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

SEATTLE - OAH

IN THE MATTER OF:

NORTHSHORE SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2013-SE-0038

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Michelle C. Mentzer in Bothell, Washington, on September 25, 26, 27 and 30, and October 3, 2013. The Parents of the Student whose education is at issue¹ appeared and represented themselves. The Northshore School District (District) was represented by Lynette Baisch and Parker Howell, attorneys at law. The following is hereby entered:

STATEMENT OF THE CASE

The Parents filed a due process hearing request (complaint) on April 10, 2013, and an amended complaint on June 11, 2013. Prehearing and other orders were entered on April 15, May 10, June 12, June 21, July 15, August 19, October 1, and October 10, 2013.

The due date for the written decision was continued to 30 days after the close of the hearing record, based on a motion by the District that was not opposed by the Parents. See First Prehearing Order of May 10, 2013. The record of the hearing closed with the submission of post-hearing briefs on November 8, 2013. Thirty days thereafter is December 8, 2013, which is the due date for the written decision.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: J-1 through J-26.

Parent Exhibits: P-1 through P-16; P-18 through P-25; P-28; P-30; P-33; P-35; P-36; P-38; P-40 through P-44; and P-46.

District Exhibits: D-1 through D-7.

The following witnesses testified under oath. They are listed in order of their appearance:

Darcy Kelley, private speech language pathologist (SLP);
Yvonne Brooks, District SLP;

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

Beate Peter, PhD, research assistant professor, University of Washington;
Becky Anderson, District assistant superintendent of special services;
Annette McNabb, District principal;
Kim Durkin, District director of elementary special education;
The Mother;
Paula Busch, District occupational therapist;
Carol Michel, District school psychologist;
The Father;
Cindy Gregson, District special education teacher;
Molly Knapp, District special education teacher; and
Shelly Fields, District family advocate and coordinator of Birth-to-Three contracts.

ISSUES

1. Whether the District violated the IDEA and denied the Student a FAPE by failing to timely and appropriately evaluate his motor skills prior to the February 2013 reevaluation;
2. Whether the District violated the IDEA and denied the Student a FAPE in the December 2011 individualized education program (IEP) by failing to:
 - a. individualize the IEP to address the Student's unique needs;
 - b. offer appropriate speech-language services;
 - c. provide speech-language services as specified in the IEP;
 - d. offer appropriate occupational therapy services;
 - e. consider, discuss, or offer an extended school year (ESY) program;
 - f. provide appropriate measurable annual goals;
3. Whether the District violated the IDEA and denied the Student a FAPE in the December 2012 IEP by failing to:
 - a. individualize the IEP to address the Student's unique needs;
 - b. offer appropriate speech-language services;
 - c. offer appropriate occupational therapy services;
 - d. consider, discuss, or offer an ESY program;
4. Whether the District violated the IDEA and denied the Student a FAPE in the March 2013 IEP amendment by failing to:
 - a. individualize the IEP to address the Student's unique needs;
 - b. offer appropriate speech-language services;
 - c. offer an appropriate ESY program;
5. Whether the District violated the IDEA and denied the Student a FAPE by failing to make some IEP decisions within the IEP team;
6. Whether the Parents are entitled to the following requested remedies, or other equitable relief as appropriate:
 - a. Compensatory education consisting of:

- (1) At least 4,274 minutes of speech-language therapy, the rate of delivery of such services to be determined at the hearing;
- (2) 1,248 minutes of occupational therapy, the rate of delivery of such services to be determined at the hearing;
- (3) ESY services of 1,120 minutes of speech-language therapy and 360 minutes of occupational therapy, the rate of delivery of such services to be determined at the hearing;
- (4) Reimbursement for the following expenses incurred through June 5, 2013, and additional similar expenses incurred thereafter:
 - (a) \$10,587.50 for speech-language therapy (82 sessions of 50 minutes);
 - (b) \$2,125.00 for occupational therapy (17 sessions of 50 minutes); and

b. Prospective relief: An order providing for an appropriate amount of speech-language therapy and an appropriate ESY program in the Student's IEP.

