement. The District did not agree to add that issue, it was not tried during the due process hearing, and the Parents have not articulated

why it should be considered despite not having been raised. *M.C.*, 858 F.3d at 1196; see also *Issaquah Sch. Dist.*, at \*37. Accordingly, this claim is not addressed.

56. The District has demonstrated that the May 2023 IEP, viewed as a whole, was appropriate. Therefore, the Parents are not entitled to a remedy.

**Issue (6) The District failed to deliver all of the Student's SDI in written language from September 6, 2023, through December 2023, which denied the Student a FAPE.**

57. If a school district fails to implement an IEP, the question is whether that failure was material. *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9<sup>th</sup> Cir. 2007). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. *Id.* at 821-22. Only a material failure to implement an IEP violates the IDEA. *Id.* at 822.

58. The District has not met its burden to establish that the Student received the SDI required by his IEP between September and December 2023. The District argues that Mr. Phan delivered the Student's SDI from the start of the 2023-2024 school year until November 17, 2023, when Mr. Phan left Orca. The evidence does not support this assertion. The District relies on an email that Mr. Phan sent to the Parents saying he was working with the Student on a daily basis. However, there is no evidence about the nature of Mr. Phan's work with the Student and no reference to SDI. Ms. Petrie made a general statement to the Parent via email that Mr. Phan was providing students with SDI, but again, there was no information about what, if anything, he was providing to this Student. Nothing else in the record establishes that the Student received SDI during this period. The District has not met its burden to establish that the Student received SDI from Mr. Phan or anyone else between the start of the 2023-2024 school year through November 17, 2023.

59. The evidence further demonstrates that Ms. Barnes provided only minimal SDI to the Student during December 2023. Ms. Barnes started as the Student's case manager on or about December 8, 2023. To the extent that she provided SDI to the Student between December 8 and December 18, 2023, when winter break began, Ms. Barnes' testimony establishes that the amount of SDI was minimal.

60. The District has not established that it provided more than minimal SDI to the Student between September and December 2023. Further, the District has not shown that the Student made progress toward his IEP goals during this period. It is unclear what progress, if any, he actually made toward the goal of typing a 5-paragraph essay. It is also unclear whether he made any progress toward the November 2023 IEP goals

during November and December 2023. Accordingly, the District's failure to implement the Student's IEP was material and denied the Student a FAPE. The Parents are entitled to a remedy, as discussed below.

**Issue (7) The District's November 2023 reevaluation was appropriate.**

61. The Parents next claim that the November 2023 reevaluation was not appropriate because it failed to conduct comprehensive assessments in reading and written language, evaluate the Student in the social/emotional/behavior and study skills/organization, incorporate teacher feedback, include an observation of the Student, and follow additional procedures for identifying students with specific learning disabilities in violation of WAC 392-172A-03045 through WAC 392-172A-03080.

62. A school district must reevaluate a student eligible for special education services at least every three years unless the parent and the district agree that a reevaluation is unnecessary. A reevaluation is also required if the district determines that the student's educational or related services needs, including improved academic achievement and functional performance, warrant reevaluation, or if the student's parent or teacher request a reevaluation. WAC 392-172A-03015.

63. Evaluations and reevaluations must comply with the requirements set out in WAC 392-172A-03020 to 03080. Under these procedures, a "group of qualified professionals selected by the school district must:

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

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

- (ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum . . .

WAC 392-172A-03020(2).

64. Students must be assessed "in all areas related to the suspected disability" and the evaluation must be "sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the

disability category in which the student has been classified.” WAC 392-172A-03020(3)(e) and (g). Assessments must be administered by “trained and knowledgeable personnel” and “in accordance with any instructions provided by the producer of the assessments.” WAC 392-172A-03020(3)(a)(iv).

65. The group cannot use any single measure or assessment as the sole criterion for determining eligibility or educational programming. WAC 392-172A-03020(2)(b). Additionally, the group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. WAC 392-172A-03020(2)(c).

66. As part of any evaluation or reevaluation, the team must review existing data on the student, including evaluations and information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers. WAC 392-172A-03025. The team must then:

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

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

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

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

WAC 392-172A-03025(2).

67. The District must prepare and provide the parents with an evaluation report. WAC 392-172A-03035. The evaluation report must include, among other things, a statement of whether the student has a disability that meets applicable eligibility criteria, a recommendation as to what special education and related services the student needs, and the date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. WAC 392-172A-03035(a), (d) and (f).

