

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Issaquah School District

Docket No. 01-2025-OSPI-02457

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2025-SE-0015

A due process hearing was held before Administrative Law Judge (“ALJ”) Marek E. Falk on June 2, 2025 through June 5, 2025, via videoconference. The Parents of the Student whose education is at issue¹ appeared and were represented by Elicia Johnson and Anna “Mickey” Moritz, attorneys at law. The Issaquah School District (“District”) was represented by Carlos Chavez, attorney at law. Also present throughout were Sharine Carver, District Executive Director of Special Services; and Rachel Simon, Pacifica Law Group LLP Associate Attorney (observing). Present to observe for the final day only was LeAnn Campbell, Pacifica Law Group LLP Summer Associate.

STATEMENT OF THE CASE

Procedural History

The Parents filed a due process hearing request (“Complaint”) on January 30, 2025. The case was assigned to ALJ Falk at the Washington State Office of Administrative Hearings (“OAH”). The District filed a response on February 12, 2025. A prehearing conference was held on March 5, 2025, and ALJ Falk issued a prehearing order on March 10, 2025, following emails between the parties and OAH to finalize the issues. The hearing was held from June 2, 2025 through June 5, 2025, as originally scheduled. An order setting the due date for post-hearing briefs was issued on June 6, 2025.

Due Date for Written Decision

At the parties’ joint request, the deadline for a written decision was extended to 30 days after the record of the hearing closed. The record of the hearing closed on July 31, 2025, at 5:00 p.m., the agreed deadline for the parties to submit their post-hearing briefs. The due date for a written decision is August 30, 2025.

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

EVIDENCE RELIED UPON

Exhibits Admitted:

Joint Exhibits: J1-J4.

District's Exhibits: D1-D15; D17-D30; D35.

Parents' Exhibits: P1-P22; P24-P45; P48.²

Witnesses Heard (in order of appearance):

Ms. Parent (the Student's Mother)

Tiffany Boutain, District Special Education Teacher

Carina Piscitelli, District Instructional Specialist

Timothy Whiteley, District General Education Teacher

Sayali Kakade, District Special Education Teacher

Melanie Zimmerman, District Paraeducator

Irene Ragan, District Speech Language Pathologist

Tia Kleinkopf, Principal, Briarwood Elementary School

Tami Mills, District Instructional Specialist

Katherine Woelffer, District Special Education Teacher

Karla Shannon-Garvey, District Director of Special Services

Susan Lukies, Certified Level I Wilson Practitioner and Private Reading Tutor

ISSUES

The issues for hearing as set forth in the First Prehearing Order, dated March 10, 2025, are as follows:

1. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - a. Failing to provide the Student with an evidence-based, multisensory, structured literacy program for students with dyslexia and implement it with fidelity, as required by the May 15, 2024 IEP Amendment, starting from the beginning of the 2024-2025 school year; and

² Citations to the exhibits of record are by party (P for the Parents; D for the District; and J for Joint), exhibit number, and page number. For example, a citation to "P6, p1" refers to page 1 of Parents' Exhibit 6. Citations to the transcript of record are to "T" followed by the page number and the witness's last name (or Parent for Ms. Parent). For example, a citation to "T214 (Parent)" refers to page 214 of the transcript.

- b. Failing to develop, review, and revise, in accordance with WAC 392-172A-03090 and WAC 392-172A-03110, an IEP in December 2024 that was appropriate and reasonably calculated to meet the Student's unique needs with respect to reading.
- 2. And, whether the Parents are entitled to their requested remedies:
 - a. Declaratory relief finding that the District violated the IDEA;
 - b. Declaratory relief finding that the Student was denied FAPE by the District's actions.
 - c. Compensatory education for Student to allow him to obtain the educational benefit that he would have received but for the District's violations of the IDEA;
 - d. Reimbursement for the costs of private tutoring in reading;
 - e. An IEP that is reasonably calculated to facilitate meaningful educational progress including that:
 - i. The IEP shall expressly require the District to implement, with fidelity, an evidence-based structured literacy program designed for students with dyslexia ("program") for the Student's SDI in reading;
 - ii. The special education teacher or paraeducator delivering the program shall be qualified to deliver the program and be fully trained in its use;
 - iii. The program shall be delivered in the scope and sequence intended by its designers, including use of the program's assessments and progress monitoring tools; and
 - iv. The Student's annual goals in the IEP shall explicitly reflect the scope and sequence of the District's chosen program;
 - f. Prospective private placement at District expense in an appropriate evidence-based multisensory, structured literacy program taught with fidelity by trained and qualified staff; and
 - g. Other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. The Student is [REDACTED].³ He lives with his Parents and his younger brother.⁴ Ms. Parent holds an occupational therapy license and formerly was an [REDACTED].⁵
2. The Student will be in fifth grade in the 2025-2026 school year.⁶ During the two school years of 2023-2024 and 2024-2025, the Student attended Briarwood Elementary School in the District for third and fourth grade, respectively.⁷
3. The Student is a learner who is motivated to learn and wants to do well.⁸ His teachers and his principal describe him as kind, helpful, thoughtful, a hard worker, and a pleasure to work with.⁹ He gets along with his friends at school, including in his general education classroom.¹⁰ He struggles with his memory, forgetting content from his reading lessons if he does not receive reinforcement and repetition.¹¹
4. In February 2023, when the Student was in second grade, the District conducted an initial evaluation of the Student.¹² At that time, the District found the Student did not qualify for special education services.¹³

Dr. Ferdico's Evaluation

5. In fall 2023, when the Student was in third grade, the Parents obtained a neuropsychological evaluation of the Student.¹⁴ The Student was evaluated by pediatric neuropsychologist Daniela Ferdico, PsyD.¹⁵

³ P45, p2.

⁴ T46 (Parent).

⁵ T45 (Parent).

⁶ J3, p5.

⁷ P45, p2; J3, p5.

⁸ T272 (Whiteley); T490 (Kleinkopf); T747 (Lukies).

⁹ T119 (Boutain); T272, T280 (Whiteley); T489-90 (Kleinkopf).

¹⁰ T273 (Whiteley).

¹¹ T747 (Lukies).

¹² J1, p1.

¹³ J1, p1.

¹⁴ P2.

¹⁵ P2, p1.

6. Dr. Ferdico assessed the Student in several areas, including cognitive functioning, executive functioning, attention, gross and fine motor control, language, memory, achievement, reading, and writing.¹⁶

7. Dr. Ferdico found the Student's executive functioning earned a score in the "poor" range (fourth percentile, meaning a performance equal or greater to only four percent of same-aged peers).¹⁷ The Student scored in the ranges of "below average" in planning (21st percentile) and simultaneous processing (16th percentile); and "poor" in attention (fourth percentile) and successive processing (fourth percentile).¹⁸

8. Dr. Ferdico found the Student's overall cognitive processing abilities were in the "below average" range, with a standard score of 81 (tenth percentile).¹⁹ The Student had scores in the ranges of "average" in verbal comprehension (37th percentile) and processing speed (45th percentile); "below average" in visual processing (tenth percentile) and fluid reasoning (12th percentile); and "well below average" in working memory (fifth percentile).²⁰

9. In the area of attention, the Student earned a score in the "poor" range (fourth percentile) on one test.²¹ On a separate test of attention tasks, all his scores were either in the "borderline" range (four items), the "below expected level" range (three items), or "well below expected level" range (three items).²²

10. In visuospatial precision, the Student earned a combined score in the "borderline" range (ninth percentile), with an error score in the "below expected level" range (sixth to tenth percentile).²³ In visuospatial processing, Dr. Ferdico specifically noted difficulties in the Student's processing of "the orientation of lines and being able to process images."²⁴

11. The Student earned scores in the "low/moderate" range in language comprehension (fourth percentile), expression (fifth percentile), and syntactic and morphological understanding (fifth percentile).²⁵ For his "Core Language Score," his score was in the "low/moderate" range (fifth percentile); this metric tested sentence

¹⁶ P2.

¹⁷ P2, p8.

¹⁸ P2, p8-9.

¹⁹ P2, p5.

²⁰ P2, p5-8.

²¹ P2, p12.

²² P2, p12.

²³ P2, p13.

²⁴ P2, p13.

²⁵ P2, p13-14.

comprehension, word structure, formulated sentences, and recalling sentences.²⁶ In a separate test on processing and responding to verbal instructions, Dr. Ferdico noted difficulties; the Student earned a score in the “borderline” range (16th percentile).²⁷

12. The Student earned a total memory score in the “well below average” range (third percentile).²⁸ His scores were in the ranges of “low average” for visual memory (23rd percentile); “well below average” for immediate memory (fourth percentile) and delayed memory (fourth percentile); and “significantly below average” for verbal memory (first percentile).²⁹

13. The Student’s total academic achievement performance was in the “very low” range.³⁰ Academic achievement is a test of progress through the academic curriculum.³¹ The Student earned scores in the “well below average” range in reading (third percentile) and written expression (fifth percentile); and in the “low average” range in math (21st percentile).³²

14. In overall reading proficiency, the Student earned a score in the “significantly below average” range (better than 0.2% of same-grade peers).³³ He earned a score in the “significantly below average” range (better than 0.1% of same-grade peers) in phonological processes, which is the “ability to independently sound out unfamiliar words in print and to sequence multiple sounds together ... to accurately recognize a specific word.”³⁴ The Student received a score in the “moderately below average” range (fourth percentile) for fluency index, which measured his “overall reading speed and rapid recognition of words in print.”³⁵ His reading comprehension score was in the “significantly below average” range (first percentile).³⁶

15. The Student earned a total writing score in the “moderately below average” range (second percentile).³⁷ He received a score in the ranges of “moderately below average” for his overall graphomotor abilities (fourth percentile); “below average” for

²⁶ P2, p13.

²⁷ P2, p15.

²⁸ P2, p15-16.

²⁹ P2, p16.

³⁰ P2, p18-19.

³¹ P2, p18.

³² P2, p18.

³³ P2, p19-20.

³⁴ P2, p21.

³⁵ P2, p23.

³⁶ P2, p25.

³⁷ P2, p27.

his overall spelling abilities (ninth percentile); and “moderately below average” for his executive functioning related to writing (fourth percentile).³⁸

16. Dr. Ferdico recorded four diagnostic impressions for the Student.³⁹ These were attention deficit hyperactivity disorder, mixed receptive-expressive language disorder, and two learning disorders: dyslexia (impairment in reading) and dysgraphia (impairment in writing).⁴⁰

17. Dr. Ferdico recommended several academic accommodations and special education services for the Student, including a structured literacy program.⁴¹ Dr. Ferdico wrote that the Student would “require evidence-based, multi-sensory methods such as Orton-Gillingham-based methods” for reading.⁴²

The District’s 2023-2024 Reevaluation

18. Following Dr. Ferdico’s evaluation, the District agreed to re-evaluate the Student.⁴³ In or before January 2024, the District evaluated the Student in the areas of reading; writing; social and emotional behavior; and speech and language.⁴⁴

19. The District’s re-evaluation found the Student’s overall reading performance was in the “well below average” range (third percentile).⁴⁵ He earned scores in the “well below average” range in both word reading and reading comprehension.⁴⁶

20. The Student’s score for overall writing tasks was in the “well below average” range (fifth percentile).⁴⁷ His score in spelling was in the “average” range, while his score in sentence composition was in the “significantly below average” range.⁴⁸

21. In speech and language, the Student earned scores in the ranges of “below average” for listening comprehension (fourth percentile); “average” in oral expression (19th percentile); and “below average” in oral language composite (eighth percentile).⁴⁹ The evaluator, speech language pathologist Irene Ragan, noted

³⁸ P2, p29-32.

³⁹ P2, p40.

⁴⁰ P2, p40.

⁴¹ P2, p42.

⁴² P2, p42.

⁴³ See J1, p1; P45, p1.

⁴⁴ J1, p1; J2, p1-2; P45, p7, 9, 11, 13; T662 (Shannon-Garvey).

⁴⁵ P45, p7.

⁴⁶ P45, p7.

⁴⁷ P45, p9.

⁴⁸ P45, p9.

⁴⁹ P45, p13; see T463-64 (Ragan).

difficulties in “pronouns, left/right differentiation, complex phrases and sentences, and narrative retell.”⁵⁰

22. In contrast to the scores the Student received in both Dr. Ferdico’s and the District’s language comprehension evaluations, special education case manager Tiffany Boutain wrote that the Student’s teacher had “report[ed] that [the Student] has great comprehension[] skills when he is read to.”⁵¹

23. According to the re-evaluation report, the results showed the Student needed and would benefit from specially designed instruction (“SDI”) in reading, writing, and communication.⁵²

The Student’s March 2024 and May 2024 IEPs (Third Grade)

24. In February 2024, following the re-evaluation, the evaluation team found the Student eligible for special education services under the disability category of Other Health Impairment.⁵³

25. The individualized education program (“IEP”) team met on February 27, 2024, to develop an IEP.⁵⁴ The attendees were the Parents, special education teacher Tiffany Boutain; speech language pathologist Irene Ragan (formerly Williams); special education teacher Karla Shannon, who served as a local educational agency representative (now Karla Shannon-Garvey, District Director of Special Services); an occupational therapist; the Student’s general education teacher; and attorneys for both parties.⁵⁵

26. Before the February 2024 IEP team meeting was held, Ms. Parent had asked the District if an evidence-based, multi-sensory, structured literacy program would be used for the Student’s reading SDI.⁵⁶ She had also asked questions to understand if the program would be implemented with fidelity, meaning with full consistency to the program’s standards for implementation.⁵⁷

27. The District informed the Parents in this team meeting, both verbally and through PowerPoint slides, that it would be providing an evidence-based, multi-

⁵⁰ P45, p13; T463 (Ragan).

⁵¹ P45, p7, see P2, p13-14; P45, p13.

⁵² P45, p19.

⁵³ J1, p1; P45, p2.

⁵⁴ P18, p3; P45, p2-3.

⁵⁵ P45, p2-3; T662 (Shannon-Garvey); see T83 (defining “LEA”).

⁵⁶ P18, p3.

⁵⁷ P18, p3; T168-170 (Parent); T588 (Mills).

sensory, structured literacy program: the Wilson Reading System (“Wilson” or “WRS”).⁵⁸ The District uses Wilson as a reading SDI curriculum for some of its students with dyslexia; several of its staff have received one to three days of training in the program.⁵⁹ The District’s PowerPoint presentation was prepared in part to address Ms. Parent’s questions about fidelity standards for the District’s reading program.⁶⁰

28. The Student’s first IEP was issued effective March 3, 2024 (“March 2024 IEP”).⁶¹

29. The March 2024 IEP does not contain any reference to whether the Student required an evidence-based, multi-sensory, structured literacy program to address his difficulties with reading and spelling.⁶² However, part of the stated rationale for the Student’s reading goal was that the Student “was given the Wilson WADE assessment of decoding and encoding on [December 28, 2024,] which ... highlighted a need to focus on ... vowel sounds, vowel teams, multi-syllabic words, and” other vowel combinations.⁶³ The “Wilson WADE assessment” is the Wilson Assessment of Decoding and Encoding, the assessment for Wilson.⁶⁴

30. The March 2024 IEP had one reading goal.⁶⁵ This goal was, “Given a list of 20 words containing long vowel sounds (i.e. cake, play, rope) [the Student] can correctly pronounce the long vowel sound in each word from 2/20 words to 20/20 words across two consecutive data days as measured by teacher/para observation and collected data.”⁶⁶ Progress on this goal was to be monitored twice monthly.⁶⁷

31. Special education teacher Tiffany Boutain was the Student’s first case manager and his first Wilson instructor.⁶⁸ Ms. Boutain began working with the Student around March 5, 2024.⁶⁹ She provided SDI to the Student through the end of his third-grade year.⁷⁰

⁵⁸ P18, p1-40; T146 (Boutain); T168-170 (Parent).

⁵⁹ T543-48 (Mills); T425 (Zimmerman).

⁶⁰ P18, p1-3.

⁶¹ P45, p2.

⁶² P45; D6; D21.

⁶³ P45, p7; see T736 (Lukies).

⁶⁴ T540 (Mills); T743 (Lukies).

⁶⁵ P45, p7-8.

⁶⁶ P45, p7.

⁶⁷ P45, p8.

⁶⁸ D1, p1; D2, p1; T117-18 (Boutain).

⁶⁹ D1, p1; D2, p1; P18, p1-4; T117-18 (Boutain).

⁷⁰ P16, p6.