See Second Prehearing Order of June 12, 2013; and Parents' supplementation of information concerning private services to be reimbursed, dated June 17, 2013 (in case file, not an exhibit).

FINDINGS OF FACT

1. The Student will shortly turn five years old. He attends preschool at the District's Sorenson Early Childhood Center (Sorenson). He has attended Sorenson since turning three years old in January 2012. Prior to that time, he was served by a Birth-to-Three program, Wonderland Developmental Center (Wonderland), from September through December 2011.
2. The Student will begin kindergarten next year, in the 2014-15 school year. There was no evidence as to whether he will be in a full-day or half-day kindergarten. The District offers both.
3. The Student lives with his Parents and two siblings within the District's boundaries. His Parents are fluent in a foreign language² and in English. The Student's native language is the foreign language, but his nanny speaks to him in English and he has been exposed to English since birth. The Student differentiates between the two languages and uses them in appropriate contexts.
4. At all relevant times, the Student has been eligible for special education under the category of developmental delay. The Student has average intelligence, but suffers from childhood apraxia of speech,³ social skills deficits, and fine motor deficits.

² The particular foreign language is not identified here in an effort to preserve the confidentiality of the family's identity.

³ Childhood apraxia of speech (CAS or apraxia) is a speech motor planning disorder. The American Speech-Language-Hearing Association (ASHA) describes CAS as follows: "a neurological childhood (pediatric) speech sound disorder in which the precision and consistency of movements underlying speech are impaired in the absence of neuromuscular deficits (e.g., abnormal reflexes, abnormal tone). . . The core impairment in planning and/or programming spatiotemporal parameters of movement sequences results in errors in speech sound production and prosody [prosody being the rhythm of spoken

5. Wonderland evaluated the Student in September 2011. J-1.⁴ The evaluation found the Student's language skills were significantly impaired, at 2.53 standard deviations below the mean for children his age. More specifically, his receptive language skills (the ability to understand what is spoken by others) were at an 18-month old level, and his expressive language skills (the ability to communicate oneself) were at a 10-month old level, at a time when the Student was 2 years and 8 months old. He was able to say 10 words in the family's native language and 4 to 5 in English. *Id.*

6. Wonderland's evaluation also found that in social skills, the Student was 1.6 standard deviations below the mean, for an age-equivalence of 17 months. His fine and gross motor skills were found to be near age level. *Id.*

7. Because the Wonderland evaluation was only three months old when the District was preparing to receive the Student at Sorenson, the District did not conduct new assessments. The District based its initial evaluation on the Wonderland assessments, and also considered an evaluation by a private SLP at Bothell Pediatric and Hand Therapy (BPHT). J-5. The Student had been receiving SLP services at BPHT in addition to the SLP services he received from Wonderland.⁵

8. BPHT's discharge report of October 2011 concluded the Student demonstrated many of the characteristics associated with CAS, including:

- Limited repertoire of vowels, less differentiation between vowel productions, and vowel errors, especially distortions, secondary to limited jaw gradation and poor jaw stability.
- Variability of errors.
- Unusual, idiosyncratic error patterns.
- The ability to produce accurately the target utterance in one context but is unable to produce the same target accurately in a different context.
- More difficulty with volitional, self-initiated utterances as compared to over-learned, automatic, or modeled utterances.
- Disturbances of prosody [the rhythm of spoken language, intonation, stress] including overall slow rate; timing deficits in duration of sounds and pauses between and within syllables contributing to the perception of excess and/or equal stress, "choppy" and monotone speech.
- Groping or observable physical struggle for articulatory position.

language, intonation, stress]." P-36:4-5. Dyspraxia is sometimes used as an alternative term for apraxia. ASHA prefers the term apraxia, so it will be used herein. *Id.*

⁴ Citations to the exhibits are in the following format. "J-1" refers to Joint Exhibit 1. Where specific pages are cited, the format is, e.g., "J-1:2" referring to Joint Exhibit 1, page 2.

⁵ Wonderland's SLP services were not publically funded, but were paid for by the Parents. After the Student moved to Sorenson, he continued to receive some SLP services from Wonderland. It appears from insurance records that he received eight more sessions from Wonderland SLPs Mary Kay Snedden and Marion Kristi after he moved to Sorenson. P-43:4-5; Testimony of Father.