68. School districts must follow additional procedures for identifying students with specific learning disabilities. WAC 392-172A-03045 through 03080. These procedures may include the use of:

- (1) A severe discrepancy between intellectual ability and achievement;  
or
- (2) A process based on the student's response to scientific, research-based intervention; or
- (3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures.

WAC 392-172A-03045.

69. The evaluation group that determines whether a student is eligible under the specific learning disability category must include the parents, the student's general education classroom teacher, and an individual qualified to conduct individual diagnostic examinations, such as a school psychologist. WAC 392-172A-03050. This group may determine that a student has a specific learning disability if:

- (1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:

. . . .

- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading fluency skills.
- (f) Reading comprehension.

WAC 392-172A-03055(1).

70. School districts must also ensure that students who are suspected of having a specific learning disability are observed in the learning environment, including the general education setting, to document the student's academic performance and behavior in the areas of difficulty. WAC 392-172A-03075. Additionally, when a student is suspected of having a specific learning disability, the evaluation report must include additional documentation for eligibility under the specific learning disability category. WAC 392-172A-03080.

71. The Parents argue that the District's evaluation was not sufficiently comprehensive because it failed to assess the Student in the area of social/emotional/behavior, and study skills/organization, also referred to as executive functioning. Although they now argue the Student required assessments in these areas, the Parents did not list concerns or request assessments in either area when they provided written consent for the reevaluation. Nor did any District teachers or staff raise concerns that the Student's needs warranted reevaluation in these areas. WAC 392-172A-03015. Additionally, the evidence establishes that the Student was not engaging in regular behaviors in the fall of 2023 so as to require an assessment in that area. Although the Student's behaviors escalated significantly in January 2024, that was not the case when the reevaluation was conducted. Likewise, concerns related to study skills/organization were addressed by accommodations in the Student's IEP and a preponderance of the evidence does not establish that the Student's needs required assessment in this area. The District has shown that it was not required to assess the Student in the areas of social/emotional/behavior or study skills/organization in November 2023.

72. The Parents further contend that the District's reading and writing assessments were not sufficiently comprehensive. In conducting the reevaluation, Ms. Sanekane considered Dr. Ames' comprehensive assessments in reading and written language from March 2022, and the District's evaluation from May 2022. These evaluations, conducted less than two years before the November 2023 reevaluation, identified issues related to fluency as a primary reading concern. Ms. Sanekane administered subtests of the KTEA-3 focused on fluency (silent reading fluency, word recognition fluency, and decoding fluency). She also tested the Student's reading comprehension, which was an area of concern for the Parents. In writing, Ms. Sanekane administered testing focused on spelling, letter naming facility, word recognition fluency, and writing fluency. This data gave the evaluation team sufficient information to determine that the Student was eligible for special education services and required SDI in reading and writing. Accordingly, the reevaluation was sufficiently comprehensive in reading and writing. WAC 392-172A-03020(3)(g).

73. The Parents argue that review of existing data under WAC 392-172A-03025(1), required consideration of assessment data, classroom-based observations, and observations by teachers and related service providers. The Parents argue that if Ms. Sanekane had gathered the required information, instead of limiting her review of existing data to past evaluations, she likely would have learned about the Student's academic, social, and executive functioning challenges. As discussed above, however, a preponderance of the evidence establishes that the Student's needs did not require assessments in social/emotional/behavior or study skills/organization or that he required any additional academic assessments. Moreover, no one on the team

required additional data in order to determine the Student was eligible for special education services. Thus, any procedural violation did not impede the Student's right to FAPE, significantly impede the Parents' participation, or deprive the Student of educational benefit.

74. The Parents next point to the District's failure to follow additional evaluation procedures for identifying whether a student has a specific learning disability. It is clear that the District's failure to use the additional procedures in WAC 392-172A-03045 through 03080 violated the procedural requirements of the IDEA. However, it is also clear that the primary purpose of these procedures is to identify whether a student has a specific learning disability. In this case, the reevaluation group, which included two general education teachers, a school psychologist, and the Parents, determined that the Student had a specific learning disability and was eligible for special education services under that disability category. The group further determined that the Student's disability "adversely impacts his capacity to read with appropriate fluency and decoding accuracy and organize his thoughts into a structured written composition," which prevented him from accessing the general education curriculum. The Parents also point to the fact that the District did not conduct an observation of the Student and did not include the additional documentation as required by the additional procedures in WAC 392-172A-03075 and 03080. While it is troubling that the District did not comply with procedural requirements, a preponderance of the evidence establishes that the evaluation team had the information it required to identify the Student as having a specific learning disability, to find him eligible in that category, and to determine that he required SDI in reading and writing. Accordingly, the District has shown that its failure to perform these steps did not significantly impede the Parents' participation, impede the Student's right to FAPE, or deprive him of educational opportunity. WAC 392-172A-05105.