32. On April 5, 2024, the Parents and the District entered into a settlement agreement that required the District to reimburse the Parents for their past educational expenses incurred for the Student.⁷¹ The Parents waived all other claims related to the District's provision of special education services for any date before April 5, 2024.⁷²

33. Effective May 15, 2024, the Student's IEP team amended the Student's March 2024 IEP.⁷³ The amended IEP ("May 2024 IEP") contained an updated reading goal for the Student because he had already completed his first reading goal.⁷⁴ No other changes were made to the March 2024 IEP.⁷⁵

34. The May 2024 IEP's single reading goal was "Given a list of 20 words containing any vowel team (i.e. boat, their, could, etc.) [the Student] can correctly pronounce the vowel team sounds in each word from 2/20 words to 20/20 words across two consecutive data days as measured by teacher/para observation and collected data."⁷⁶ Progress on this goal was to be monitored twice monthly.⁷⁷

35. The March 2024 IEP and the May 2024 IEP provided for the Student to receive 220 weekly minutes of SDI in the special education setting: 100 minutes of reading SDI, 80 minutes of writing SDI, and 40 minutes of speech/language.⁷⁸ Both IEPs also provided for 30 minutes of social/emotional SDI in the general education setting.⁷⁹ This service matrix provided for 1,445 total minutes, or 87% of the Student's time, in the general education classroom.⁸⁰

Wilson Reading System and its Fidelity Requirements and Recommendations

36. Wilson is an evidence-based, multi-sensory, structured literacy program based on the Orton-Gillingham literacy program.⁸¹ A "structured literacy program" is one that provides "very explicit and systematic direct teaching that addresses core concepts that a student needs to know ... to become a good reader."⁸² "Multi-sensory" refers to

⁷¹ P3, p1-4.

⁷² P3, p1, 3-4. Due to the parties' settlement agreement, facts from dates before April 5, 2024 will only be relied upon in this decision to provide context and assess the Student's progress over time.

⁷³ D6, p2.

⁷⁴ D6, p1-2.

⁷⁵ D6, p1-8.

⁷⁶ D21, p6-7.

⁷⁷ D21, p7.

⁷⁸ D21, p30.

⁷⁹ D21, p30.

⁸⁰ D21, p30.

⁸¹ P18, p8-9, p30-40; T725 -29 (Lukies).

⁸² T725 -26 (Lukies).

the use of multiple senses and actions to reinforce learning, such as visual, oral, and aural, as well as multiple forms of kinesthetic motion.⁸³ An “evidence-based” program is one that is based on the “science of reading,” meaning it is based on the “decades worth of research that has come together to identify what it is to make a good reader.”⁸⁴ An “evidence-based” program also means that the program itself has been shown, through research, to be effective when implemented as designed.⁸⁵

37. Wilson is a “tier 3” program for students with dyslexia; it is a higher-intensity intervention than both the general education curriculum, known as “tier 1,” and the intermediate interventions known as “tier 2.”⁸⁶ Wilson is a highly scripted program, making it easier for instructors to deliver than programs that require lesson development.⁸⁷

Wilson Steps and Lessons

38. Wilson has 12 steps, each focusing on a different skill set.⁸⁸ Each step has multiple sub-steps, with each sub-step focusing on a discrete concept within the steps’ broader skill set.⁸⁹ For example, Step 1 has six sub-steps (1.1 through 1.6).⁹⁰ Step 2 has five sub-steps (2.1 through 2.5).⁹¹

39. The teaching of each Wilson sub-step is through a “lesson.”⁹² Lessons for each sub-step are delivered as many times as necessary for a student to obtain mastery of the sub-step’s material.⁹³

40. Each lesson has ten proscribed parts, each for a different activity or learning mode.⁹⁴ The ten parts of a lesson comprise three “blocks” of related skills.⁹⁵ Block 1’s parts promote foundational reading skills; Block 2’s parts promote foundational writing

⁸³ T728 -29 (Lukies).

⁸⁴ T726 (Lukies).

⁸⁵ T232-33 (Kakade); T636 (Mills).

⁸⁶ T591 (Mills); T726-27 (Lukies)

⁸⁷ T116-17 (Boutain); T405 (Zimmerman).

⁸⁸ P18, p26-29; P43, p13-14; see also P18, p26-27.

⁸⁹ P18, p26-29; P43, p13-14; T734-36 (Lukies).

⁹⁰ P18, p26-29.

⁹¹ P18, p26-29.

⁹² P33, p7-10.

⁹³ T731 (Lukies); P18, p13.

⁹⁴ P26, p7.

⁹⁵ P26, p7.

skills, and Block 3's parts promote fluency and comprehension.⁹⁶ One lesson may be broken up into multiple days of instruction.⁹⁷

41. Block 1 is broken up into five parts (part 1 through part 5), Block 2 is broken up into three parts (part 6 through part 8), and Block 3 is broken up into two parts (part 9 and part 10).⁹⁸

42. The total time for one Wilson lesson in one-on-one instruction is typically 60 to 75 minutes, though some students may need up to 90 minutes.⁹⁹ Lessons in small-group settings take longer because each student must have a chance to read while the others listen, and because the teacher must address the individual needs of multiple students.¹⁰⁰ Consequently, a single small-group lesson is expected to take 90 to 120 minutes, depending on the size of the group and the needs of the students.¹⁰¹

43. To deliver Wilson as designed, whether in one-on-one instruction or in a small group of students, instructors must deliver a minimum of two full lessons (all three blocks, two times each), per week.¹⁰²

44. For small-group instruction with two full lessons at or close to the minimum total minutes, the Wilson creators recommend five instruction periods of 45 to 60 minutes each, which includes four days of lesson parts and "an additional day for focused practice."¹⁰³ The recommended minimum schedule includes instruction of parts 1 and 2 four days weekly; of parts 3 through 8 two days weekly; part 9 one or two days weekly; and part 10 two or three days weekly; this does not include the focus practice on the fifth day.¹⁰⁴

45. However, optimal small-group Wilson instruction features five 90-minute classes, to deliver four full lessons plus "an additional day of focused instruction."¹⁰⁵

46. While students with adequate memory and comprehension may be able to progress quickly with two or three one-on-one lessons per week, "students who have significant word-level deficits with a complicated cognitive profile will benefit from (and

⁹⁶ T738-39 (Lukies); P26, p7.

⁹⁷ P43, p12, p31-33.

⁹⁸ P26, p7; P33, p9-10; T737-42 (Lukies).

⁹⁹ P43, p31.

¹⁰⁰ T733 (Lukies).

¹⁰¹ P43, p32-34; see P18, p14 (District's Feb. 2024 PowerPoint presentation for the Parents).

¹⁰² P43, p11, p29, p31-32, p35; T559, T588 (Mills); T729, T778-79 (Lukies).

¹⁰³ P26, p8; P43, p33; see P43, p32.

¹⁰⁴ P26, p8; P43, p33; see P43, p32.

¹⁰⁵ P43, p32-33, 35.

need) a more intensive schedule.”¹⁰⁶ Specifically, a “more complicated [cognitive] profile include[s] students with dyslexia and ... weaknesses [in] rapid naming skill, orthographic memory, working memory and other executive functions, vocabulary, and oral comprehension.”¹⁰⁷

47. Students with a complicated cognitive profile “need more instruction and significantly more time for Block 3 work” (reading and auditory fluency and comprehension—parts nine and ten of a Wilson lesson).¹⁰⁸ For these students, providing three to five full Wilson lessons per week, with one full lesson per day of instruction, “should definitely be considered.”¹⁰⁹ Ideally, in a small group, they should receive Wilson instruction for five days per week, at 90 minutes per day.¹¹⁰ In ideal one-on-one instruction, they should receive three days per week at 90 minutes per day, or four to five days per week at 60 minutes per day.¹¹¹ Providing a high intensity of Wilson lessons is important with these students, because frequent repetition can be important for learning automaticity.¹¹² A higher intensity of services is also important “for students who are more than 2-3 grades behind in reading.”¹¹³

48. In general, on average, students should master a minimum of three to four steps each year.¹¹⁴ “Depending on student profile and intensity (group size, lesson length and frequency), it may take 2-3 years (or more) to complete all 12 steps.”¹¹⁵ Students with complex cognitive profiles “will likely take two or more years to complete WRS Steps 1-6, and one or two additional years to complete WRS Steps 7-12[, though] this varies from student to student.”¹¹⁶ The Wilson instructor’s manual does not explicitly state but does imply that this duration expectation for students with complex profiles is based on students receiving Wilsons “ideal” intensity of services.¹¹⁷

¹⁰⁶ P43, p34.

¹⁰⁷ P43, p34.

¹⁰⁸ P43, p34.

¹⁰⁹ P43, p31.

¹¹⁰ P43, p34.

¹¹¹ P43, p34.

¹¹² T779 (Per Ms. Lukies, two full lessons per week is the absolute minimum for most students, to be able to recall content and develop automaticity.); T756 (Ms. Lukies recommended four days a week at 90 minutes per day for the Student, given his difficulties).

¹¹³ P43, p35.

¹¹⁴ P11, p2.

¹¹⁵ P43, p35.

¹¹⁶ P43, p34.

¹¹⁷ See P43, p34.

Wilson Fidelity and Pedagogical Requirements

49. It is important for students to learn to read fluently; if they cannot and so must concentrate on decoding (reading) or guessing the sounds of text, this will impede their comprehension.¹¹⁸ Many or most children exposed to standard, modern reading instruction can learn with relative ease the many rules of reading and spelling English, and thus learn to read fluently.¹¹⁹

50. Individuals with dyslexia may be unable to internalize these rules easily; they often must memorize numerous, minute rules to learn to be able to read at all.¹²⁰ To learn to read fluently, these readers must learn the numerous rules with “automaticity,” so that they can recall and apply every needed rule instantly, to be able to decode (read) each part of every word quickly and with ease.¹²¹ To learn the rules with automaticity requires high frequency repetition of material.¹²²

51. Wilson is an evidence-based program, meaning that research has shown it is effective as instruction for students with dyslexia when it is implemented with “fidelity” (as designed).¹²³ While accommodations and supplemental instruction may be beneficial, if the educational program is not implemented as designed, this risks readers not learning to decode and encode (spell) words and risks them not developing the automaticity they require to read fluently.¹²⁴

52. To deliver Wilson as designed, each part of a lesson’s 10 parts must be delivered with each lesson, in the manner intended.¹²⁵

53. As a part of the delivery of part 4 of a lesson (wordlist reading), the instructor may “chart” the correctness of the student’s reading of 15 real and 15 nonsense words.¹²⁶ Charting should occur in every lesson for one-on-one instruction, but only as

¹¹⁸ P43, p19-20.

¹¹⁹ P43, p19-20.

¹²⁰ T729-30 (Lukies); P43, p19-20; see P18, p26-29 (listing details of each rule, as shown in each step and sub-step of Wilson).

¹²¹ T730, T778-79 (Lukies); P43, p19-23, p29.

¹²² T779 (Lukies); see P43, p11-12, p16, p23.

¹²³ P18, p30-40; T442 (Zimmerman); see P43, p28 (listing the program’s “Essential Principles for Students with ... Dyslexia”).

¹²⁴ P43, p2; T590-91 (Mills); T729-32 (Lukies); see P43, p19-23, p29.

¹²⁵ T588, T590-91 (Mills); T731-32 (Lukies); see P43, p2.

¹²⁶ T408-09 (Zimmerman); D23, p11; P12, p1.

needed to test for sub-step progression in group lessons.¹²⁷ The instructor should mark a student's errors on the chart, to target their difficulties in future instruction.¹²⁸

54. To deliver part 8 of a lesson (dictation) as designed and for a student to gain the full learning experience, students must mark up and correct their work in a specific, scripted set of steps.¹²⁹ The eight proofing steps include marking the content in various ways, both to correct errors and to identify certain parts of words (morphemes) and types of words.¹³⁰ Errors should not be corrected by the instructor; part of the designed learning process is for students to identify their own errors and correct them, prompted by the instructor's questions as needed.¹³¹ The scripted marking and proofing steps are each part of the program's design to help a reader learn to encode and decode, and they are important to help a student develop the cognitive skills needed to build the automaticity needed to read fluently.¹³²

55. Part 10 of a lesson is for reading or auditory comprehension of materials beyond a student's reading level.¹³³ This step is to expose students to new vocabulary, complex syntactic structure, and new information, and to allow them to practice comprehension.¹³⁴ Part 10 is particularly important for individuals "at the bottom percentiles of reading ability, [because] if they do not read, they will ... grow even further behind" in their vocabulary development.¹³⁵

56. To deliver part 10, the instructor should select texts from various sources, and use a scripted Wilson process.¹³⁶ This process involves specific instructions for the student and instructor, to guide visualization, "discussion, modelling of thinking, and retelling of the story."¹³⁷ The expected time for step ten in one Wilson lesson is 15 to 30 minutes (for both small-group and one-on-one instruction); with two lessons per week, this is 30 to 60 minutes total weekly time.¹³⁸

¹²⁷ P33, p10.

¹²⁸ P33, p19; T749-50 (Lukies).

¹²⁹ P33, p10-12; T739-42 (Lukies); see P26, p9.

¹³⁰ P33, p10-12; T739-42 (Lukies).

¹³¹ P33, p10-11; T739-42 (Lukies).

¹³² P33, p10-11; T739-42 (Lukies).

¹³³ P43, p25.

¹³⁴ P43, p25.

¹³⁵ P43, p25.

¹³⁶ P43, p25; T563-65 (Mills).

¹³⁷ P43, p25.

¹³⁸ T632 (Mills); P26, p7; P33, p9.

57. The content of Wilson’s 12 steps and many sub-steps is arranged in increasing complexity.¹³⁹ The steps and the materials are designed to build on each other, and later steps require the knowledge gained in earlier ones.¹⁴⁰ To support a reader’s growing competence and confidence, the steps and sub-steps must be delivered exactly in order.¹⁴¹ This is referred to as following the program’s “scope and sequence,” which the District’s Instructional Specialist Tami Mills noted is important for the reasons described here.¹⁴²

58. A student is considered to have mastered a sub-step’s concept when they can establish mastery of multiple parts of a sub-step’s lessons. These include the ability to correctly spell dictated words and sentences with limited errors, and independently correct their errors through teacher-directed questioning (this is part 8 of every lesson).¹⁴³ A student must also be able to correctly read out loud all 15 of the assessment’s 15 real words and 13 of the assessment’s 15 nonsense words (this is part 4 of every lesson).¹⁴⁴ A student must not be allowed to advance from a sub-step before they have mastered the current material; this may impede progress in higher sub-steps, given that the steps are designed to build on each other.¹⁴⁵

59. Additional fidelity considerations for structured literacy programs are discussed in the recommendations of the Washington Office of Superintendent of Public Instruction (“OSPI”) regarding services to students with dyslexia, in OSPI’s “Dyslexia Guidance: Implementing MTSS for Literacy” (“OSPI Guide”).¹⁴⁶ The OSPI Guide states that it was created in response to a change in law regarding students from kindergarten through second grade, but it also makes multiple statements that proper implementation is important for all students from prekindergarten through twelfth grade.¹⁴⁷ OSPI recommends that school districts do the following:

- a. Provide training and coaching to ensure staff both know how to deliver the program as designed and do deliver it as designed;
- b. Collect high-quality data from multiple sources to assess the quality of implementation and student responses to the instruction;

¹³⁹ P43, p10, p13-14, p28; T139-40 (Boutain); T588 (Mills); T729 (Lukies).

¹⁴⁰ T429-30 (Zimmerman); T729 (Lukies); P43, p13-14, p29-30; see T239-40 (Lukies).

¹⁴¹ T730 (Lukies); P43, p10, p28, p35; see T429-30 (Zimmerman); T239-40 (Piscitelli); T588 (Mills).

¹⁴² T587-88 (Mills).

¹⁴³ T732, T739-40, T773-74 (Lukies); P43, p36; see P26, p9.

¹⁴⁴ T560; T750 (Lukies); P33, p19; see, e.g., D23, p11; P12, p1.

¹⁴⁵ P43, p11, p29-30, p35; T588 (Mills); T729-30 (Lukies); see P43, p2; T560.

¹⁴⁶ P8.

¹⁴⁷ P8, p5-7.

c. Review the intervention plan regularly to determine which supports to stop, continue, or intensify based on student and fidelity data;

d. Monitor students regularly to assess intervention level and assess fidelity, meaning the extent to which evidence-based practices are being implemented as intended.¹⁴⁸

The District's Literacy Instruction, 2024-2025 (Fourth Grade)

60. When the Student began fourth grade on August 29, 2024, his case manager was special education teacher Sayali Kakade.¹⁴⁹ Paraeducator Melanie Zimmerman began instructing the Student in Wilson on September 12, 2024, on the tenth school day of the school year.¹⁵⁰ This instruction did not begin sooner because the District's special education team both needed time to align various students' services with their general education classrooms' schedules and wanted to allow students time for socialization with their peers and to become comfortable in their new classrooms.¹⁵¹ The delay totaled nine school days.¹⁵²

61. Both Ms. Kakade and Ms. Zimmerman received one day of training in how to implement Wilson.¹⁵³ They were taught by Ms. Mills and at least one other District-employed instructor.¹⁵⁴ Ms. Mills had previously received three days of Wilson training from an instructor employed by the Wilson training company.¹⁵⁵ Ms. Mills has never delivered Wilson to any students; she has only trained others in delivering it.¹⁵⁶

62. The 2024-2025 school year was the first year for Ms. Zimmerman to teach Wilson, and Ms. Kakade has never taught it.¹⁵⁷ That school year was Ms. Kakade's first year as a teacher and Ms. Zimmerman's eighth year as a paraeducator.¹⁵⁸ The

¹⁴⁸ P8, p7-8, 21.