- Poor speech intelligibility.
- Restricted sound inventory.
- Loss of apparently previously spoken words.
- A wide gap between his receptive language abilities and expressive abilities.

J-5:3-4.

9. The District found the Student qualified to receive services in the areas of communication and social skills. J-9. The District's evaluation stated that the Student's problem with speech production was at the root of his broader language and social skill delays:

It appears that [the Student's] expressive language delay is secondary to his difficulty with speech sound production. This delay interferes with his ability to appropriately interact with his environment, express his needs and wants, learn new concepts, answer and ask questions, participate in group activities and engage in appropriate social interactions.

J-9:7.

10. The District's evaluation stated that the Student's speech sounds primarily consisted of two consonants, "k" and "g" (and sometimes "b"), plus neutral vowel sounds like "ah" and "uh." J-9:7-8. The Student's first teacher at Sorenson explained that he could not say his name, and would instead touch his hand to his chest to refer to himself. He generally communicated using non-word vocalizations to make his desires known, or would point or grab someone's hand to show them something. Testimony of Gregson. The Mother filled out a New Student Profile for the District. In the section on SLP needs, she circled the choice "severe" and wrote: "apraxia – as described by private SLP." P-2.

11. The Student's Sorenson SLP, Yvonne Brooks,⁶ utilized a 39-item checklist to determine the severity of the Student's needs. (This was done prior to Ms. Brooks working with the Student, based on Wonderland's evaluation.) The "highest need" category on the checklist is for children with 23+ points on the checklist. The Student had 25 points. Ms. Brooks wrote that the Student's need for intervention was high, and assigned him 60 minutes per week. P-3. This did not mean 60 minutes of one-on-one (1:1) therapy. As discussed below, it meant a combination of 1:1 and group time.

12. The District uses an "SLP Severity Intervention Chart" to help determine the number of minutes of therapy each child should receive. This, in turn, helps the District decide how many students to assign to each SLP, and how many SLPs to assign to each school. P-30; Testimony of Durkin. Category 1 on the chart is 20 – 30 minutes per week for mild impairments.

⁶ Ms. Brooks has been an SLP with the District for almost 20 years. Prior to that, she worked as an SLP briefly in a neighboring school district and in a hospital outpatient setting. She has attended multiple trainings on apraxia of speech. She has served children with apraxia on her caseload, including 6 – 7 in the 2012-13 school year. She is certified in Prompts for Restructuring Oral Muscular Phonetic Targets (PROMPT), a methodology often used in treating apraxia. PROMPT involves the therapist placing hands on the student's face to give physical prompts on jaw placement and other aspects of speech production. PROMPT is recommended to be used twice a week with students. Testimony of Brooks.

Category 2 is 40-50 minutes for moderate impairments. Category 3 is 60 minutes for "severe to profound" impairments. There is a fourth category called "Additional Factors". It lists auxiliary, non-therapy tasks that SLPs perform, such as writing insurance letters, programming assistive communication and assistive technology devices, training family and staff, participating in consistently lengthy IEP meeting, developing materials, and travel. Only one item on the list might influence the amount of actual therapy time a child receives. That item is "ELL" (English Language Learners). *Id.*⁷

13. The chart instructs SLPs to assign one of the four categories to each student. It then states:

For students that are mild (1) or moderate (2), additional factors can bump them up into the next rating (2) or (3), respectively.

Id. Ms. Brooks testified that (1) or (2) being bumped up to (2) or (3) is only an illustration. She interprets the chart as meaning that additional factors in the fourth category can bump SLP time for a category (3) student above 60 minutes per week. Testimony of Brooks.

14. This reading of the severity chart is contrary to its plain wording. The sentence quoted above is very specific; there are no words indicating its contents are merely an illustration or example. However, even accepting Ms. Brooks' assertion as true, no *therapy* time above 60 minutes per week is provided for if additional factors in category 4 exist, except perhaps for ELL students. (There is no evidence the Student has ever been considered an ELL.) This is because the items in category 4 are almost entirely *auxiliary non-therapy* activities. These non-therapy activities consume an SLP's time and might justify fewer students on that SLP's caseload, or more SLP time being assigned to that school.