75. Finally, as the District points out, it has already remedied any deficiencies in the reevaluation by providing an IEE at public expense based on the Parents' disagreement with it.

76. In conclusion, the November 2023 reevaluation was appropriate, and the Parents are not entitled to a remedy.

**Issue (8) The November 2023 IEP was not appropriate.**

77. The Parents claim that the District's November 2023 IEP denied the Student FAPE because it did not include positive behavioral supports, appropriate measurable goals, or sufficient SDI.

78. When the IEP team met, the Student's behaviors were not occurring regularly, although they were becoming enough of an issue that Mr. Zimmerman believed they needed to be addressed. The IEP team determined that the District would use Tier 2 behavioral supports to address behavior concerns along with accommodations. Although the Student's behaviors intensified within the coming months, the determination of reasonableness is made as of the time the IEP was developed. *Adams*, 195 F.3d at 1149. Under the so-called "snapshot rule," the IEP was appropriate given the Student's behaviors at that time. *Id.*

79. The Parents also claim that the November 2023 IEP failed to provide measurable and appropriate goals. With respect to reading, the IEP sought to improve the Student's ability to answer inferential questions pertaining to a text "improving reading comprehension from 1 out of 5 correct inference questions to 4 out of 5 correct inference questions as measured by teacher data collection." This goal was clear and measurable. The District has not established, however, that a goal focused on reading comprehension was appropriate at this time. Although the IEP team determined that making inferences from text would be an area of growth, the reevaluation made clear that the Student's specific learning disability adversely impacted his ability to read with appropriate fluency and decoding accuracy. Additionally, Mr. Hoefer's input to the IEP team indicated that the Student's reading fluency was slower when he read independently and he was careful to reach each word correctly, which have impacted comprehension. Accordingly, a goal that focused on improving inference comprehension without addressing the underlying fluency and decoding issues was not tied to the Student's present levels of performance. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

80. The Student's writing goal was measurable, in that it sought to improve the Student's ability to "use a graphic organizer to brainstorm ideas and develop paragraph drafts prior to writing improving written language task initiation from 0 out of 5 opportunities to 5 out of 5 opportunities as measured by student writing samples." Additionally, the District has shown that this goal was appropriate. It focused on task initiation which was a clearly identified area of concern. Accordingly, it was tied to the Student's present levels of performance as a growing writer who produced written work with strong conventions and sentence structure but had difficulty getting started. The Parents further point to the fact that the IEP contained inaccurate information about the Student's progress toward his previous IEP goal. While that is troubling, to say the least, it does not establish that the new goal was inappropriate.

81. Lastly, the Parents contend that the IEP failed to offer sufficient reading and writing SDI. There is no evidence that any team members disagreed with the amount of SDI the November 2023 IEP provided. Ms. Petrie credibly testified that the team

agreed to start with 50 minutes of SDI in writing and 50 minutes of SDI in reading per week, and to amend the minutes if the Student required more minutes to make progress. A preponderance of the evidence demonstrates that the November 2023 IEP provided sufficient SDI.

82. The District has shown that the Student's IEP was appropriate, with the exception of the Student's reading goal. Given the Parents' longstanding concerns about the Student's reading skills, and the fact that the Student was approaching middle school, the failure to craft an appropriate reading goal was significant. Without an appropriate reading goal, the IEP as a whole was not reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. *Endrew F.*, 580 U.S. at 399. The Parents are entitled to a remedy for this denial of FAPE.

**Issue (9) The District was not required to initiate a functional behavioral assessment in the fall of 2023.**

83. The Parents claim that the District should have initiated an FBA of the Student in the fall of 2023 instead of waiting until late February 2024. They claim that the District's failure to address the Student's behaviors in a timely manner violated the IDEA and denied him a FAPE.