¹⁴⁹ T348 (Kakade); D35, p2.

¹⁵⁰ D12, p2; D35, p2; T369 (Kakade).

¹⁵¹ T334-35, T370 (Kakade); T487-88 (Kleinkopf); see D9, p1.

¹⁵² See D35, p2.

¹⁵³ P4, p1, p4.

¹⁵⁴ T346 (Kakade); T404 (Zimmerman); T546-48 (Mills).

¹⁵⁵ T544-46 (Mills).

¹⁵⁶ T546, T620 (Mills). Ms. Mills has once implemented another product from the same company as Wilson, for a single student; that was a program at a quicker pace than Wilson, for students with fewer difficulties. T620, T622 (Mills); see T726-27 (Lukies).

¹⁵⁷ T424-25 (Zimmerman); T336 (Kakade); see P4, p1, p4. Ms. Kakade has delivered another structured literacy program to one student, when she was a paraeducator. T356 (Kakade).

¹⁵⁸ T330 (Kakade); T398-99 (Zimmerman).

Student's small group, which initially had three students in it but later had only two, was Ms. Zimmerman's first time implementing Wilson.¹⁵⁹

63. In fourth grade, the Student received 30 minutes of small-group Wilson reading on four days of the week, and 20 minutes of small-group non-Wilson writing instruction on the same days.¹⁶⁰ He generally received 120 minutes of Wilson reading SDI and 80 minutes of writing SDI weekly during weeks with no non-school days.¹⁶¹ This was 20 minutes more weekly reading SDI than the 100 minutes provided for in the May 2024 IEP.¹⁶²

64. This schedule, though it allowed more reading minutes than provided for in the Student's IEP, was fewer than the minimum number of weekly minutes required to deliver Wilson in a small group, as designed by the program.¹⁶³ The number of minutes allotted for Wilson instruction was insufficient for Ms. Zimmerman to cover all parts of Wilson lessons; she did not provide part 10 of Wilson lessons (on auditory and reading comprehension) to the Student.¹⁶⁴ Further, Ms. Zimmerman was expected to work on the Student's reading goal with him during his pull-out time, which was challenging to manage because his goal was not aligned with his Wilson progress.¹⁶⁵ Though she believed she was fully implementing Wilson during the allotted 30 minute sessions, Ms. Zimmerman acknowledged she would have been better able to teach the Student's small group lessons with more time.¹⁶⁶

65. Due to the time constraints, Ms. Zimmerman understood she was only expected to instruct the Student on parts one through nine of each Wilson lesson.¹⁶⁷ Ms. Zimmerman understood that part 10 of each Wilson lesson was being taught to the Student in his general education classroom.¹⁶⁸ The District informed the Parents in a December 19, 2024 team meeting that the Student's Wilson schedule, under the May 2024 IEP, was as follows:

- a. Monday: Wilson lesson parts 1-5 and 9;

¹⁵⁹ T424-25 (Zimmerman).

¹⁶⁰ D9, p1; T294-95 (Whiteley); T417, T419 (Zimmerman); see D21, p30.

¹⁶¹ D9, p1; T419 (Zimmerman); see T440 (Zimmerman); D35, p2.

¹⁶² See D21, p30.

¹⁶³ D21, p30; P43, p32 (the minimum Wilson small-group requirements at four days per week are 180 to 240 minutes, at 45 to 60 minutes per day, without the recommended extra day for review).

¹⁶⁴ T443-44, T446-47, T455 (Zimmerman).

¹⁶⁵ T437-38 (Zimmerman).

¹⁶⁶ T435-36, T442-44 (Zimmerman).

¹⁶⁷ T443-44, T446-47, T455 (Zimmerman).

¹⁶⁸ T443-44, T455 (Zimmerman).

- b. Tuesday: Wilson lesson parts 1-2 and 6-8;
- c. Thursday: Wilson lesson parts 1-5 and 9; and
- d. Friday: Wilson lesson parts 1-2 and 6-8.
- e. Additionally: “[The Student] receives Part 10 during his SDI with the SLP and in general education with his class.”¹⁶⁹

66. In the December 19, 2024 team meeting, Ms. Mills told the Parents that the Student received the equivalent of a Wilson lesson’s part 10 from both his speech language pathologist, Irene Ragan, and his fourth-grade general education teacher, Timothy Whiteley.¹⁷⁰ Ms. Mills had been told by Ms. Zimmerman that Ms. Zimmerman thought the Student received part 10 in his general education class, and she had misunderstood Ms. Ragan’s statements about her work with the Student.¹⁷¹ The available evidence establishes that Ms. Mills’ understanding was incorrect, as explained below.

67. The Student received 40 minutes speech/language SDI weekly with Ms. Ragan.¹⁷² Ms. Ragan’s instruction of the Student included some non-Wilson SDI on story comprehension and vocabulary development, which may partially overlap with the learning goals of a Wilson lesson’s part 10.¹⁷³ However, Ms. Ragan provided no Wilson instruction to the Student and used no Wilson methodology with him, including no use of Wilson’s scripted process for part 10.¹⁷⁴ The amount of auditory or reading comprehension SDI the Student received weekly with Ms. Ragan, if any, is not established by the evidence.¹⁷⁵ No evidence establishes that her work with the Student satisfied the learning goals of a Wilson lesson’s part 10.¹⁷⁶

68. The evidence does not establish that Mr. Whiteley provided auditory or reading comprehension instruction to his general education class while the Student was present.¹⁷⁷ Mr. Whiteley did implement i-Ready’s computer-based, general curriculum reading instruction for the Student, but he provided no Wilson instruction to him,

¹⁶⁹ P26, p8; see T566-67 (Mills).

¹⁷⁰ T566-68 (Mills); T470 (Ragan); P28, p1; P26, p8.

¹⁷¹ T568, T553, T557 (Mills); see T633-34 (Mills).

¹⁷² D12, p3; D21, p30.

¹⁷³ T461-62 (Ragan); D21, p16-22; P43, p25.

¹⁷⁴ T470-71 (Ragan); P28, p1; D21, p16-22; see P43, p25.

¹⁷⁵ See T460-79 (Ragan); D21, p16-22, p30.

¹⁷⁶ P28, p1; D21, p16-22; P43, p25; see T460-79 (Ragan); T375-76 (Kakade).

¹⁷⁷ See T270-324 (Whiteley); T633-34, T553, T557 (Mills); T294-95 (Whiteley) (Mr. Whiteley’s literacy instruction, apart from computerized i-Ready instruction, appears to have occurred while the Student was pulled out of the classroom for his reading and writing SDI.).

including no use of Wilson's scripted process for part 10.¹⁷⁸ No evidence establishes Mr. Whiteley provided any of the close attention and methodology required to implement step ten of a Wilson lesson to the Student.¹⁷⁹ Similarly, no evidence establishes whether, if the Student received teacher-led auditory or reading comprehension instruction from Mr. Whiteley, that Mr. Whiteley worked with the Student directly to assess and aid his comprehension.¹⁸⁰

69. To determine the Student's mastery of each Wilson sub-step, Ms. Zimmerman used only word charting from part 4 of a Wilson lesson; she did not use the Student's dictation and self-correction from part 8 of a lesson, as required by the program.¹⁸¹ In charting words from the lessons' part 4, no evidence shows that Ms. Zimmerman recorded the Student's errors to be able to target the Student's difficulties later.¹⁸²

70. Ms. Zimmerman believed she conducted part 8's dictations with every lesson, thus twice a week, typically on Tuesdays and Fridays, except for holidays and snow days.¹⁸³ Every dictation session requires the use of a dictation sheet that a student fills out, marks, and corrects, to teach and reinforce encoding skills, as described above.¹⁸⁴ Ms. Zimmerman submitted all the Student's work samples to Ms. Kakade in response to the Parents' request, before the December 19, 2024 IEP team meeting.¹⁸⁵ Neither parties' exhibits have dictation sheets from the District's instruction for any dates in 2025, apart from the Student's January 2025 step assessment papers.¹⁸⁶ The District's 2024-2025 calendar shows that between September 12, 2024 and December 19, 2024, there were 14 Tuesdays and 12 Fridays, excluding all noted school closures—this totals 26 days, or 25 days if the school year's single inclement weather closure day occurred on one of these Tuesdays or Fridays.¹⁸⁷ The available evidence shows at total of ten dictation sheets for this period: two out of a possible five for September,¹⁸⁸ four out of eight for October,¹⁸⁹ two out of eight for November,¹⁹⁰

¹⁷⁸ P35, p1; P36, p1; see T293 (Whiteley); P43, p25.

¹⁷⁹ P43, p25; see T270-324 (Whiteley).

¹⁸⁰ See T270-324 (Whiteley); P43, p25.

¹⁸¹ T409 (Zimmerman); see T410-13 (Zimmerman).

¹⁸² D23, p11; see P33, p19; T749-50 (Lukies); *but* see P5, p7 (showing Ms. Zimmerman did note the Student's errors during the Student's step assessment for Step 1).

¹⁸³ T406, T440-41, T447-48 (Zimmerman); see P26, p8.

¹⁸⁴ P33, p10-12; P26, p9; T739-42 (Lukies).

¹⁸⁵ T376-77 (Lukies); T441 (Zimmerman); P25, p1-2.

¹⁸⁶ See D23; P5.

¹⁸⁷ D35, p2.

¹⁸⁸ D23, p21-22.

¹⁸⁹ D23, p17-20; P5, p27.

¹⁹⁰ D23, p15-16; P5, p24-25.

and two out of six for December¹⁹¹. Ten instances of part 8 out of 25 expected instances is an implementation rate of 40 percent. This evidence shows the Student was receiving fewer than one Wilson lesson per week, on average. Additionally, the Student's dictation sheet for what appears to be September 19, 2024 is only partially completed; the evidence does not establish why this part of the lesson was incomplete.¹⁹² According to the Wilson program and Ms. Lukies, students with memory struggles, like the Student, must have information and skills repeated more frequently than weekly or every other week to retain learned content.¹⁹³

71. In conducting part 8 of each Wilson lesson, Ms. Zimmerman did not consistently follow some or perhaps all parts of Wilson's scripted proofreading procedures.¹⁹⁴ She corrected the Student's dictation for him on every dictation sheet in evidence, apart from the incomplete lesson in September, rather than have the Student correct his own work.¹⁹⁵ She also did not have the Student mark his dictation content as directed by the Wilson part 8 procedure, showing incomplete or wholly missing markup on every one of the ten dictation sheets in evidence, as well as missing content on multiple sheets.¹⁹⁶ As some of Wilson's proofreading procedures do not leave visible marks, and Ms. Zimmerman did not testify to her process for guiding the Student through his proofreading, the evidence does not establish which, if any, of the curriculum's other proofreading steps Ms. Zimmerman used.¹⁹⁷ Ms. Zimmerman was unaware she was conducting part 8 incorrectly and leaving out some of Wilson's pedagogical steps.¹⁹⁸

72. Ms. Kakade, as the Student's case manager, was responsible for overseeing Ms. Zimmerman's Wilson instruction along with the other forms of SDI Ms. Zimmerman delivered, to ensure Ms. Zimmerman was implementing the instruction correctly.¹⁹⁹ Ms. Kakade, who had never implemented Wilson and was not familiar with its requirements, never observed Ms. Zimmerman's instruction and did not check Ms. Zimmerman's work in implementing Wilson.²⁰⁰ Instead, she trusted that Ms.

¹⁹¹ D23, p13-14; P5, p22-23.

¹⁹² D23, p22.

¹⁹³ T777-78 (Lukies); P43, p31.

¹⁹⁴ D23, p13-21; see P33, p10-12.

¹⁹⁵ T411-13 (Zimmerman); D23, p13-21; see P33, p10-12.

¹⁹⁶ D23, p13-21; see P33, p10-12; T752-53, T767-68 (Lukies).

¹⁹⁷ See T411-15 (Zimmerman); P33, p12.

¹⁹⁸ See T411-15, T442-44 (Zimmerman).

¹⁹⁹ T393 (Kakade).

²⁰⁰ T358-59, T377, T393-94 (Kakade).

Zimmerman was doing everything correctly.²⁰¹ She did not personally monitor the Student's progress, instead recording the data Ms. Zimmerman reported to her.²⁰²

Susan Lukies' Wilson Services

73. In November 2024, the Parents arranged for a private tutor, Susan Lukies, to provide one-on-one Wilson instruction for the Student outside of school hours.²⁰³ Because Ms. Parent had told her the Student had been diagnosed with dyslexia and was receiving Wilson SDI at school, Ms. Lukies agreed that Wilson would be the appropriate program to use in tutoring the Student.²⁰⁴

74. In her first meeting with the Student, on November 13, 2024 Ms. Lukies conducted a WADE assessment, to determine the Student's appropriate level in Wilson.²⁰⁵ After assessing the Student Ms. Lukies began instructing the Student in Wilson on November 25, 2024.²⁰⁶ Ms. Lukies worked with the Student twice a week, for 60 minutes each session, nearly every week through the week of the due process hearing.²⁰⁷

75. Ms. Lukies implemented the Student's Wilson instruction with complete adherence to the program's pedagogical requirements, apart from providing fewer than Wilson's minimum weekly number of minutes, given her tutoring was intended to supplement the District's provision of services.²⁰⁸

76. Ms. Lukies was a certified special education teacher for several years, primarily in Connecticut.²⁰⁹ She holds a master's degree in special and general education, and a Level 1 Certification in teaching Wilson.²¹⁰ Her Wilson certification involved instruction from a trainer employed by Wilson Language Training, 90 hours' course work, and at least 65 clinical practicum hours, while teaching a student one-on-one for

²⁰¹ T393-94 (Kakade).

²⁰² T383 (Kakade).

²⁰³ T80-81 (Parent); T742 (Lukies); see P14, p1-6.

²⁰⁴ T742-43 (Lukies).

²⁰⁵ T743 (Lukies).

²⁰⁶ P14, p1-6; P11, p1.

²⁰⁷ T745 (Lukies); P14, p1-6. The total sum for February 2025, \$425, appears to be in error, as instruction for only five dates, for a total of \$375.00, is listed. See P14, p4.

²⁰⁸ See P11; P12; P43; T725-56 (Lukies).

²⁰⁹ P9, p1-4; T721 (Lukies).

²¹⁰ P9, p2, p4; P10, p1.

one school year.²¹¹ Ms. Lukies has instructed about 30 students in Wilson through public schools.²¹²

77. Ms. Lukies also worked for the District for about two months in fall 2024.²¹³ Her caseload was larger than she was used to.²¹⁴ This caused her tremendous strain, due in part to the time demands after her household's recent move across the country.²¹⁵ She believed she would not be successful in doing a good job and that she would not be able to provide her students the quality of service they deserved.²¹⁶ When Ms. Lukies learned that the District had another qualified person who was willing and able to take over her job, she resigned, effective immediately, deeming that to be better for her students.²¹⁷

78. Ms. Lukies was not biased against the District due to her experience. She understood the demands on the District, and she did not hold it against the District that she had felt unable, at the time, to do the job she had been assigned.²¹⁸

Wilson Progress (Third and Fourth Grades, 2023-2024 and 2024-2025)

79. The Student began receiving Wilson instruction from the District in early March 2024 at Step 1, sub-step 1.1 ("Step 1.1").²¹⁹ Working with Ms. Boutain, he reached Step 1.3 on or before March 26, 2024, and was expected to begin Step 1.4 the following week.²²⁰ He ended the school year working on Step 1.5.²²¹

80. Ms. Zimmerman, under the direction of Ms. Kakade, began the Student's fourth grade Wilson instruction on Step 1.4.²²² As students frequently forget some of the previous year's learning over the summer, Ms. Kakade determined it was best to start the Student's instruction below where he had ended the previous school year.²²³

²¹¹ P10, p1; T724-25 (Lukies).

²¹² T725 (Lukies); see P9, p2.

²¹³ P9, p12; T721 (Lukies).

²¹⁴ T722 (Lukies).

²¹⁵ T722 (Lukies).

²¹⁶ T722-23 (Lukies).

²¹⁷ T722-23 (Lukies); see also T670-71 (Shannon-Garvey).

²¹⁸ See T721-25 (Lukies).

²¹⁹ D2; T138 (Boutain).

²²⁰ D4, p1.

²²¹ D7, p1.

²²² T411 (Zimmerman); T561 (Mills); P26, p9; see T124 (Boutain).

²²³ T411 (Zimmerman).