84. "A functional behavior assessment is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors." *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441, \*10 (E.D. Cal. June 14, 2016). The IDEA only requires an FBA when a child is removed from his current placement due to problem behaviors. *Butte Sch. Dist. No. 1 v. C.S.*, 817 F. App'x 321, 326 (9th Cir. 2020) (unpublished); 20 U.S.C. § 1415(k)(1)(D)(ii).

85. A behavioral intervention plan (BIP) is a plan incorporated into a student's IEP if the IEP team determines that it is necessary for the Student to receive FAPE. WAC 392-172A-01031. Additionally, in the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports to address that behavior. WAC 392-172A-03110(2)(a)(i); 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

86. When the IEP team met in November 2023, the Student was engaging in infrequent behaviors that could be appropriately addressed with Tier 2 behavioral supports. While such supports can be inadequate to support students who engage in frequent and severe behavior, the Student was not engaging in such behaviors in the fall of 2023. Compare *Upper Darby Sch. Dist. v. K.W.*, 2023 U.S. Dist. LEXIS 129803, \*24 (E.D. Pa. July 27, 2023), aff'd *Upper Darby Sch. Dist. v. K.W.*, 2024 U.S. App. LEXIS

20582 (3d Cir. Aug. 14, 2024) (student had history of aggressive behaviors, physically and verbally; teacher frequently used de-escalation techniques because student was often frustrated, yelling, or running around classroom); *Garvey Sch. Dist.*, 119 LRP 38328 (SEA CA 09/16/19) (student's intense and frequent behaviors prevented him from receiving appropriate services and required FBA).

87. By late January 2024, however, the Student's behaviors had escalated in severity and frequency, and it was clear that the Student required additional behavioral support. Although District staff made efforts to address the Student's behaviors, those efforts were not effective. In addition to disruptive or rude behavior, such as ignoring classroom rules and expectations and Ms. Barnes' attempts to deliver his SDI, the Student's significant behaviors, such as aggression towards peers, attempting to destroy property, and acting defiantly in response to consequences, had become frequent. By February 2, 2024, Mr. Zimmerman reported that students had made a mock grave with the Student's name on it because they felt the Student was physically hurting others and it was not being addressed. At that point, the Student's behaviors were clearly having an adverse impact on his learning and that of other students. Accordingly, by early February 2024, it became clear that the Student's IEP team needed to consider whether the Student required a BIP or other behavioral supports in order to receive FAPE. WAC 392-172A-03110(2)(a)(i); -01031. During the month of February, the wellness team met with the Student to support him, and the District proposed a plan of success to address behaviors. The District then initiated an FBA on February 27, 2024, which was within a reasonable timeframe.

88. In conclusion, the District was not required to initiate an FBA in the fall of 2023 and initiated an FBA within a reasonable time after the Student's behaviors escalated. Therefore, a remedy is not warranted.

**Issue (10) The District's June 2024 reevaluation was appropriate.**

89. The Parents claim that the June 2024 reevaluation was inappropriate because the District did not appropriately consider the evaluative data and recommendations from Dr. Clancy's IEE, did not conduct an observation of the Student, and failed to follow additional procedures for identifying students with specific learning disabilities.

90. A preponderance of the evidence establishes that the District appropriately considered the evaluative data and recommendations from Dr. Clancy's IEE. Ms. Hall incorporated extensive data and excerpts from Dr. Clancy's IEE report. She referred the reader to Dr. Clancy's recommendations and to multiple sections of the IEE report. The fact that the District did not incorporate *all* of Dr. Clancy's IEE report, including recommendations, into the reevaluation report does not mean the District failed to

consider the IEE report or its recommendations. Additionally, the team recommended finding the Student eligible for special education and providing SDI in reading, written language, study skills/organization, and social/emotional/behavior, consistent with Dr. Clancy's recommendations.

91. Dr. Clancy observed the Student during the testing process and provided detailed notes regarding her observations. Given that the District adopted Dr. Clancy's testing rather than retesting the Student, it was reasonable to rely on her thorough observations of the Student during the testing process.