81. Working with Ms. Zimmerman, the Student began his fourth grade Wilson SDI on September 12, 2024.²²⁴ Using only a word charting assessment for her sub-step assessments, instead of also using part 8's dictation sheets as required by the curriculum, Ms. Zimmerman found the Student mastered Step 1.4 on October 8, 2024.²²⁵ She found he mastered Step 1.5 on October 25, 2024.²²⁶ These sub-steps were all ones he had either started or mastered during his third-grade year.²²⁷

82. Ms. Parent was concerned by this apparent lack of progress, given the Student had ended third grade on Step 1.5.²²⁸ Ms. Mills opined that going from Step 1.4 in September to starting Step 1.6 in November was a reasonable level of progress, given the Student's IQ score.²²⁹

83. In her Wilson WADE assessment on November 13, 2024, Ms. Lukies found the Student had mastery of neither Step 1.3 nor Step 1.4.²³⁰ He mispronounced one Step 1.3 nonsense word and multiple Step 1.4 real words, he misspelled one or more words from both sub-steps, and he had numerous errors in his dictated sentences.²³¹

84. When Ms. Lukies began tutoring the Student in Wilson on November 25, 2024, she began with a mix of Step 1.3 and Step 1.4 skills.²³² She provided instruction and words from both sub-steps based on his assessment results that he had not fully mastered these steps and her determination that starting on Step 1.3 alone would have included only very simple words, which could have been humiliating for a student his age.²³³

85. Ms. Zimmerman worked with the Student on his first new fourth grade Wilson material, Step 1.6, for three months, from around October 25, 2024 through January 17, 2025.²³⁴

²²⁴ T333-34, T411 (Zimmerman); see D9, p1.

²²⁵ T409 (Zimmerman); D23, p11; see P26, p9.

²²⁶ D23, p11; see P26, p9.

²²⁷ D7, p1.

²²⁸ D14, p1-3; T72-73 (Parent).

²²⁹ T561 (Mills).

²³⁰ T744 (Lukies); P14, p1.

²³¹ T744 (Lukies).

²³² T745, T802-03 (Lukies).

²³³ T802-03 (Lukies); P14, p1. While P14 states Ms. Lukies was working on Step 1.4 and Step 1.5 concurrently in her earliest sessions with the Student, this was incorrect; she made her invoice sometime later, without checking her records of the Student's sub-step progress. T803-04 (Lukies).

²³⁴ D23, p11; P5, p1-9.

86. With Ms. Lukies, the Student progressed quickly through all of Step 1, given his partial experience with the District on each of the sub-steps. On or before December 17, 2024, Ms. Lukies and the Student were working on Step 1.6, and the Student completed Step 1.6 on or before January 6, 2025.²³⁵

87. Working with Ms. Lukies, completing at least one full lesson each week, as shown by her Step 2.1 wordlist chart, the Student was on Step 2.1 (the next sub-step after Step 1.6) from January 7, 2025 through at least January 27, 2025.²³⁶

88. Ms. Zimmerman began the Student on Step 2.1 the week of January 20, 2025.²³⁷

89. Around the week of May 19, 2025, the Parents pulled the Student out of the District's Wilson SDI.²³⁸ At that time, the Student was at Step 2.4 or Step 2.5 with the District.²³⁹

90. As of May 20, 2025, working with Ms. Lukies, the Student was on Step 2.5, the final sub-step of Step 2.²⁴⁰ On this date, Ms. Lukies conducted a six-month assessment of the Student, to assess his mastery of the first two steps.²⁴¹ This assessment showed the Student had learned both the reading and spelling content through Step 2.5 with 97% accuracy.²⁴² This assessment also showed the Student had made observable progress on his knowledge as of that date, as measured as a percentage of his mastery of content from all twelve steps, compared to his baseline assessment with Ms. Lukies on November 13, 2024.²⁴³

91. As of June 5, 2025, Ms. Lukies was still working with the Student on Step 2.5.²⁴⁴

92. Once the Student received the same sub-step Wilson instruction with both his District instructors and Ms. Lukies, he progressed at a rate of approximately one sub-step per month.²⁴⁵ Assuming progress of one monthly sub-step during only the nine months of each school year, with 51 sub-steps remaining in Wilson from Step 3

²³⁵ P27, p1; P12, p1; P14, p2.

²³⁶ P12, p1.

²³⁷ D19, p1; P48, p3; T453-54 (Zimmerman).

²³⁸ T649-50 (Woelffer).

²³⁹ T421 (Zimmerman).

²⁴⁰ P11, p2.

²⁴¹ P11, p1-2.

²⁴² P11, p2.

²⁴³ P11, p1.

²⁴⁴ T745 (Lukies).

²⁴⁵ See P11, p2; P12, p1; T745 (Lukies).

through Step 12, it may take the Student approximately 5.6 school years to complete the program.²⁴⁶

Literacy Scores and Progress (Third and Fourth Grades, 2023-2024 and 2024-2025)

The Student's i-Ready Scores

93. The District tests elementary school students in reading and math three times yearly using the i-Ready system.²⁴⁷ This is an adaptive test that responds to an individual student's performance, rather than a standardized test that asks all students the same questions.²⁴⁸ The District considers the Student's i-Ready scores in assessing his instructional needs and his progress.²⁴⁹ The i-Ready system also provides individualized, computer-based, instructional lessons for students, based on each student's scores; the District provided this instruction to the Student in his general education classroom.²⁵⁰

94. For the September 2023 i-Ready administration, the Student scored a 1.88 overall in reading.²⁵¹ In January 2024, the Student scored a 1.84 overall in reading.²⁵² In June 2024, the Student scored a 1.88 overall in reading.²⁵³ For the Student's October 2024 i-Ready reading score, in the fall of his fourth grade year, the Student scored a 1.92 overall in reading.²⁵⁴ Each of the Student's scores from September 2023 through October 2024 reflect the Student was able to read at the expected level for first graders.²⁵⁵

95. In January 2025, the Student took the i-Ready twice.²⁵⁶ The first time, he again scored at a first grade reading level in reading.²⁵⁷ The second testing was administered two days later by Mr. Whiteley, with multiple "accommodation[s]" for the Student.²⁵⁸ Mr. Whiteley administers the i-Ready test to his general education students three times

²⁴⁶ P18, p28-29 (listing sub-steps).

²⁴⁷ T280-81 (Whiteley).

²⁴⁸ T322-23 (Whiteley).

²⁴⁹ J3, p17; D21, p6; see T678 (Shannon-Garvey).

²⁵⁰ T281, T299-300, T305-06 (Whiteley).

²⁵¹ D29, p5.

²⁵² D29, p4.

²⁵³ D29, p4.

²⁵⁴ D29, p3.

²⁵⁵ See T296-97 (Whiteley); see also T747-48 (Ms. Lukies declined to identify a reading level for the Student as of the date of the hearing, but she testified that the words he was currently learning in Wilson, in June 2025, were words she had previously taught to first graders, and that he was "quite far behind.").

²⁵⁶ T303 (Whiteley).

²⁵⁷ T303-04, T317 (Whiteley).

²⁵⁸ T303-04 (Whiteley).

per year, and additionally sometimes administers it to his students with IEPs, though those students often take it in a special education setting.²⁵⁹

96. At the hearing, Mr. Whiteley testified that during the second January 2025 i-Ready reading test, all instructions, passages, and questions were read aloud to the Student by the computer program, and he also had someone with him to remind him to go slowly.²⁶⁰ Mr. Whiteley was asked, “[W]hat is being read to the student by i-Ready, when their IEP accommodations calls for that, with regard to the literacy i-Ready assessment?”²⁶¹ Mr. Whiteley testified that when the read-aloud accommodation was employed with a student for the i-Ready literacy assessment, the program would “read pretty much anything that’s on the screen. ... So it would include the passage or the directions or the multiple choice questions....”²⁶² Mr. Whiteley did not use the term “phonics” in relation to the i-Ready’s read-aloud options, but he confirmed that all content would be read aloud, including both the portions to test ability to read and the portions to test reading comprehension.²⁶³ Conversely, Ms. Shannon-Garvey, who has never administered an i-Ready test, testified that i-Ready’s reading comprehension component allowed all content to be read to the students, but that “to [her] understanding, the phonics diagnostic ... won’t read the passage to students. It will just read the questions.”²⁶⁴ Given his familiarity with the i-Ready test, and the fact that he administered the Student’s second January 2025 i-Ready test, Mr. Whiteley’s testimony is more credible than Ms. Shannon-Garvey’s regarding how much of this test was read to the Student. Any test content that was read to the Student cannot be used to determine the Student’s phonics decoding or reading comprehension abilities.²⁶⁵ Relatedly, in March and April 2025, the IEP team removed two accommodations for reading tests aloud, in the Student’s classes and in the state reading test.²⁶⁶

97. With the accommodation that removed all reading from his reading test, the Student scored at a third-grade level in reading.²⁶⁷ This caused him to receive third grade i-Ready reading lessons.²⁶⁸ However, Mr. Whiteley “lowered [his level] quite a

²⁵⁹ T220 (Piscitelli).

²⁶⁰ T300, T304-05, T317-21 (Whiteley).

²⁶¹ T319-20 (Whiteley).

²⁶² T319-20 (Whiteley).

²⁶³ T319-21 (Whiteley).

²⁶⁴ T679 (Shannon-Garvey).

²⁶⁵ See T304-05 (Whiteley).

²⁶⁶ J4, p3; J3, p3; see T538 (Mills) (defining “ELA,” referred to in J3, as “English language arts”).

²⁶⁷ T305-06 (Whiteley).

²⁶⁸ T305-06 (Whiteley).

bit” because the Student was struggling to do the third-grade level of work in his individualized i-Ready lessons.²⁶⁹

98. The Student’s spring 2025 i-Ready scores were not available as of the week of the hearing.²⁷⁰

The Student’s Report Card, First Semester 2024-2025

99. The Student’s fourth grade, first semester report card used a grading scale as shown here:²⁷¹

Scoring Key for Behaviors that Promote Learning	Scoring Key for Academic Performance
C: Consistently	4: Mastery
M: Meeting behavior expectations	3: Proficiency
E: Emerging grade-level skills	2: Basic
G: Growth area, receives supports	1: Below grade level
	NA: Not assessed this semester
	NG: No grade
	Y: Yes, supplemental progress report provided

100. Mr. Whiteley issued the Student’s report card.²⁷² He conferred with the Student’s special education teachers in determining the Student’s literacy grades, allotting him a “2” in most scores, a “3” in one score, and no scores of “1,” as follows in the image below:²⁷³ These scores were not based on the Student’s ability to read and write independently, but rather his performance while using accommodations, such as books on tape, a computer “co-writer” tool, and having tests read aloud.²⁷⁴

	Sem 1	Sem 2
Literacy		
Reading: Foundational Skills - Understanding and using phonemic awareness and phonics knowledge to support accuracy and fluency.	2	
Reading: Informational Text- comprehending and analyzing non-fiction text to gain knowledge and understanding.	2	
Reading: Literary Text- Exploring and interpreting stories to understand themes, characters, and literary elements.	2	
Language: Vocabulary- Understanding of words and their meanings in order to communicate and comprehend across subject areas.	2	
Language: Grammar & Conventions- Study and application of rules and structures of language in order to clearly communicate while speaking and writing.	2	
Writing Informational Text-Using appropriate language, detail, and organization to educate readers on a specific topic.	3	
Writing: Opinion Text-Using reasons and examples to persuade or inform readers about the author’s stance on a belief or topic.	2	
Writing: Narrative Text- Crafting stories that depict characters, settings, and events, engaging readers through plot development and descriptive language.	NA	

²⁶⁹ T305-06 (Whiteley); P35, p1.

²⁷⁰ T281 (Whiteley).

²⁷¹ D24, p1; see T285 (Whiteley).

²⁷² T284-86 (Whiteley).

²⁷³ D24, p2; T286 (Whiteley).

²⁷⁴ T308-09 (Whiteley); see D21, p27.

101. In the report card, Mr. Whiteley commented that the Student was “making steady progress in literacy,” that he had “growth in all reading areas[, and that] his written work [was] also improving.”²⁷⁵ He based these conclusions on his own observations and the Student’s “significant” increase in his i-Ready scores from a first grade level to a third grade reading level.²⁷⁶

102. Mr. Whiteley opined that without these accommodations, the Student would have had multiple grades of “1,” and confirmed reading was the Student’s lowest scoring academic area.²⁷⁷

103. Mr. Whiteley was uncertain what date the Student’s first semester report card was issued, but believed it would happen in “January [2025], perhaps,” adding, “I don’t know. Early – early in the calendar year.”²⁷⁸

The Student’s IEP Goal Progress and Tracking, 2024-2025

104. The Student’s March 2024 reading goal (“long vowel sounds”) related to Wilson content from Step 4.1 through Step 5.3, and from steps 11.1, 11.5, and 12.1.²⁷⁹ His May 2024 reading goal (“any vowel team”) related to content from all of Step 9 and from Step 12.1.²⁸⁰ These goals were based on content from the District’s core curriculum, without reference to the Student’s Wilson progress, following the District’s practice for IEP goals.²⁸¹ Setting goals three or more Wilson steps ahead of the Student’s step level was contrary to the advice of the District’s Instructional Specialist Carina Piscitelli.²⁸² Such a goal risked confusing the Student and would not be helpful to him because he would be missing foundational knowledge normally learned before advancing to Wilson’s Step 9 and higher.²⁸³

105. The May 2024 IEP stated that its reading goal was to be tested twice monthly.²⁸⁴ The Student’s next IEP (“March 2025 IEP”) was issued effective March 10, 2025.²⁸⁵ The March 2025 IEP contains a Goal and Objectives/Benchmarks document, dated February 10, 2025, regarding the Student’s reading goal.²⁸⁶ The report shows

²⁷⁵ D24, p2.

²⁷⁶ T286-87 (Whiteley); see D24, p2.

²⁷⁷ T309-10 (Whiteley)

²⁷⁸ T287-88 (Whiteley).

²⁷⁹ P18, p12; P18, p26-27; see P45, p7.

²⁸⁰ P18, p12; P18, p26-27; see T735, 781 (Lukies); D21, p6-7.

²⁸¹ D18, p42-43; T672-73 (Shannon-Garvey); T574-75 (Mills); see P32, p1.

²⁸² T240 (Piscitelli).

²⁸³ T780-82 (Lukies).

²⁸⁴ D6, p8.

²⁸⁵ J3, p5.

²⁸⁶ J3, p15.

three total data collection dates for the May 2024 IEP goal during the Student's fourth grade year: on October 11, 2024, with a score of 18/20 (the Student correctly pronounced 18 of 20 words correctly), October 25, 2024, with a score of 10/20, and January 16, 2025, with a score of 20/20.²⁸⁷ Ms. Zimmerman collected this data.²⁸⁸

106. Regarding the first reading goal in the March 2025 IEP, the discussion states that the Student had almost mastered his May 2024 reading goal, but that the goal should be discontinued because the Student would benefit from having a goal based on the Wilson curriculum.²⁸⁹ The Student's new first reading goal states the baseline assessment was given from words in Wilson's Step 2.5; the goal's literacy objectives appear to relate to Wilson Step 2 and possibly Step 3.²⁹⁰

The Parent's Communicated Concerns and the District's Investigation

107. Concerned about what seemed to her to be the Student's lack of progress in Wilson from where he had ended his third-grade year, Ms. Parent requested an IEP team meeting on October 23, 2024.²⁹¹ Ms. Parent expressed concern that the Student was only then finishing Step 1.5, which he had been working on in June 2024, and suggested the District was not providing two full Wilson lessons per week with all ten of the required parts.²⁹² She also requested a copy of Ms. Zimmerman's "Wilson certificate."²⁹³

108. Also on October 23, 2024, Ms. Parent came to the school, asking to see Ms. Zimmerman's Wilson certification.²⁹⁴ Principal Tia Kleinkopf met with Ms. Parent in person that day, to get more information and respond to Ms. Parent's concerns.²⁹⁵ After this meeting, Ms. Kleinkopf spoke with Ms. Shannon-Garvey, Ms. Zimmerman, and possibly Ms. Kakade to research Ms. Parent's Wilson questions.²⁹⁶

109. On Thursday, November 7, 2024, Ms. Mills observed Ms. Zimmerman conducting part of a single Wilson lesson.²⁹⁷ The purpose of the observation was for Ms. Mills to assess the effectiveness of Ms. Zimmerman's Wilson instruction as well

²⁸⁷ J3, p15.

²⁸⁸ T383 (Kakade).

²⁸⁹ J3, p15.

²⁹⁰ J3, p15-6; P18, p28-29.

²⁹¹ D14, p2; T72-73 (Parent).

²⁹² D14, p2.

²⁹³ D14, p1.

²⁹⁴ T495-96 (Kleinkopf).

²⁹⁵ D14, p1.

²⁹⁶ T504 (Kleinkopf).