92. The Parents next contend that the District failed to follow additional procedures required for evaluation of students with specific learning disabilities, including the requirement to conduct a classroom observation. As of June 2024, the Student had been diagnosed with specific learning disability by two private evaluators and had already been found eligible under the specific learning disability category. The Parents strongly advocated for qualifying the Student in the specific learning disability category rather than in the other health impairment category, to which all team members agreed. Additionally, the reevaluation provided extensive information about how the Student's specific learning disability adversely impacted his education. To the extent that the failure to follow procedures related to identification of students with specific learning disability violated the IDEA, a preponderance of the evidence demonstrates that it did not impede the Student's right to FAPE, significantly impede the Parents' participation, or deprive the Student of educational benefit.

93. The District has shown the June 2024 reevaluation of the Student was appropriate.

#### **Issue (11) The District Developed an Appropriate IEP in June 2024.**

94. The Parents contend that the June 2024 IEP was not reasonably calculated to confer meaningful educational benefit to the Student because it did not include appropriate, measurable annual goals, or sufficient SDI, and did specify that the Student required targeted reading intervention in the form of an evidence-based structured literacy curriculum (structured literacy curriculum) designed for students with dyslexia in order to access his education.

95. The District has shown that the June 2024 IEP included measurable and appropriate goals. The IEP set two goals in each area – reading, writing, social/emotional/behavior, and study skills/organization. All of the goals, which are stated in full above, were measurable. Each was clearly written, provided a numeric baseline and target, and indicated how data would be collected. For example, one

behavior goal sought to improve the Student's ability to ignore negative peer interactions from 0 out of 10 opportunities to 9 out of 10 opportunities as measured by student observations and teacher data collection.

96. The Parents further contend that all of the Student's reading and writing goals were inappropriate because they were not tied to his present levels of performance. They argue that two of these goals – the reading goal focused on inferential comprehension and the writing goal focused on using a graphic organizer – were also inappropriate because they were repeated from the previous IEP.

97. A preponderance of the evidence establishes that the Student's goals were appropriate. The first of the Student's two writing goals focused on using a graphic organizer to improve his ability to get started. Use of a graphic organizer was based on Dr. Clancy's recommendations and included teaching the Student how to use this tool. The second goal sought to improve the Student's ability to edit for proper conventions (capitalization and punctuation). This goal sought to enable the Student to make progress toward a middle school writing standard. Accordingly, the District has shown that both goals were appropriate.

98. The Student's reading goal focused on decoding multisyllabic words was directly tied to his present levels of performance which indicated that difficulty decoding larger words was impeding fluency. The Parents argue that the inferential comprehension goal was inappropriate because the Student did not have the core reading skills to be able to read for comprehension effectively. As discussed, however, the June 2024 IEP included a decoding goal, in contrast to the November 2023 IEP which focused solely on comprehension and did not address underlying reading deficits. Moreover, the Student had made progress toward his inferential comprehension goal but had not yet achieved it, making it reasonable to continue. The Student's reading goals were appropriate.

99. The Parents next claim that the June 2024 IEP failed to provide the Student with sufficient SDI. They argue that 80 minutes per week of SDI in reading and 80 minutes per week of SDI in the general education setting was not sufficient to address the Student's reading deficits. However, the final draft of the IEP actually provided the Student with a total of 140 minutes per week of SDI in reading and 140 minutes per week of SDI in writing. The draft proposed that 80 minutes per week in each area would be provided in the co-taught general education classroom, and 60 minutes per week in each area would be provided in the study skills class. This amount of SDI was largely in keeping with Dr. Clancy's recommendation. Moreover, the IEP team specifically agreed that the Mercer IEP team would meet within 30 days of the start of the school year and could adjust the Student's minutes if necessary, based on his progress.

100. The Parents appear to argue that because they sent their 10-day notice before the District sent the final draft of the June 2024 IEP, the draft IEP was the District's "offer of FAPE." This argument is not persuasive. The record clearly establishes that the District and the Parents were still communicating by email about changes to the IEP through late June.

101. Lastly, the Parents argue that the June 2024 IEP was inappropriate because it failed to specify that the Student required targeted reading intervention in the form of an evidence-based structured literacy curriculum designed for students with dyslexia in order to access his education. The District argues that it was not required to specify the teaching methodology it would use in the June 2024 IEP, and that "the IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide educational benefit." District's Brief at p.48.