²⁹⁷ D16, p1; T553-55 (Mills).

as whether changes were needed in the Student's instruction or SDI minutes.²⁹⁸ Ms. Mills testified that "during the lesson ... I had the Wilson manual open to make sure that the parts [Ms. Zimmerman] was supposed to be teaching were taught with fidelity, and ... so that's what I did."²⁹⁹ Ms. Mills noted no problems with Ms. Zimmerman's instruction, finding she was delivering Wilson to the Student effectively and "with fidelity."³⁰⁰ Ms. Mills was particularly impressed with Ms. Zimmerman's pace, delivery, and ability to keep the students in the group interested.³⁰¹ Before the observation, Ms. Mills did note that the Student's IQ might affect his progress and that Wilson's minimum time requirement, for fidelity, was 180 minutes per week.³⁰²

110. As the Student completed a dictation sheet dated November 7, 2024, the date of Ms. Mills' observation, Ms. Mills presumably observed the implementation of a lesson's part 8 (dictation).³⁰³ However, Ms. Mills did not note Ms. Zimmerman's error that day in correcting the Student's work for him.³⁰⁴ No evidence establishes that Ms. Mills reviewed the previous dictation sheets the Student had completed while working with Ms. Zimmerman or that she noticed that Ms. Zimmerman did not conduct a dictation session with every lesson (or did not conduct two lessons weekly), did not always have the Student mark up his words, and never had him correct his errors himself, instead always correcting the Student's dictation work for him.³⁰⁵ Ms. Mills did not observe the Student's general education classroom to determine if Wilson lessons' part 10 was implemented there, instead relying on Ms. Zimmerman's understanding; she did not verify whether auditory or reading comprehension work meeting Wilson's pedagogical goals and the Student's needs was being provided.³⁰⁶ Beyond observing one instruction period, Ms. Mills did not investigate further due to the Student's progress through the Wilson sub-steps; as she did had not verify Ms.

²⁹⁸ D16, p1-2; T505 (Kleinkopf).

²⁹⁹ T549 (Mills); see T553-54 (Mills).

³⁰⁰ T570, T553-56 (Mills); see T443 (Zimmerman).

³⁰¹ T554 (Mills); see P43, p27 (discussing the importance of a positive tone that keeps students engaged).

³⁰² D16, p2; T550-52 (Mills).

³⁰³ D23, p16; D16, p1; T552 (Mills). Ms. Mills did not testify as to the specific lesson parts she observed. See T536-640 (Mills).

³⁰⁴ See T553-56 (Mills); P33, p10-12.

³⁰⁵ See T553-56 (Mills); see also T410, T412-13 (Zimmerman); D23, p13-21; T536-640 (Mills).

³⁰⁶ T605-06, T633-34 (Mills); see T553, T557 (Mills); see also T593-94 (Ms. Mills testified to her understanding that audiobooks could be used to deliver part 10 of a Wilson lesson, with no indication she was aware of Wilson's pedagogical requirements, delivered through use of Wilson's scripted process for part 10).

Zimmerman's records, she did not realize Ms. Zimmerman was advancing the Student without using both Wilson's requirements for assessing sub-step mastery.³⁰⁷

111. On December 19, 2024, Ms. Parent sent an email listing concerns to several members of the Student's IEP team.³⁰⁸ Ms. Parent stated she was passing on concerns noted by Ms. Lukies in reviewing the Student's Wilson work documents, IEPs, and progress reports.³⁰⁹ Ms. Parent noted that two full Wilson lessons were not being delivered weekly, as shown by limited dictation in several months.³¹⁰ She also noted that the Student's March 2024 and May 2024 reading goals were both based on skills at Wilson levels far beyond the Student's current progress.³¹¹ She wrote that the instructor was correcting the Student's dictation errors in every lesson, rather than following Wilson's proofreading procedures.³¹² She indicated charting was not being properly done because errors were not listed on the charts.³¹³ Ms. Parent stated that all these errors were contrary to Wilson's fidelity standards, and requested if the team felt the instructor was properly qualified, that Ms. Parent receive evidence of correct Wilson implementation.³¹⁴

December 19, 2024 IEP Team Meeting

112. On December 19, 2024, the Student's IEP team convened to hold the meeting Ms. Parent had requested on October 23, 2024.³¹⁵ Before or at the meeting, the Parents made several requests, each of which the team decided not to implement, apart from the Parents' request for a copy of the IEP.³¹⁶ The denied requests included the following:

- a. The team declined to require the District to hire a certified Wilson instructor to teach the Student.³¹⁷

³⁰⁷ T598-99 (Mills); see T409, T410-13 (Zimmerman).

³⁰⁸ P27, p1-4.

³⁰⁹ P27, p1-2.

³¹⁰ P27, p1.

³¹¹ P27, p1.

³¹² P27, p1.

³¹³ P27, p1.

³¹⁴ P27, p1-2.

³¹⁵ D18, p1, p41-43.

³¹⁶ D18, p41-43.

³¹⁷ D18, p41-42; see T369 (Kakade); T645-47 (Woelffer) (Ms. Zimmerman and Special Education Teacher Katie Woelffer were the Student's only Wilson instructors through the District in the 2024-2025 school year).

b. The team did not agree to allow the Student's tutor, Ms. Lukies, to observe Ms. Zimmerman's Wilson instruction.³¹⁸ Concern was noted that the Student would be distracted by having someone he knew present, though the District had in other situations found ways for an observer to watch instruction while out of sight.³¹⁹ Ms. Shannon-Garvey was concerned Ms. Lukies had a "conflict of interest" and might be biased against the District because she knew Ms. Lukies had briefly worked for the District in a different school, and had left abruptly.³²⁰

c. The team declined to reimburse the Parents for the cost of Ms. Lukies' private tutoring because the team believed the Student was "making adequate progress" in his Wilson instruction.³²¹

d. The team did not agree to consider whether the Student should have increased minutes of SDI in reading.³²² District staff preferred to wait until the 2025 annual IEP meeting, expected to take place in February 2025, because more information would be available, such as IEP progress data and mid-year i-Ready scores.³²³

e. The team turned down the Parents' request for the Student to have a reading goal aligned with the ordering of instruction in Wilson.³²⁴ In the PWN issued after the meeting, Ms. Shannon Garvey wrote, "the [D]istrict will develop reading goals aligned with state grade-level standards. This approach aligns with OSPI guidance and reflects best practices for creating IEP goals that support a student's overall academic growth and access to the general education curriculum."³²⁵

March 2025 IEP-Related Communications and Events (Post-Complaint)

113. On January 30, 2025, the same day the Parents' Complaint in this action was filed, Ms. Kakade sent the Parents a draft copy of the District's proposed 2025 IEP for the Student ("Draft 2025 IEP").³²⁶

114. The Draft 2025 IEP's new reading goal discussion stated, "[a]ccording to the data related to [the Student's] word errors in [the Wilson] curriculum, [the Student]

³¹⁸ D18, p42.

³¹⁹ D18, p42; T689 (Shannon-Garvey).

³²⁰ D18, p42; T688 (Shannon-Garvey).

³²¹ D18, p42.

³²² D18, p42.

³²³ D18, p42; T697 (Shannon-Garvey).

³²⁴ D18, p42-43.

³²⁵ D18, p42-43.

³²⁶ D20, p1.

needs to work on closed syllable nonsense words with blends, digraphs, and welded sounds next.”³²⁷ The first new proposed reading goal was, “[w]hen given closed syllable nonsense words with blends, digraphs, and welded sounds, [the Student] will decode the nonsense words from 0% accuracy to 80% accuracy as measured by curriculum based measures.”³²⁸ This proposed goal aligned with Step 2 and Step 3 of Wilson.³²⁹ A very similar reading goal appeared in the March 2025 IEP that was issued effective March 10, 2025, with words from Wilson Step 2.5 used to assess the Student’s baseline knowledge.³³⁰

115. The Draft 2025 IEP also contained a second reading goal, related to reading comprehension.³³¹ The goal discussion stated that the Student “understands reading topics with appropriate accommodations, such as having the text read aloud.”³³² It also stated, “[a]ccording to his iReady score on Phonics, [the Student] is decoding accurately and has surpassed the Grade 3 level.” Similar conclusions that the Student was able to read and understand content at a third-grade level were repeated in the March 2025 IEP.³³³

116. The Draft 2025 IEP provided for the Student to receive 330 weekly minutes of SDI, divided as follows:³³⁴

Educational Services				
SDI	Provider	Minutes	Frequency	Location
<i>Social / Emotional</i>	<i>Special Education Teacher or Paraprofessionals</i>	<i>30</i>	<i>Weekly</i>	<i>In General Education</i>
Monitored By: <i>Special Education Teacher or Paraprofessionals</i>				
<i>Reading</i>	<i>Special Education Teacher or Paraprofessional</i>	<i>180</i>	<i>Weekly</i>	<i>In Special Education</i>
Monitored By: <i>Other</i>				
<i>Written Language</i>	<i>Special Education Teacher or Paraprofessionals</i>	<i>80</i>	<i>Weekly</i>	<i>In Special Education</i>
Monitored By: <i>Special Education Teacher or Paraprofessional</i>				
<i>Speech/Language</i>	<i>Sp/Lang Path</i>	<i>40</i>	<i>Weekly</i>	<i>In Special Education</i>
Monitored By: <i>Sp/Lang Path</i>				

³²⁷ D20, p12.

³²⁸ D20, p13.

³²⁹ P18, p26-29.

³³⁰ J3, p5, p16.

³³¹ D20, p14.

³³² D20, p14.

³³³ J3, p17.

³³⁴ D20, p24.

117. This proposed service matrix (“Proposed Matrix 1”) provided for 30 minutes of SDI in the general education classroom, 300 minutes of SDI in the learning resource center (“LRC”), which is a special education setting, and 1,395 total minutes, or 82% of the Student’s time, in the general education classroom.³³⁵

118. The Student’s IEP team met on two dates to finalize the Student’s 2025 IEP, on February 10, 2025 and March 5, 2025.³³⁶

119. During one or both meetings, the District proposed two alternative service matrices for the Student’s 2025 IEP.³³⁷ The first of these was Proposed Matrix 1, as proposed to the Parents on January 30, 2025 in the Draft 2025 IEP.³³⁸

120. The second of these two alternatives (“Proposed Matrix 2”) had adjusted information for reading and writing, as follows:³³⁹

Proposed Matrix 2
Reading: 140 minutes weekly in Special Education
Writing: 40 minutes weekly in Special Education
Writing: 40 minutes weekly in General Education
Speech/Language: 40 minutes weekly in Special Education
Social-Emotional: 30 minutes weekly in General Education

121. Proposed Matrix 1, with 300 minutes outside the general education classroom, would have caused the Student to miss his social studies and science classes with his general education peers.³⁴⁰ Proposed Matrix 2 would have permitted the Student to attend those two classes.³⁴¹ Proposed Matrix 2 also provided for 180 minutes of Wilson instruction, between the 140 minutes of reading SDI and the 40 minutes of writing SDI in the LRC.³⁴² It also would give the Student 40 minutes of writing SDI in the general education classroom, to work on the District’s proposed writing goal for paragraph writing, a topic not covered in the Wilson curriculum.³⁴³

³³⁵ D20, p24; see 330 (defining “LRC”).

³³⁶ J4, p1.

³³⁷ J4, p2.

³³⁸ Compare J4, p2 and D20, p24.

³³⁹ J4, p2.

³⁴⁰ J4, p2; T584 (Mills).

³⁴¹ J4, p2; T584 (Mills).

³⁴² J4, p2; T582-83 (Mills); T645-46 (Woelffer).

³⁴³ T582-85 (Mills).

122. Because the Parents and the District team members could not agree on either proposed matrix, the team kept the March 2025 IEP's service matrix the same as in the 2024 IEPs' matrices, due to the stay put requirements of the due process hearing proceedings.³⁴⁴

123. However, the team did agree to remove an accommodation to have tests read aloud, so that results would reflect the Student's reading comprehension instead of his listening comprehension.³⁴⁵ Similarly, effective April 26, 2025, the IEP team agreed to remove the Student's accommodation to have test content read to him in the upcoming state testing.³⁴⁶

124. In March 2025, the Student was assigned a different case manager and that teacher began teaching half the Student's reading SDI.³⁴⁷ Ms. Parent noted that after this point, the Student frequently came home unhappy or crying, complaining about this teacher, and reporting behavior by the teacher that Ms. Parent saw as harmful.³⁴⁸

125. Around the week of May 19, 2025, the Parents began removing the Student from school early on the days he had Wilson SDI scheduled, to stop exposing him to the teacher that made the Student unhappy and to avoid subjecting him to what they believed was inadequate Wilson instruction.³⁴⁹ After removing the Student, Ms. Lukies continued to deliver Wilson instruction to the Student, for two hours weekly, as before.³⁵⁰ The Student has appeared happier and more self-confident since he was removed from the District's Wilson SDI.³⁵¹

Recommendations for the Student's Wilson SDI Minutes from the Parties and Wilson

126. Ms. Mills believed the Student was receiving two full lessons per week at the District's 2024-2025 delivery rate of 120 minutes of reading SDI per week.³⁵² This was based on her understanding that the lessons' part 10 was being delivered in general education and that all other components of the lessons were being delivered with fidelity, though she acknowledged that "ideally" the Student would have part 10 through a Wilson-trained instructor.³⁵³ She did not agree with the District's Draft 2025

³⁴⁴ J4, p2; see D21, p30 (2024 IEPs' service matrices).

³⁴⁵ J4, p3.

³⁴⁶ J3, p1; T650-52 (Woelffer).

³⁴⁷ T646 (Woelffer); P34, p1-2.

³⁴⁸ T193 (Parent); T210-13 (Piscitelli).

³⁴⁹ T649-50 (Woelffer); see T194, T213-14 (Parent).

³⁵⁰ T745 (Lukies).

³⁵¹ T193-95 (Parent).

³⁵² T557 (Mills).

³⁵³ T557, 604 (Mills).

IEP that proposed 180 minutes for reading and 80 for writing, as “he would be missing important general education instruction and time with his peers.”³⁵⁴ She supported the Proposed Matrix 2 discussed in the February and March 2025 IEP team meetings, with 180 minutes for Wilson between 140 minutes for reading and 40 minutes from his 80 minutes of writing time.³⁵⁵

127. Ms. Lukies acknowledged that the District’s Proposed Matrix 2 in the 2025 IEP team meetings, with 140 weekly minutes of reading time (for Wilson lessons’ blocks 1 and 3) and 40 weekly minutes of writing time (for Wilson lessons’ block 2) would satisfy Wilson’s absolute minimum of 180 minutes weekly for small-group instruction.³⁵⁶ However, she opined that the Student required more weekly minutes, due to his struggles with confidence and his speech impediment.³⁵⁷ Separately, she noted the Student regressed easily and needed additional practice at each step.³⁵⁸ She also noted that the apparent 220 combined minutes the Student had received from the District’s instruction and her own “wouldn’t be sufficient[, as] even with the 220, he is still at Sub-Step 2.5.”³⁵⁹ Ms. Lukies recommended one-on-one instruction for the Student, ideally at 360 weekly minutes, but minimally at 240 weekly minutes.³⁶⁰

128. The Student’s difficulties, as assessed by both Dr. Ferdico and by the District’s evaluations and teachers, qualify him as having a complicated cognitive program, as defined by the Wilson system³⁶¹. These difficulties relate to many areas within his reading, spelling, writing, vocabulary, oral comprehension, memory, and executive function abilities.³⁶²As discussed above, Wilson’s creators recommend additional Block 3 work for these students, and additional lessons beyond the two-lesson minimum due to the additional time and repetition these students need.³⁶³ In ideal situations, according to the Wilson creators, these students should receive 450 weekly minutes in small-group instruction, and 240, 270, or 300 weekly minutes in one-on-one instruction.³⁶⁴

³⁵⁴ T580 (Mills); see 584 (Mills); D20, p24.

³⁵⁵ T582-84 (Mills); see J4, p2.

³⁵⁶ T788 (Lukies).

³⁵⁷ T788 (Lukies).

³⁵⁸ T756 (Lukies).

³⁵⁹ T789 (Lukies); see T733 (In discussing small-group versus one-on-one instruction, Ms. Lukies testified, “[I]f someone is really struggling, they probably need more targeted interventions.”).

³⁶⁰ T815-16 (Lukies).

³⁶¹ See P43, p34; *supra* note 362; see also T756 (Ms. Lukies’ testified to her experience of the Student’s regressing easily and needing repetition).

³⁶² J3, p12, 17, 25; P45, p13, 19; D21, p9, 28; P2, p6-8, 13- 27, 30-32, 40; T461-62 (Ragan).

³⁶³ P43, p31, 34.

³⁶⁴ P43, p34.

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.³⁶⁵ In a special education due process hearing, the burden of proof is a preponderance of the evidence.³⁶⁶

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.”³⁶⁷

4. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state’s compliance with the IDEA.³⁶⁸ The first question is whether the state has complied with the procedures set forth in the IDEA.³⁶⁹ The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits.³⁷⁰ “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.”³⁷¹

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

³⁶⁵ RCW 28A.155.260(1).

³⁶⁶ RCW 28A.155.260(3).

³⁶⁷ *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-01, 102 S. Ct. 3034 (1982).

³⁶⁸ *Id.* at 206-07.

³⁶⁹ *Id.* at 206.

³⁷⁰ *Id.* at 206-07.

³⁷¹ *Id.* at 207.

plan.³⁷² 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.³⁷³

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."³⁷⁴ The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry.³⁷⁵ 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.³⁷⁶ The "essential function of an IEP is to set out a plan for pursuing academic and functional advancement."³⁷⁷ Accordingly, an IEP team is charged with developing a comprehensive plan that is "tailored to the unique needs of a particular child."³⁷⁸ Additionally, a student's "educational program must be appropriately ambitious in light of his circumstances"³⁷⁹

7. In reviewing an IEP, "the question is whether the IEP is reasonable, not whether the court regards it as ideal."³⁸⁰ The determination of reasonableness is made as of the time the IEP was developed.³⁸¹ An IEP is "a snapshot, not a retrospective."³⁸² However, a school district cannot "discharge its duty under the IDEA by providing a program that produces some minimal academic advancement, no matter how trivial."³⁸³

³⁷² *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

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

³⁷⁴ *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988 (2017).

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 400.

³⁷⁷ *Id.* at 399.

³⁷⁸ *Id.* at 391.

³⁷⁹ *Id.* at 402.

³⁸⁰ *Id.* at 399 (emphasis in original).

³⁸¹ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

³⁸² *Id.*

³⁸³ *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010) (quoting *Amanda J.*, 267 F.3d at 890).

Whether the District violated the IDEA and denied the Student FAPE by failing to provide the Student with an evidence-based, multisensory, structured literacy program for students with dyslexia and implement it with fidelity, from the beginning of the 2024-2025 school year.

8. If a school district fails to implement the requirements laid out in an IEP, this may deny a student FAPE.³⁸⁴ However, special education services “need only be provided ‘in conformity with’ the IEP.”³⁸⁵ According to the Ninth Circuit, “[t]here is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of [FAPE].”³⁸⁶

9. Therefore, if a school district fails to implement an IEP, the question is whether that failure was material.³⁸⁷ “A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.”³⁸⁸ Only a material failure to implement an IEP violates the IDEA.³⁸⁹ For a failure to implement to be material, it is “not require[d] that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.”³⁹⁰

Extrinsic evidence will not be considered to interpret the language in the IEP.

10. The Parents argue that information outside the four corners of the Student’s May 2024 IEP should be considered in determining what the District was required to implement. The Parents point to multiple sources to argue there should be no “dispute that the Student is entitled to an evidence-based, multisensory structured literacy program by virtue of his IEP.”³⁹¹ These sources include the recommendations of OSPI’s document “Dyslexia Guidance: Implementing MTSS for Literacy,” the District’s Power Point used in the IEP team meeting for the development of the March 2024 IEP, and the content of the District’s December 2024 PWN.³⁹² Given the necessity of delivering evidence-based structured literacy programs with fidelity to meet the full benefits seen in analyses of the programs, and the District’s written statements that they planned to

³⁸⁴ *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 821 (9th Cir. 2007).

³⁸⁵ *Van Duyn*, 502 F.3d at 821 (quoting 20 USC § 1401(9)).

³⁸⁶ *Van Duyn*, 502 F.3d at 821.

³⁸⁷ *Van Duyn*, 502 F.3d at 822.

³⁸⁸ *Van Duyn*, 502 F.3d at 821-22.

³⁸⁹ *Van Duyn*, 502 F.3d at 822.

³⁹⁰ *Van Duyn*, 502 F.3d at 822.

³⁹¹ Parents’ Post Hearing Brief at 33 (“Parents’ Brief”).

³⁹² Parents’ Brief at 33-34.

use such a program for the Student's reading SDI, the Parents argue the May 2024 IEP required the District to implement its chosen reading program with fidelity.³⁹³

11. Regarding claims of agreed services that are not included in the written IEP, the Ninth Circuit has ruled, "[a]n IEP is not a contract – but even if it were, we could not read into it additional terms the parties did not agree to include."³⁹⁴ The Seventh Circuit has ruled, "[u]nder usual circumstances, the court should find it unnecessary to go beyond the four corners of the" IEP to determine what the IEP requires, though "vagueness in the instrument with respect to how its goals are to be achieved may require that the court turn to extrinsic evidence to determine the intent of those who formulated the plan."³⁹⁵ Failing to address in an IEP the specific curriculum or instructional method to be used does not constitute this form of vagueness. Specification of a particular curriculum is not usually required because school districts are generally entitled to deference in deciding what programming is appropriate for a student.³⁹⁶

12. The Parents cite no legal authority to justify use of extrinsic evidence regarding the District's communications in determining the IEP's requirements.³⁹⁷

13. The Student's May 2024 IEP required the District to deliver 100 weekly minutes of reading SDI in a special education setting.³⁹⁸ This is not vague and does not justify consultation of extrinsic evidence.³⁹⁹

The District's nine-day delay in beginning reading SDI was a material failure to implement the Student's IEP.

14. The Parents presented evidence at the hearing and in their post-hearing brief that the District failed to implement the Student's IEP in a timely manner at the start of the Student's fourth grade year.⁴⁰⁰

15. The IDEA requires that "[a]t the beginning of each school year," school districts must have an IEP in effect for each child with a disability within its

³⁹³ Parents' Brief at 34.

³⁹⁴ *Van Duyn*, 502 F.3d at 820.

³⁹⁵ *John M. v. Bd. of Educ. of Evanston Twp. High Sch. Dist.* 202, 502 F.3d 708, 715 (7th Cir. 2007)

³⁹⁶ *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1031 n.5 (9th Cir. 2009) (citing *Rowley*, 458 U.S. at 206).

³⁹⁷ See Parents' Brief at 33-34.

³⁹⁸ D21, p30.

³⁹⁹ See *Van Duyn*, 502 F.3d at 820; *John M.*, 502 F.3d at 715.

⁴⁰⁰ Parents' Brief at 11.

jurisdiction.⁴⁰¹ However, delays in implementing an IEP may not be material if the delays were reasonable, considering the student's and the school district's specific circumstances.⁴⁰²

16. In *C.H. v. Cape Henlopen Sch. Dist.*, the Third Circuit found a procedural violation of the IDEA where the district did not have an IEP in place for student on the first day of school, as required by 20 U.S.C. § 1414(d)(2)(A).⁴⁰³ In that case, the Third Circuit concluded the student had not been denied an educational benefit because the district had acted diligently and the delay was caused by the parent, including the parent's scheduling delays, communication failure, and refusal to participate in meetings or permit evaluation of the student.⁴⁰⁴

17. In this case, the District delayed nine school days in providing services to the Student at the start of his fourth-grade school year, to arrange schedules and allow students socialization and adjustment time. The District began its literacy SDI for the Student on the tenth school day after the start of the year. This failure to implement the Student's IEP at beginning of the year was a procedural violation of the IDEA.⁴⁰⁵

18. The District has not established that any reasonable factors justify this delay. As the Student had been attending the same elementary school for at least two years, he did not need almost two weeks to get used to the school, his classroom, and his peers; a delay for this purpose was not reasonable. Further, it was not reasonable to take nine school days to understand the schedules of all elementary school students to slot their time with their SDI providers.⁴⁰⁶ Finally, the District already had an IEP to work with, and the Parents played no role in the delay.⁴⁰⁷

19. The evidence has established that the Student, with his unique cognitive needs, and being several grade levels behind in reading, very much needed the literacy SDI

⁴⁰¹ 20 U.S.C. § 1414(d)(2)(A); 34 CFR 300.323(a); see WAC 392-172A-03105.

⁴⁰² *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1189 (W.D. Wash. 2002); *M.K. v. Issaquah Sch. Dist.*, No. 2:24-cv-787-BJR, 2025 U.S. Dist. LEXIS 112086, at *24 (W.D. Wash. June 12, 2025); see *JG v. Douglas Cty. Sch. Dist.*, 552 F.3d 786, 796-99 (9th Cir. 2008) (evaluation delay was reasonable).

⁴⁰³ *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 68 (3d Cir. 2010).

⁴⁰⁴ *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d at 68-71 (noting, "[W]e decline to hold that a school district is liable for procedural violations that are thrust upon it by uncooperative parents.").

⁴⁰⁵ See *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 68; 20 U.S.C. § 1414(d)(2)(A); 20 USC §1415(f)(3)(E)(ii).

⁴⁰⁶ See *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d at 1189.

⁴⁰⁷ See *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d at 68-71.

called for in his IEP. The District's nine-day delay deprived the Student of educational benefit.⁴⁰⁸

20. Consequently, this delay constitutes a material failure to implement the IEP.⁴⁰⁹ The District's procedural violation of the IDEA denied the Student FAPE for the nine-day period of the delay.⁴¹⁰

The District provided the reading SDI minutes required by the IEP, beginning September 12, 2024.

21. The Parents contend that by failing to deliver the Student's Wilson instruction with full compliance with the curriculum, the District materially failed to implement the Student's IEP.⁴¹¹ Specifically, the Parents cite to part 10 being missing, the total minutes being insufficient, the Student's reading goal being far beyond his current work in Wilson's scope, and the missing elements of part 8.⁴¹² Additionally, the Parents allege that the Student's Wilson instructors were improperly trained and not following the Wilson protocols "even ... in the time available."⁴¹³ The Parents' argument relies, in large part, on the extrinsic evidence outside of the IEP that will not be considered here, as noted above.

22. Where a student does not make progress, but the school district has not materially failed to implement the IEP as written, a lack of progress on its own does not create a material failure to implement.⁴¹⁴

23. In the present case, the May 2024 IEP required the District to deliver 100 weekly minutes of reading SDI. During the Student's fourth grade year, beginning September 12, 2024, the District delivered the required number of weekly minutes and sometimes 20 minutes more per week. Once its literacy SDI began, the District implemented the reading minutes the IEP required.

⁴⁰⁸ See *Van Duyn*, 502 F.3d at 822; 20 USC §1415(f)(3)(E)(ii).

⁴⁰⁹ See *Van Duyn*, 502 F.3d at 822.

⁴¹⁰ See *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d at 1189.

⁴¹¹ Parents' Brief at 33-36.

⁴¹² Parents' Brief at 34-35.

⁴¹³ Parents' Brief at 34.

⁴¹⁴ See *Dep't of Educ. v. A.U.*, No. 11-00085 AWT-BMK, 2011 U.S. Dist. LEXIS 152260, at *12-14 (D. Haw. Nov. 22, 2011), *adopted by Dep't of Educ. v. A.U.*, CV 11-00085 AWT-BMK, 2012 U.S. Dist. LEXIS 9534 (D. Haw., Jan. 25, 2012) (remanding case because hearing officer assessed harm to child but not whether the failure to implement was material).

24. While the Parents contend that District's lack of compliance with the Wilson protocols constitutes a failure to implement the IEP, the IEP does not specify a curriculum, let alone call for strict adherence to the requirements of a particular curriculum. The IEP does not direct the District to deliver every part of its curriculum, using all scripted procedures and employing sufficient minutes to meet the program's minimum standards.

25. The Parents cite to no authority to support a conclusion that the Student's lack of progress, in and of itself, proves a material failure to implement.⁴¹⁵ The Parents also cite to no authority to support the use of a curriculum delivery "best practices" standard in an IEP implementation analysis, particularly where no particular curriculum or curriculum compliance is specified by the IEP.⁴¹⁶ The appropriateness of the District's curriculum and the sufficiency of the IEP's minutes for proper curriculum implementation are issues of the IEP's development, not its implementation. The Parents did not raise the issue of the development of the May 2024 IEP in their Complaint; consequently, the IEP's appropriateness cannot be addressed in this decision.

26. Accordingly, the District has met its burden to show that its implemented reading SDI met the written requirements of the IEP. Consequently, the District did not materially fail to implement the Student's May 2024 IEP beginning September 12, 2024.

Whether the District violated the IDEA and denied the Student FAPE by failing to develop, review, and revise an IEP in December 2024 that was appropriate and reasonably calculated to meet the Student's unique needs with respect to reading.

27. The Parents contend that the District denied the Student FAPE by failing to revise his IEP in December 2024. Their argument asserts the District did not use the information it had available to it regarding the Student's Wilson SDI delivery, his lack of progress, and his anticipated needs.⁴¹⁷

28. The IDEA requires that a school district review and revise a student's IEP periodically, and not less than annually, to determine if goals are being achieved.⁴¹⁸ IEP teams must revise IEPs "as appropriate," in response to lack of expected progress with IEP goals or in the general education curriculum; results from reevaluations; information obtained about the student; the student's anticipated needs; or "other

⁴¹⁵ See Parents' Brief at 33-34; *Dep't of Educ. v. A.U.*, 2011 U.S. Dist. LEXIS 152260, at *12-14.

⁴¹⁶ See Parents' Brief at 33-34.

⁴¹⁷ Parents' Brief at 36-38.

⁴¹⁸ WAC 392-172A-03110(3)(a).

matters.”⁴¹⁹ Information about a student that the IEP team may need to address in considering revision includes existing evaluation data, classroom observations, assessments, and observations from teachers and related services providers.⁴²⁰

29. A student’s instruction “must be ‘specially designed’ to meet a child’s ‘unique needs.’”⁴²¹ A student’s IEP must be “constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.”⁴²²

30. “The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.”⁴²³ The IEP must outline an educational program which provides “merely more than *de minimis*” progress. As stated by the Supreme Court,

It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to drop out.” The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.⁴²⁴

31. In *Falmouth Sch. Dep’t v. Doe*, the First Circuit addressed the appropriateness of a district’s reading SDI for a child with dyslexia and ADHD who was described as a “slow learner.”⁴²⁵ In that case, the school district had declined to offer the student the full implementation of the structured literacy program recommended by multiple professionals, including the district’s director of special education, to target the student’s unique needs.⁴²⁶ The student’s reading level was “pre-K” at the start of first

⁴¹⁹ WAC 392-172A-03110(3)(b), 3(b)(i-v).

⁴²⁰ WAC 392-172A-03025(1)(a-c); see WAC 392-172A-03110(3)(b)(iii).

⁴²¹ *Endrew F.*, 580 U.S. at 400 (quoting 20 USC §§1401(29)) (emphases in original); see WAC 392-172A-01175(1)(c).

⁴²² *Endrew F.*, 580 U.S. at 400 (citing 20 USC §§1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv)).

⁴²³ *Endrew F.*, 580 U.S. at 399.

⁴²⁴ *Endrew F.*, 580 U.S. at 402-03 (quoting *Rowley*, 458 U.S. at 179) (citation modified).

⁴²⁵ *Falmouth Sch. Dep’t v. Doe*, 44 F.4th 23, 38 (1st Cir. 2022).

⁴²⁶ *Falmouth*, 44 F.4th at 32-33.

grade; kindergarten midway through first grade; similar at the end of second grade; and pre-K, kindergarten, or early first grade (depending on the evaluation method) midway through third grade.⁴²⁷ The school district asserted that the student's disabilities reasonably led to such slow progress.⁴²⁸ However, the First Circuit disagreed, relying on the *Endrew F.*'s Court's requirement of an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and the insufficiency of "merely more than de minimis progress."⁴²⁹ The *Falmouth* court held that the student's slow learning required the district to do more to address the underlying causes of the student's slow progress, and found that the district had violated the IDEA and denied the student FAPE by its insufficient efforts.⁴³⁰

32. Also in *Falmouth*, the First Circuit affirmed its previous holding that while school districts "have discretion to 'choose among competing pedagogical methodologies,'" the courts "'are entrusted with ascertaining the adequacy of an IEP's educational components.'"⁴³¹ The court based its holding regarding "adequacy" on the *Endrew F.* Court's requirement that "[t]he instruction offered [be] specially designed to meet a child's unique needs through an individualized education program."⁴³²

33. In this case, the Student's IEP team met on December 19, 2024, to review the Parent's concerns. By that date, the District knew or should have known that the Student's IEP was not "reasonably calculated to enable" the Student to make reading progress. The District should have known it was "appropriate" to revise the Student's IEP, given the available "information about the [S]tudent," such as his lack of correctly assessed Wilson progress, and "other matters," such as the District's unknowingly incomplete Wilson instruction.⁴³³

34. The District cites to several cases to argue that "Even if the ALJ found that Student's rate of reading progress had slowed in any material fashion, lack of progress towards an IEP goal does not in itself mean that an IEP is inappropriate or that a student is being denied a FAPE."⁴³⁴ However, each of the four cases the District cited to make this point are opinions regarding the appropriateness of an IEP at the time it

⁴²⁷ *Falmouth*, 44 F.4th at 31-32.

⁴²⁸ *Falmouth*, 44 F.4th at 38.

⁴²⁹ *Falmouth*, 44 F.4th at 38-39.

⁴³⁰ *Falmouth*, 44 F.4th at 36, 38-39.

⁴³¹ *Falmouth*, 44 F.4th at 38 (quoting *Lessard v. Wilton Lyndeborough Cooperative School District*, 518 F.3d 18, 28-29 (1st Cir. 2008)).

⁴³² *Falmouth*, 44 F.4th at 38 (quoting *Endrew F.*, 137 S. Ct at 999) (first alteration and emphases in original).

⁴³³ *Endrew F.*, 580 U.S. at 399; WAC 392-172A-03110(3)(b)(iii), (v).