102. The Washington state legislature has recognized the importance of early identification of students who show indications of, or areas of weakness associated with, dyslexia. RCW 28A.320.260. When a covered student requires intervention, RCW 28A.320.260(3)(b) requires that interventions "must be evidence-based multisensory structured literacy interventions and must be provided by an educator trained in instructional methods specifically targeting students' areas of weakness." Similarly, OSPI has issued dyslexia guidance, which defines and discusses the structured literacy teaching approach and its benefits for all students in all grades.

103. The Ninth Circuit Court of Appeals has held that school districts are "entitled to deference in deciding what programming is appropriate as a matter of educational policy." *Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048, 1056 (9th Cir. 2022). In *Crofts*, the parent contended that the Student's IEP denied her a FAPE because she would have progressed more using the Orton-Gillingham approach. *Id.* The Court explained that districts are not required to specify an instructional method unless that method is necessary to enable a student to receive a FAPE. *Id.* In *Crofts*, the record showed that the student's IEPs were reasonably calculated to enable her to make progress in light of her circumstances without that methodology. *Id.* at 1057.

104. Similarly, in *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 952 (9th Cir. 2010), the court explained:

Although school districts should specify a teaching methodology for some students, for other students IEPs may not need to address the instructional method to be used because specificity about methodology

is not necessary to enable those students to receive an appropriate education. See 64 Fed. Reg. 12,552. We accord deference to the District's determination and the ALJ's finding that [the student's] teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective. We hold that the District did not commit a procedural violation of the [IDEA] by not specifying teaching methodologies in [the Student's IEPs] . . .

*Id.* at 952; see also *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011) (“IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit”).

105. In this case, the evidence demonstrates that the Student's June 2024 IEP was reasonably calculated to enable him to make progress even though it did not specify that he required a structured literacy curriculum. As discussed above, the IEP contained significant information about the Student's present levels and provided goals and sufficient SDI to meet the Student's needs. The evidence further establishes that District teachers, in delivering the Student's SDI, would be able to choose from a variety of evidence-based and structured programs “such as Wilson, Wired for Reading, Orton Gillingham, etc,” based on what program they determined would best meet the Student's unique needs as set out in his IEP. By offering this programming, Ms. Petrie believed that the IEP team adopted Dr. Clancy's recommendation to provide targeted reading intervention, although the team could not answer specific questions until the Student's teachers were assigned at the start of the school year.

106. Allowing the Student's teacher to choose which structured literacy program would best meet the Student's needs is not inconsistent with Dr. Clancy's recommendation, which called for a structured literacy curriculum but did not require a specific one. It is also consistent with the practice at Hamlin Robinson, where the school uses the Slingerland teaching method, but teachers develop a curriculum in response to the Student's writing needs. Moreover, it is consistent with precedent recognizing that the IDEA gives educators discretion to select from various methods to choose the one that best meets a student's unique needs. *Id.*

107. In addition, OSPI guidance to school districts in Washington state makes clear that a structured literacy approach for providing reading intervention is beneficial for all students in all grades. For K-2 students who fall within the purview of RCW 28A.320.260(3)(b), the law requires that interventions follow a structured literacy approach. Given OSPI's endorsement of a structured literacy approach and the fact that the District made clear to the Parents that it has various programs that meet this

standard, it is unclear why the IEP cannot be appropriate unless it includes a statement that the Student needs a structured literacy approach to receive a FAPE. The key question is whether the IEP is reasonably calculated to enable the Student to make progress in light of his circumstances, and the District has met that standard. See *Crofts*, 22 F.4<sup>th</sup> at 1057; see also *H.R. v. District of Columbia*, 2024 U.S. Dist. LEXIS 57101 (D.D.C. Mar. 29, 2024)(IEPs provided sufficient specificity to provide for a FAPE without reference to specific reading methodology).

108. The Parents ask the ALJ to follow the reasoning in *Rogich v. Clark Cty. Sch. Dist.*, 2021 U.S. Dist. LEXIS 197135 (D. Nev. Oct. 12, 2021), which focused on whether the student's IEP team was required to include "the Orton-Gillingham methodology, or similar program" in the IEP. *Id.* at \*16. *Rogich* concerned a student with a severe disability who required a specific methodology with consistent implementation of that one methodology. *Id.* at \*19-21. Independent evaluators agreed that mixing multiple methodologies could impede the student's educational development. *Id.* at \*21. Despite that, the district refused to discuss the types of programming it could provide to meet the student's unique needs. *Id.* at \*19. Additionally, the court found that the district did not have a program equivalent to Orton-Gillingham in terms of offering multimodal teaching and did not have the requisite knowledge to properly identify or create a program. *Id.* at \*23. The court concluded that "failing to identify a methodology that would ensure the same approach is consistently utilized throughout the day by all of [the student's] instructors necessarily means that [the student] will not have the opportunity to learn as she needs to." *Id.* at \*24 (emphasis in original).