⁴³⁴ District's Post Hearing Brief at 20 ("District's Brief").

was developed; none discuss the decision of whether to revise an IEP before the next annual review or how progress can inform that decision.⁴³⁵

35. Insofar as the District relied on the Student's i-Ready scores, the District knew by the December 2024 team meeting that the Student's scores in spring and fall 2024 showed little growth from his third-grade winter scores, despite the Student having received reading SDI since early March 2024. "A standardized test is, by definition, designed to measure a child's progress without regard to her individual circumstances, let alone with regard to the individual circumstances for that child identified in her IEP."⁴³⁶ However, the i-Ready is not a standardized test, but rather an adaptive test that adjusts future questions based on submitted answers. Additionally, the District's witnesses and documents show they do rely on i-Ready scores in assessing the Student's reading and auditory comprehension.

36. The record is unclear on the date the Student's report card would have been released. If it was available at the time of the December 19, 2024 IEP team meeting, it was not a reliable indicator of the Student's progress in reading. The Student's grades reflected a consideration of his performance while receiving his accommodations, including text-to-speech, so he was listening, not reading. Without his accommodations, instead of scores of "2" ("Basic") in reading and language, some or all these scores would have been "1" (Below grade level").

37. By the meeting date, the District should have known that the Student was not receiving the full reading SDI services communicated by the IEP team to the Parents when the IEP was developed. The evidence produced at the hearing, and available to the District as of December 19, 2024, shows that fewer than two Wilson lessons were being delivered weekly, when two should have been delivered. Based on the dictation sheets the Student completed, the true number may have been fewer than one lesson weekly. Further, the evidence was available that not all parts of Wilson lessons were delivered according to the program's directions, and some parts were not delivered at all. It was also apparent that Ms. Zimmerman did not test the Student on part 8 of his Wilson lessons before progressing him in Wilson sub-steps, resulting in the Student being advanced in Wilson sub-steps before he had demonstrated mastery of the material. While it is commendable that the District had the Student's Wilson instruction observed, the observer and the Student's case manager did not collect all the data available to them and did not provide the oversight they should have of the Student's

⁴³⁵ See District's Post Hearing Brief at 20 (citing *J.G. v. Douglas County Sch. Dist.*, 552 F.3d 786, 801 (9th Cir. 2008); *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117 (9th Cir. 2011); *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008); *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. # 221*, 375 F.3d 603, 616 (7th Cir. 2004)).

⁴³⁶ *G.D. v. Swampscott Pub. Sch.*, 27 F.4th 1, 12 (1st Cir. 2022).

reading SDI. Further, had the team paid attention to the fact that the Student was receiving fewer Wilson lessons weekly than the team communicated to the Parents in both March and December 2024, they would have known that the Student's reading SDI minutes were insufficient to provide the services the team believed they were.

38. By the December 2024 team meeting, the District knew that the Student's reading goal had been tested only two times from September to December 2024, and that his second score, in October 2024, showed significant regression from his first score earlier that month. While the data the IEP team had at the meeting did not establish what the Student's score would have been in November or December 2019, the failure to test suggested a lack of time on the Student's instructor's part to monitor the Student's reading goal. This fact should have prompted the District to communicate with the Student's instructor to understand what was interfering with goal monitoring.

39. As noted above, the Student was also being advanced in Wilson sub-steps without appropriate testing. Had the Student's Wilson progress been tested as required by the Wilson program, this would have shown the Student's difficulty progressing in his Wilson lessons, within the limited reading SDI minutes available to him. Had the District's observation of the Student's Wilson lesson investigated more aspects of the Student's instruction, his improper Wilson advancement would have been clear, and his need for more minutes would have been more apparent to the IEP team. The evidence does not support a conclusion that the District's Wilson progress assessment is accurate.

40. The District argues the Student progressed in his reading goal from his third-grade score, and "no one was contesting the quality of Ms. Zimmerman's provision of Student's reading SDI."⁴³⁷ However, had either Ms. Mills or Ms. Kakade exercised more diligent oversight over the Student's reading SDI, the IEP team would have been fully aware of the problems with this instruction and the limitations posed by the May IEP's time constraints. Such oversight would have been more in line with OSPI's recommendations in the OSPI Guide, as well.

41. Though the Student's IQ is not high, and he has multiple difficulties that may make academic progress difficult, students with dyslexia can be taught to read when they have appropriate instruction. SDI must be designed "to address the unique needs that result from the student's disability."⁴³⁸ Both the Student's May 2024 IEP's reading SDI minutes and the increased amount the District provided in 2024-2025 did not

⁴³⁷ District's Brief at 19-20.

⁴³⁸ WAC 392-172A-01175(1)(c); see *Endrew F.*, 580 U.S. at 400; *Falmouth*, 44 F.4th at 38-39.

allow for the proper implementation of Wilson. The missing steps in the Student's Wilson instruction, including work to improve his spelling and vocabulary, were important ones to help the Student to develop literacy.⁴³⁹ The Student also needed more repetition of material to learn more easily, given his memory difficulties and need for reinforcement. His stalled progress in Wilson's Step 1.6, alongside the imperfect and incomplete delivery of the District's chosen curriculum, of which the District had been made aware of by the IEP team meeting date, together indicate that the Student needed additional minutes of reading SDI with more faithful adherence to the Wilson curriculum to be able to make progress.⁴⁴⁰

42. By December 19, 2024, it was evident that the Student's IEP was providing the Student with minimal progress, below a "basic floor of opportunity," and that it did not meet its "essential function" of allowing the Student to make "academic and functional advancement."⁴⁴¹ Consequently, as of this date, the IEP was not reasonably calculated to allow the Student to make appropriate progress.⁴⁴² The District had sufficient information available to it to show it should revise the Student's IEP to provide more reading SDI minutes and better adherence to its chosen curriculum. The District's refusal to do so deprived the Student of the educational benefit he would have received for the next five months.

43. Accordingly, the preponderance of the evidence establishes the District's failure to revise the Student's May 2024 IEP in December 2024 violated the IDEA and denied the Student FAPE.

Whether the Parents are entitled to their requested remedies.

44. The Parents have requested multiple remedies, including declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE by the District's actions, compensatory education, reimbursement for private tutoring costs, private placement in a literacy program meeting certain requirements, and an IEP meeting several requirements.

45. As concluded above, the District violated the IDEA and denied the Student FAPE by delaying nine school days to implement the Student's May 2024 IEP at the start of the 2024-2025 school year, and by failing to revise the Student's IEP in December 2024. As such, the Parents are entitled to remedies for these violations for the two weeks from August 29, 2024 through September 11, 2024, and for the five months

⁴³⁹ *Endrew F.*, 580 U.S. at 400.

⁴⁴⁰ *See Endrew F.*, 580 U.S. at 399.

⁴⁴¹ *Endrew F.*, 580 U.S. at 399; *Rowley*, 458 U.S. at 201.

⁴⁴² *Endrew F.*, 580 U.S. at 403.

from December 19, 2024 until approximately May 19, 2025, when the Parents began removing the Student from his reading SDI.

Modifications to the Student's IEP for the 2025-2026 school year

46. The Parents requested a remedy of an IEP that is reasonably calculated to facilitate the Student's meaningful educational progress including that:

- i. The IEP shall expressly require the District to implement, with fidelity, an evidence-based structured literacy program designed for students with dyslexia ("program") for the Student's SDI in reading;
- ii. The special education teacher or paraeducator delivering the program shall be qualified to deliver the program and be fully trained in its use;
- iii. The program shall be delivered in the scope and sequence intended by its designers, including use of the program's assessments and progress monitoring tools; and
- iv. The Student's annual goals in the IEP shall explicitly reflect the scope and sequence of the District's chosen program;

47. The District is directed to have the Student's IEP team meet within 10 school days from the entry of this order to prepare a revised IEP for the Student in line with the directives in the five sub-sections below.

Request for an IEP requiring the District to implement an evidence-based structured literacy program designed for students with dyslexia

48. School districts are generally entitled to deference in deciding what programming is appropriate for a student.⁴⁴³ For that reason, a student's IEP need not specify the instructional method to be used unless the methodology is necessary to enable the student to receive FAPE.⁴⁴⁴

49. In this case, the parties do not dispute that an evidence-based structured literacy program designed for students with dyslexia is appropriate for the Student. The District implemented such a program, albeit with modifications that hindered the

⁴⁴³ *J.L. v. Mercer Island*, 575 F.3d at 1031 n.5 (citing *Rowley*, 458 U.S. at 206).

⁴⁴⁴ *Id.* at 1039 (citing 64 Fed. Reg. 12,552); *R.E.B. v. Haw. Dep't of Educ.*, 770 F. Appx 796, 800-01 (9th Cir. 2019); see also *Dep't of Education, Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46665 (2006) (nothing in IDEA requires IEP to include specific methodology; methods may be addressed in IEP if necessary for child to receive FAPE).

Student from making appropriate progress. Further, the evidence has established that the Student, due to his disabilities, requires relatively intensive tier 3 services in an evidence-based structured literacy program for students with dyslexia in order to receive an appropriate education.⁴⁴⁵

50. Thus, the Parents' request is granted. The Student's prospective IEP must state that the Student requires his literacy SDI through an evidence-based structured literacy program designed for students with dyslexia. To clarify, "literacy SDI" refers to instruction in decoding and encoding, such as the 10 parts of a Wilson lesson. It does not refer to the Student's other writing-related SDI, which is not at issue in this case.

Requests for an IEP requiring the District to (1) implement its literacy program with fidelity and (2) deliver the program in the scope and sequence intended by its designers, including use of the program's assessments and progress monitoring tools

51. The Parents have also asked for the Student's structured literacy curriculum to be implemented with fidelity, including with respect to scope and sequence, assessment, and monitoring tools.

52. It is concluded that in general, a structured literacy curriculum may not need to be implemented with perfect fidelity if a school district is following the requirement that an IEP and its services be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁴⁴⁶ Modifying a structured literacy program may be reasonable under this requirement, if a student's unique needs require accommodations in delivery or a student's skills and needs show that reductions in services are permissible.⁴⁴⁷

53. However, in this case, several of the requirements of the District's chosen curriculum that were omitted were things that the Student needed to make appropriate progress towards future literacy. These requirements included the minimum of two lessons weekly; spelling and morpheme identification reinforcement through a Wilson lesson's part 8; evidence of sub-step mastery before advancement; and vocabulary development and growth of syntactic understanding through a lesson's part 10. The evidence suggests these and other omissions were made due to time constraints and insufficient instructor training or knowledge.

⁴⁴⁵ See *R.E.B. v. Haw. Dep't of Educ.*, 770 F. Appx at 800-01.

⁴⁴⁶ *Endrew F.*, 580 U.S. at 399.

⁴⁴⁷ See WAC 392-172A-01175(3)(c); P43, p2 (the Wilson manual explains the difference between permissible accommodations and impermissible modifications to the program).

54. Further, the evidence suggests that at least with Wilson, the District's current chosen tier 3 structured literacy program, the Student requires all the parts of the program's structural and implementation requirements to make even moderate progress. With 100 to 120 minutes of small group Wilson instruction that omitted key components, his progress was stalled once he was advanced, without proper evidence of mastery, to his first new content after starting fourth grade. Even once he had 120 minutes of one-on-one instruction from Ms. Lukies in addition to the District's instruction, his progress was slower than Wilson predicts for students with fewer cognitive difficulties.

55. Thus, it is concluded that in this case, to reflect the unique needs of the Student, and allow him to access the "basic floor of opportunity" that is functional literacy, the District must implement its chosen structured literacy program with full compliance with the program's requirements.⁴⁴⁸ This includes all requirements for specific lesson and lesson part delivery; scope and sequence; error recording; assessing sub-step and step mastery; progress reporting, and all implementation directions, including teaching methods, scripts, procedures, strategy, and tone. Though accommodations may be reasonable, depending on the Student's needs, and 100 percent fidelity is not being ordered, full compliance with all material, pedagogical pieces of the curriculum must be made, with no parts of lessons, scripted instruction, or other program requirements omitted.

56. Further, the Student's prospective IEP must specifically state the above requirements.

Request for annual reading goals that explicitly reflect the scope and sequence of the District's chosen program

57. The Parents have asked for the Student's reading goals in his IEP to "explicitly reflect the scope and sequence of the District's chosen program."

58. An IEP must contain "[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 meet each of the student's other educational needs that result from [their] disability."⁴⁴⁹ There must be a relationship between the present levels of performance and the goals and objectives.⁴⁵⁰

⁴⁴⁸ *Rowley*, 458 U.S. at 201.

⁴⁴⁹ WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2).

⁴⁵⁰ *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

59. In the March and May 2024 IEPs, the Student's reading goals were related to Wilson content that was likely a year or multiple years away from the Student's present levels. This was not related to his present levels of performance.⁴⁵¹ While the Student's IEP team may require that the Student's reading goal or goals relate or connect somehow to the general education curriculum, the team must ensure that goals do not conflict with the District's chosen structured literacy program. They must be related to the Student's present level of performance.⁴⁵²

60. Goals far outside of the Student's current focus of study, as in the 2024 IEPs, do not promote the Student's progress in the District's chosen curriculum. Rather, they detract from the Student's structured literacy SDI and risk confusing him unnecessarily if the instructor starts teaching to the goal, in conflict with the curriculum's scope and sequence. Such a conflict will slow his progress. A goal that reflects his current and near future step or level in his literacy SDI program, as in the Student's March 2025 IEP, will better assess the Student's progress in the District's chosen curriculum.

61. Consequently, the Student's reading goal or goals must be related to the Student's present and near future levels of performance in his structured literacy curriculum, so that the goals promote and reflect his progress through the curriculum.

62. However, they need only "explicitly" reflect the scope and sequence of the Student's literacy curriculum insofar as that is helpful to the team and instructors to understand and implement the goal and to monitor the Student's progress.

Minutes of structured literacy SDI required for the IEP

63. It is also concluded that the minutes and the instructional mode that the Student requires to make adequate progress must allow for sufficient repetition. His IEP must provide 240 minutes weekly of structured literacy SDI in one-on-one instruction.

64. This conclusion is based on several factors. First, though his Wilson progress was still slow, the Student had clear improvement once he started receiving 120 minutes of one-on-one instruction in every part of Wilson from Ms. Lukies, a well-trained, experienced provider. This was in addition to his 100 to 120 minutes of small-group instruction in many aspects of Wilson from a capable District instructor, though her Wilson training or knowledge was lacking. Additionally, the Wilson program recommends far more than 240 one-on-one minutes for students with complex cognitive profiles, like the Student, but states that 240 minutes of one-on-one

⁴⁵¹ See *Seattle Sch. Dist.*, 34 IDELR 196.

⁴⁵² See *Seattle Sch. Dist.*, 34 IDELR 196.

instruction is the recommended minimum for such students. Further, Ms. Lukies, with her Wilson certification, her experience teaching Wilson to many students, and her personal knowledge and observation of the Student after two hours weekly with him for over six months, recommended 360 minutes as the ideal for the Student, but 240 minutes as the minimum.

65. The conclusion that the Student needs 240 weekly minutes of literacy SDI is also made with consideration to the IDEA's requirement for services to be delivered in the least restrictive environment and the Student's need to have time with his general education peers.

66. School districts must ensure that special education students are served in the "least restrictive environment."⁴⁵³ This means students should be served "(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily."⁴⁵⁴

67. WAC 392-17A-02060(2) requires that decisions regarding a student's educational placement be based on four criteria: (a) The student's IEP; (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070...; (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain [their] annual goals; and (d) A consideration of any potential harmful effect on the student or on the quality of services [that they need]."⁴⁵⁵

68. The Ninth Circuit has developed a four-part test to determine whether a student's placement represents the least restrictive environment, as first set out in *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994).⁴⁵⁶ The four factors to consider are "(1) the academic benefits of placement in a mainstream setting, , with any supplementary aides and services that might be appropriate; (2) the non-academic benefits of mainstream placement, such as language and behavior models provided by non-disabled students; (3) the negative

⁴⁵³ WAC 392-172A-02050.

⁴⁵⁴ WAC 392-172A-02050.

⁴⁵⁵ See 34 CFR 300.116(b)(2).

⁴⁵⁶ *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1137 (9th Cir. 2003); see *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994).

effects the student's presence may have on the teacher and other students; and (4) the cost of educating the student in a mainstream environment....”⁴⁵⁷

69. The first criterion of the Ninth Circuit’s test involves consideration of “the educational benefits available to the child in a regular classroom, supplemented with appropriate aids and services, as compared to the educational benefits of a special education classroom.”⁴⁵⁸ “While every effort is to be made to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child’s IEP goals.”⁴⁵⁹ “The IDEA only requires a state educational agency to mainstream a disabled student to the maximum extent appropriate. It would be inappropriate to mainstream a child when he can receive no educational benefit from such a policy.”⁴⁶⁰

70. The educational benefit a child derives from a one-on-one aide in a general education environment verses placement in a special education classroom is frequently addressed by courts to determine whether a student was placed in their least restrictive environment.⁴⁶¹ Working with a one-on-one aid in the general education environment, separately from the rest of the class “mistakes proximity for participation”⁴⁶² and “is not meaningful inclusion.”⁴⁶³

71. In this case, the May 2024 IEP’s service matrix provided for 220 weekly minutes of SDI in the special education setting, and 1,445 minutes, or 87% of the Student’s total time, in the general education classroom. These quantities did not change in the Student’s March 2025 IEP. An increase from 100 to 240 weekly minutes of reading SDI in a special education setting, with no other changes to services or the total of 1,665 weekly educational minutes, results in 360 minutes in the special education setting and 1,305 minutes, or 78% of the Student’s time, in the general education classroom.