109. The facts in *Rogich* must be distinguished from the facts in this case for several reasons. First, in this case, the District uses Orton-Gillingham and similar programs and has staff with the requisite knowledge and skills to develop a program to meet the Student's needs. Second, many structured literacy programs can meet the Student's needs and there is no evidence that trying different programs or curriculums would impede the Student's educational development. Third, this is not a case in which the District refused to discuss programming available to the Student. The IEP team spent significant time discussing the Parents' concerns about the Student's reading SDI, including where, how, and by whom it would be delivered. It is understandable that the Parents wanted answers to all of those questions in June 2024, and wanted the IEP completed at that time. The team discussed that it was too early to know who would be the Student's special education teacher or case manager and made it very clear that the Parents would be able to meet with the special education teacher or case manager at the beginning of the year to ask specific questions about the instruction they planned to deliver. The team discussed that in a co-taught classroom, SDI could be delivered in a small group in the back of the classroom but noted that the Student's teacher, once assigned, could answer specific questions about delivery of SDI.

Likewise, the study skills teacher, once assigned, could answer specific questions about curriculum and delivery of SDI in that setting. The IEP team recommended a meeting with the Mercer team at the start of the 2024-2025 school year to adjust minutes if necessary, in addition to answering questions about delivery of SDI and curriculum. Finally, the IEP team discussed that teachers had special education certification and were offered professional development opportunities. Thus, in this case, unlike in *Rogich*, the District shared as much information as it had and took steps to ensure the Parents' questions would be answered quickly once the new team was in place.

110. The IEP, as a whole, was reasonably calculated to enable the Student to make progress in light of his circumstances. The Parents are not entitled to a remedy.

### Summary of Violations

111. The District violated the IDEA and denied the Student a FAPE by 1) failing to provide timely progress reports during the 2023-2024 school year; 2) failing to implement the Student's May 2023 IEP between September 6 through December 2023; and 3) failing to develop an appropriate IEP in November 2023.

112. The District has proven by a preponderance of the evidence that it did not violate the IDEA or deny the Student FAPE in regard to any other issues alleged by the Parents.

### Remedies

113. When a parent proves a violation of the IDEA, a tribunal may "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii).

114. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P.*, 631 F.3d at 1125. "There is no obligation to provide day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. Dist. of Columbia*, 401 F.3d at 523-24. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Id.* at 524.

115. A hearing officer may fashion individualized relief for students seeking compensatory education. As noted in *R.P.*:

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

*R.P. v. Prescott*, 631 F.3d at 1126.

116. The District's violations in this case delayed the Student's receipt of appropriate reading and writing intervention. The evidence demonstrates that the Student has deficits in reading and written instruction and requires SDI in both areas. It is therefore appropriate to provide compensatory education to enable the Student to make up for that lost educational opportunity.

117. **Sixty hours of compensatory education is awarded as follows: 1) the District shall reimburse the Parents for \$4,806.00 paid to Language & Learning Arts for approximately 45 hours of reading intervention (55 sessions X 50 minutes); and 2) the District shall pay for 15 hours of reading and/or writing intervention by a provider selected by the Parents who has the required education, training and experience to serve the Student's needs, at a maximum rate of \$120.00 per hour.** The District shall contract with the chosen provider, so long as the provider is available and willing to provide this service, and the services shall be available to the Student within 20 days of issuance of this order. The services will be delivered at any time during the two calendar years following the date of this decision at the duration and frequency determined appropriate between the Parents and the provider. If the provider bills the District for time the Student failed to appear for scheduled sessions under the provider's billing policy, that time shall count toward this compensatory education award. This award provides services from an outside provider rather than through the District so that the Student does not miss academic instruction during the school day and because the Student has made progress at Language & Learning Arts.

118. The award of 60 hours is calculated as follows: The Student missed approximately 30 hours of instruction between September 6, 2023, through December 2023.<sup>33</sup> From January 1 to June 21, 2024, the Student's reading SDI, totaling

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<sup>33</sup>The May 2023 IEP, which was in place between September 6 and November 20, 2023, provided 150 SDI minutes per week (10 weeks X 150 minutes per week = 1,500 minutes). The November 2023 IEP, which was

approximately 20 hours, was delivered under an IEP that had an inappropriate reading goal.<sup>34</sup> The amount is increased from 50 to 60 hours due to the District's procedural violation in failing to provide timely progress reports.

119. Although a compensatory award of private services is sometimes reduced to account for the fact that students generally progress more rapidly with one-on-one instruction as opposed to instruction in a classroom, it is not appropriate to reduce the award in this case. The evidence establishes the importance of timely intervention to address reading and writing deficits. Now that the Student is in middle school, time is of the essence in building these skills. Accordingly, the award is not reduced.

120. The evidence demonstrates that reimbursement to Language & Learning Arts is appropriate because it specializes in serving students with dyslexia. All SLPs who provide services are trained in providing reading interventions. Additionally, the Student made progress through their program.

121. The Parents also seek reimbursement for tuition at Hamlin Robinson and an additional year of placement at Hamlin Robinson.

122. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if: (1) the district placement violated the IDEA; and (2) the Parents' private school placement is "proper" under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361 (1993). A private school placement does not need to maximize the student's potential or provide every special education service and support she needs to be deemed proper or "appropriate" for reimbursement purposes. See, e.g., *C.B. v. Garden Grove Unified Sch. Dist.*, 635 F.3d 1155, 1159-60 (9th Cir. 2011), cert. denied, 565 U.S. 977 (U.S. 2011). A unilateral private placement is proper for reimbursement purposes if it offers instruction that is specially designed to meet the student's unique needs as well as the support services the student requires to benefit from that instruction. *M.N. v. State of Hawaii, Dep't of Educ.*, 509 Fed. Appx. 640, 641 (9th Cir. 2013, unpublished). A private placement does not need to satisfy the IDEA's least-restrictive environment requirement to be proper under the Act. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 991 (8th Cir. 2011).

123. Parents who unilaterally change their child's placement do so at their own financial risk. *Burlington v. Dep't of Ed. of Mass.*, 471 U.S. 359, 374 (1985). The Supreme Court explained that reimbursement for a private placement is allowed because Congress could not have intended to require parents to either accept an

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in place between November 20 and December 18, 2023, provided 100 SDI minutes per week (3.5 weeks X 100 minutes per week = 350 minutes). This was approximately 30 hours.

<sup>34</sup> The November 2023 IEP provided 50 minutes per week of reading SDI from January 1 to June 21, 2024 (23 weeks X 50 minutes per week = 1,150 minutes, or approximately 20 hours).

inadequate public-school education pending adjudication of their claim or bear the cost of a private education. *Id.* at 370.

124. If a district shows its IEP was appropriate, the analysis ends and the parent is not entitled to public funds for privately obtained services. See, e.g., *M.C. v. Voluntown Bd. of Educ.*, 226 F.3d 60, 66 (2d Cir. 2000) (“Only if a court determines that a challenged IEP was inadequate should it proceed to the second question.”)

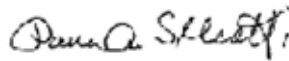
125. In this case, the District has shown that the June 2024 IEP was appropriate. Accordingly, the Parents have not met the first prong of the reimbursement test. Therefore, it is not necessary to address whether Hamlin Robinson was a proper placement.

126. The Parents are not entitled to reimbursement for the cost of tuition at Hamlin Robinson. Additionally, a preponderance of the evidence does not establish that the Parents are entitled to an additional award of compensatory education in the form of prospective placement at Hamlin Robinson by the District.

### **ORDER**

1. The District violated the IDEA and denied the Student a FAPE as set forth in Conclusions of Law 39, 60, and 82.
2. The District is ordered to provide compensatory education as set forth in Conclusions of Law 117.
3. The District has shown that it has not violated the IDEA or denied the Student a FAPE as to any other issues alleged by the Parents.

SERVED on the date of mailing.



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Pamela Meotti  
Administrative Law Judge  
Office of Administrative Hearings

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

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at [appeals@k12.wa.us](mailto:appeals@k12.wa.us).

## DECLARATION OF SERVICE

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

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Dated May 2, 2025, at Olympia, Washington.

  
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cc: Administrative Resource Services, OSPI