72. It is concluded that this reduction of the Student’s time in a general education setting is appropriate under the law. Under WAC 392-17A-02060’s four factors, the primary consideration in making a placement decision is what is needed to deliver the

⁴⁵⁷ *Ms. S. v. Vashon Island*, 337 F.3d at 1137 (citation modified).

⁴⁵⁸ *Ms. S. v. Vashon Island*, 337 F.3d at 1137 (citation modified).

⁴⁵⁹ *City of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (9th Cir. 1996).

⁴⁶⁰ *Poolaw v. Bishop*, 67 F.3d 830, 838 (9th Cir. 1995)

⁴⁶¹ *E.g.*, *Clovis Unified Sch. Dist.*, 114 LRP 548 (CA SEA 2013); *Patterson Joint Unified Sch. Dist.*, 110 LRP 28776 (CA SEA 2010); *Glendale Unified Sch. Dist.*, 54 IDLER 306 (CA SEA 2010).

⁴⁶² *Las Virgenes Unified Sch. Dist. v. S.K.*, No. CV-05-8467-GAF, 54 IDELR 289, 110 LRP 35620 (C.D. Cal. June 14, 2010).

⁴⁶³ *Hollister Sch. Dist.*, 60 IDELR 172 (CA SEA 2013).

services the Student requires to receive FAPE. Under these factors, and under the IDEA, the Student's placement must be in "the least restrictive environment [that] also meets [his] IEP goals."⁴⁶⁴ The evidence established that the Student requires an increased number of literacy SDI minutes to receive FAPE.⁴⁶⁵ His one-on-one instruction, wholly different from the general education curriculum of his peers, cannot be conducted as a part of the general education curriculum.⁴⁶⁶

73. The Ninth Circuit's "Rachel H." test emphasizes the benefits for the Student by mainstreaming and the negative effects and costs to others from this process.⁴⁶⁷ The first factor, comparing the Student's educational benefit in a general education setting versus in a special education setting, strongly supports a special education setting because the Student cannot receive FAPE if his reading SDI consists of the general curriculum supplemented by an aide's assistance.⁴⁶⁸ The second factor, the non-academic benefits of a mainstream setting, weighs in favor of a special education setting; while the Student will benefit from access to his peers, separate instruction from the rest of the class "is not meaningful inclusion." Additionally, no evidence suggests the Student requires nondisabled peers to model appropriate behavior for him, and as a rising fifth grader, he could be embarrassed to be separately instructed in the same classroom as his general education peers. Further, with 78% of his time in a general education setting, the Student will still have ample time with his peers.⁴⁶⁹ The third factor, negative effects to the teacher and other students, weighs in favor of a mainstream placement, as no negative effects would come to anyone else; the Student is well-liked by his instructors and principal, and has friends in his general education classroom.⁴⁷⁰ There is no evidence regarding the fourth factor, the cost of education in a mainstream placement.⁴⁷¹

74. The Ninth Circuit's test weighs in favor of a special education setting for the Student's SDI that cannot occur properly in a mainstream setting, but placement in a mainstream setting for all other instruction.⁴⁷² This is because two factors weigh in favor of a special education setting for the SDI that requires it, and there is no dispute he should be in a mainstream setting for his remaining school time. The overarching consideration under the IDEA is finding the least restrictive setting that can provide

⁴⁶⁴ *City of San Diego*, 93 F.3d at 1468; see WAC 392-17A-02060(a-d).

⁴⁶⁵ See WAC 392-17A-02060(2)(a-c).

⁴⁶⁶ See WAC 392-17A-02060(2)(d); *Hollister Sch. Dist.*, 60 IDELR 172.

⁴⁶⁷ See *Ms. S. v. Vashon Island*, 337 F.3d at 1137.

⁴⁶⁸ See *Ms. S. v. Vashon Island*, 337 F.3d at 1137; *Poolaw*, 67 F.3d at 838.

⁴⁶⁹ *City of San Diego*, 93 F.3d at 1468; see *Ms. S. v. Vashon Island*, 337 F.3d at 1137.

⁴⁷⁰ See *Ms. S. v. Vashon Island*, 337 F.3d at 1137.

⁴⁷¹ See *Ms. S. v. Vashon Island*, 337 F.3d at 1137.

⁴⁷² See *Ms. S. v. Vashon Island*, 337 F.3d at 1137.

FAPE; the Student requires 240 minutes of literacy SDI, which must occur in a special education setting.⁴⁷³

75. The requirements for the least restrictive environment, a “basic floor of opportunity,” and an IEP that is “reasonable,... not ... ideal” are all considered here, and lead to the conclusion to require 240 literacy SDI minutes for the Student, rather than the more ideal amounts of 360 or 420 minutes.⁴⁷⁴ 240 one-on-one literacy SDI minutes are necessary for the Student to have an IEP that is “reasonably calculated to enable [him] to make progress appropriate, in light of his circumstances,” and to eventually achieve functional literacy.⁴⁷⁵

76. Consequently, it is concluded that the Student requires 240 minutes weekly in one-on-one instruction for his literacy SDI.

77. As in the IEP team’s Proposed Matrix 2 considered for the Student’s 2025 IEP, if it makes sense for the Student’s schedule, some of these 240 one-on-one minutes may be delivered as part of the Student’s writing SDI instead of during his reading SDI, as long as those minutes will be devoted to the spelling and writing portions of the District’s structured literacy curriculum, and not to other writing instruction.

Request for requirement that professionals delivering the program to “be qualified to deliver the program and be fully trained in its use”

78. The Parents have requested that the Student’s literacy SDI instructors be properly trained in the District’s structured literacy program.

79. WAC 392-172A-02090(1)(i) provides that “[s]pecial education... must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators may assist in the provision of special education..., provided that the instruction is designed and supervised by special education certificated staff.... Student progress must be monitored and evaluated by special education certificated staff....”

80. When appropriate for the case, courts may order additional training for a child’s teachers as a remedy for violations of the IDEA.⁴⁷⁶

⁴⁷³ See *Ms. S. v. Vashon Island*, 337 F.3d at 1137; *City of San Diego*, 93 F.3d at 1468.

⁴⁷⁴ *Endrew F.*, 580 U.S. at 399; *Rowley*, 458 U.S. at 201; see *Ms. S. v. Vashon Island*, 337 F.3d at 1137; WAC 392-17A-02060(2).

⁴⁷⁵ *Endrew F.*, 580 U.S. at 399; see *Rowley*, 458 U.S. at 201.

⁴⁷⁶ *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (cited with approval in *R.P. v. Prescott*, 631 F.3d at 1125).

81. In this case, several District staff lacked sufficient knowledge of the Wilson program for the Student to receive SDI providing FAPE. First, the Student's Wilson instructor did not have sufficient knowledge about the curriculum to implement it according to its directives and pedagogical requirements. While it is concluded that many problems with the District's delivery of Wilson were due to time constraints, the instructor did not realize she was delivering part 8 incorrectly or advancing the Student in sub-steps inappropriately. Second, the District's observer of the Student's Wilson instruction testified that she checked the Wilson instructor manual as she observed the lesson and noted no problems. She did not appear to be aware that the lesson's part 8, conducted that day, was not conducted correctly according to the clear dictates of the manual. She also did not appear to understand the requirements for part 10, in that she believed it could be delivered by a student simply listening to an audio book, rather than by engaging with an instructor using the scripted protocol. Additionally, she did not verify adherence to the Wilson requirements by reviewing the Student's past work, the paraeducator's records, or the Student's general education classroom instruction; she believed the program was being delivered "with fidelity" despite several omissions and errors. This employee trains other District staff in Wilson, though the record does not establish how many educators have been trained by this individual. Third, and finally, the Student's case manager during the fall semester of the Student's fourth grade year did not have a good understanding of the Wilson curriculum and did not oversee the Student's Wilson instruction to be sure it was being delivered correctly. She did not monitor and evaluate the Student's progress, only recording the data the paraeducator reported to her. Based on these facts, it is concluded that these individuals were not "appropriately qualified" to deliver the Student's Wilson SDI with sufficient adherence to the curriculum to provide the Student FAPE.⁴⁷⁷

82. Consequently, the District must provide training and/or study time to its educators who will instruct the Student in his structured literacy program, sufficient to enable the instructors to implement every part of the program with the "full compliance" directed above.⁴⁷⁸ The District must verify these instructors have mastery of all instructional requirements. For this reason, the District will also need to provide training and/or study time to the special education staff who will verify the instructors' mastery, sufficient so that this staff has sufficient mastery of the program to identify all instructional errors and failures to adhere to the program requirements.

83. If the Student's literacy SDI is delivered by a paraeducator, the District must also ensure that the paraeducator receives oversight and supervision from special

⁴⁷⁷ WAC 392-172A-02090(1)(i).

⁴⁷⁸ See *Park v. Anaheim*, 464 F.3d at 1034 (directing the school district to better train the student's teachers as a compensatory remedy).

education certificated staff (referred to below as a “case manager”), as required, and that the oversight be provided by someone who is appropriately qualified to understand the curriculum requirements and identify errors in instruction.⁴⁷⁹ The special education staff who will verify the instructors’ mastery must similarly verify this case manager’s mastery.

84. The training or study time required for the instructors, case managers, and verifying staff to have full mastery of all the curriculum’s lesson parts, implementation requirements, and all other pieces required for the “full compliance” directed above must occur within 30 calendar days from the date of this order.

85. Finally, the requirements listed in this subsection for the training of the Student’s instructors, his case manager, and the verifying staff, sufficient to deliver and verify “full compliance,” as directed above, must be included in the Student’s IEP for the 2025-2026 school year.

Compensatory education and reimbursement for past costs

86. The Parents seek two forms of equitable relief that courts treat as “compensatory education.” These are in the form of reimbursement for private tutoring costs and compensatory education to allow the Student to obtain the educational benefit he should have received.

87. “Compensatory education is an equitable remedy that seeks to make up for ‘educational services the child should have received in the first place,’ and ‘aim[s] to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.’”⁴⁸⁰ “There is no obligation to provide a 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.”⁴⁸¹

88. Compensatory education awards may be fashioned to provide individualized relief for students and parents. As noted in *R.P. v. Prescott Unified School District*:

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

⁴⁷⁹ See WAC 392-172A-02090(1)(i).

⁴⁸⁰ *R.P. v. Prescott*, 631 F.3d at 1125 (quoting *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005) (alteration in original)).

⁴⁸¹ *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

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).⁴⁸²

89. In this case, the District denied the Student FAPE by failing to implement his IEP for nine school days at the start of his fourth-grade year and by failing to revise the Student's IEP in December, after the District should have known the Student's reading SDI minutes were insufficient to provide him FAPE.

90. Regarding reimbursement, the Parents informed the District of their concerns regarding the Student's Wilson instruction in October 2024 and then in November 2024 arranged for private, paid instruction for the Student from a certified Wilson instructor. They spent \$75 per hour for tutoring, for a total of \$2,100.00 from December 19, 2024 through April 2025. This is calculated from expenditures of \$150 in December 2024; \$600 in January 2025; \$375 in February 2025; \$525 in March 2025; and \$450 in April 2025. This does not account for the Parent's tutoring costs from November 13, 2024 through December 18, 2024 and beginning May 1, 2025; it is concluded the Parents' reimbursement should be balanced with the compensatory education minutes ordered below.

91. Consequently, the District is ordered to reimburse the Parents for \$2,100.00 within 45 days of the entry of this order.

92. Regarding compensatory education, the Student lost SDI minutes due to the District's two denials of FAPE. He would have received approximately 200 additional minutes of reading SDI at the start of the year (under the terms of the May 2024 IEP), and 120 to 140 additional minutes for the five months from December 19, 2024 to May 19, 2025.

93. The evidence in the record establishes the Student's need for improved reading instruction, to build foundational skills. It is appropriate to provide compensatory education for the reading instruction that the District failed to provide at the start of the Student's fourth grade year and after refusing to revise the Student's IEP in December 2024. Additionally, it is appropriate to provide this instruction by way of

⁴⁸² *R.P. v. Prescott*, 631 F.3d at 1125; see *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370, 105 S. Ct. 1996 (1985) (discussing 20 USC § 1415(e)(2)) ("We are confident that by empowering the court to grant "appropriate" relief Congress meant to include retroactive reimbursement to parents as an available remedy....").

private tutoring because the Student has started private tutoring with a well-trained provider and is doing well with this instruction.

94. Accordingly, the District shall pay for 46 hours of literacy tutoring 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 \$125.00 per hour.

95. The District shall contract with the chosen provider, so long as the provider is available and willing to provide this service, and the tutoring shall be available to the Student within 30 calendar days of the Parent's identification to the District of their chosen provider. The services will be delivered at any time during the calendar year following the finalization of the contract, 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 tutoring sessions under the provider's billing policy, that time shall count toward this compensatory education award.

96. The award is calculated as follows:

- a. 100 minutes per week of reading instruction (100 minutes per week to be provided under the May 2024 IEP that were not provided from August 29 to September 11, 2024) x 2 weeks (number of weeks from August 29 to September 11, 2024) = 200 minutes/60 minutes per hour = 3.33 hours, plus
- b. 120 minutes per week of reading instruction that should have been provided x 21 weeks (number of weeks from December 19, 2024 to May 17, 2024) = 2,520 minutes/60 minutes per hour = 42.00 hours;
- c. 42.00 hours plus 3.33 hours = 45.33 hours, rounded up to 46 hours of tutoring.

97. Although a compensatory award of one-on-one instruction is sometimes reduced to account for the fact that students usually progress more rapidly with one-on-one instruction as opposed to instruction in a group, it is not appropriate to reduce the award in this case. The evidence in the record establishes that the Student has a significant reading problem, and that he requires one-on-one instruction for his reading SDI through the District. Further, given that he is a rising fifth grader who is several grade levels behind in reading, the longer his literacy instruction takes, the more difficulty he will face in accessing his education.

98. In summation, the District is ordered to reimburse the Parents for \$2,100.00 of their tutoring expenses within 45 days of the entry of this order. Further, the District shall pay for 46 hours of literacy tutoring, under the terms described above.

Request for private placement in a literacy program

99. In their Complaint, the Parents requested “private placement in a literacy program meeting certain requirements.” During the hearing, Ms. Parent requested that all reading SDI be privately provided, due to her displeasure with the District’s providers, particularly given the Student’s emotional distress after his special education case manager changed.

100. As discussed above, the IDEA requires that students be placed in the least restrictive environment that can provide them with FAPE.⁴⁸³ WAC 392-172A-02055 discusses the “continuum of alternative placements,” with the general education setting being the least restrictive, the special education setting being next, and home instruction being more restrictive than private or “special schools.”⁴⁸⁴

101. Placing the Student in home instruction or private instruction for his reading SDI is not appropriate at this time. It is reasonable to presume the District will be able to deliver appropriate instruction to the Student as directed in this decision. Further, the Student’s own educational needs and disabilities are not so severe that he is unable to attend a public school or unable to receive FAPE inside a public school; a home setting and a private placement are both too restrictive with these facts.⁴⁸⁵

102. This is not to conclude that Ms. Parent’s concern about the emotional impact on the Student from potentially improper teaching methods is not important, but merely that this decision is not the right avenue to solve the problem identified. Now that the District is aware of the complaint about its teacher through the testimony at the hearing and the contents of this decision, the District must have an opportunity to provide any guidance or retraining necessary. It is noted that earlier in the remedy section, regarding the order that the Student’s IEP require “full compliance” with the Student’s literacy program’s requirements, the directive included compliance with the implementation instructions regarding “tone,” which the Wilson manual states is important. Further, if the Parents have any concerns about the treatment of their child, they can report this to the school and seek improvements; removing the Student from school and placing him in a more restrictive environment is not the appropriate way, at this time, to solve the problem the Ms. Parent identified.

103. Consequently, the Parents’ request for private placement for the Student’s reading SDI is denied.

⁴⁸³ WAC 392-172A-02050; *City of San Diego*, 93 F.3d at 1468.

⁴⁸⁴ WAC 392-172A-02055(2)(a).

⁴⁸⁵ WAC 392-172A-02050; WAC 392-172A-02055(2)(a); *City of San Diego*, 93 F.3d at 1468.

ORDER

1. The District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education.
2. The Parents are entitled to the remedies as directed in COLs 47, 50, 55, 56, 61, 76, 82-85, 98.
3. The Parents' remaining requested remedy is denied.

SERVED on the date of mailing.



Marek E. Falk
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.

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:

Parents

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Dated August 29, 2025, at Olympia, Washington.

Lan Le

Representative
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cc: Administrative Resource Services, OSPI