15. Ms. Brooks believes the Student was the only child on her caseload in either the 2011-12 or the 2012-13 school years whose IEP assigned more than 60 minutes of SLP time per week. Testimony of Brooks. It is found that 60 minutes per week is generally the maximum SLP *therapy* time the District will assign to a student. Extra time for the therapist to engage in auxiliary, non-therapy activities can be added to that, but such time is not therapy. This general 60-minute maximum was ultimately exceeded after the Parents threatened to file for a due process hearing if the Student did not receive more than 60 minutes of SLP therapy. See D-3. A few months thereafter, the Student received 90 minutes per week of such therapy in the amended IEP of March 2013. (Of those 90 minutes, 50 minutes would be in whole-class Language Group, not 1:1 therapy.)

16. Based on the Student's initial evaluation and SLP Brooks' recommendation on the number of minutes of therapy, the District drafted the Student's first IEP in December 2011, when he was about to enter Sorenson.

⁷ Another item in category 4 appears to influence the type of therapy provided rather than the amount. It is for students whose behavior does not allow them to participate in group therapy, so they must be served 1:1. *Id.*

17. Sorenson is a developmental preschool. Students may enter when they turn three years old, so they enter at varying times throughout the school year. Sorenson classes generally have 8 – 12 students, two of whom are non-disabled and the remainder of whom have disabilities. Testimony of Gregson and McNabb. Language development is emphasized throughout the day at Sorenson because most of the students have language delays. Sorenson operates four days a week, Monday through Thursday. Students attend either the morning or the afternoon session, for 2.5 hours per day, or a total of 10 hours per week.

18. The remaining Findings of Fact discuss each of the three IEPs at issue separately, omitting facts about motor skills/occupational therapy. That topic is discussed in a separate section later in the Findings.

December 2011 IEP

Appropriateness of goals

19. The December 2011 IEP had six annual goals: three in communication and three in social/emotional skills. J-11:5-6. The Parents contend the goals lacked baselines, were vague and immeasurable, were inappropriate, and provided that progress would be assessed by subjective rather than objective methods. The following findings are made regarding these contentions.

20. All six of the goals contained an indefinite baseline that did not state what the Student's current skill level was. Each goal said his current level was "less than 80%." From this, it is unknown whether the Student's baseline was 5%, 20%, 70% or something else. It is impossible to measure progress without knowing where the Student began. The endpoint for all six of the goals was for the Student to improve to at least 80% in each skill. J-11:5-6.

21. SLP Brooks and the classroom teacher, Cindy Gregson, wrote the Student's goals. They testified that the Student's baseline was zero on all of his goals. They stated this is a definite baseline, even though not stated in the goals themselves. However, this assertion is contradicted by the present levels of performance (PLOP) in the IEP itself, and by other evidence. For instance, part of the receptive language goal was to demonstrate an understanding of body parts. The PLOP states, per Mother's report, that the Student already knew many body parts. J-11:3. Part of the expressive language goal was for the Student to improve his vocabulary. The PLOP does not state he had zero vocabulary. Rather, it states he used 15 words – 10 in the family's native language and 4 – 5 in English. One of the Student's social/emotional goals was to comply with adult direction without tantruming. There was no indication in Ms. Gregson's testimony that the Student tantrumed 100% of the time when given a direction. Rather, she testified he would become frustrated when people could not understand him, use even more gestures, and would then tantrum. Testimony of Gregson.

22. The assertion by Ms. Brooks and Ms. Gregson that the Student's baseline was zero on all goals was also contradicted by Sorenson teacher Molly Knapp. Ms. Knapp explained that the reason there was no baseline in any of the Student's IEP goals was that he had not attended class at Sorenson yet. Testimony of Knapp. The IEP was written in December 2011, before the Student started attending Sorenson in January 2012. While Ms. Knapp was not the Student's teacher when he arrived at Sorenson, she is competent to testify about the creation of initial IEPs at Sorenson, having taught there for five years. Ms. Brooks echoed Ms. Knapp's

testimony by acknowledging that she (Ms. Brooks) did not take baseline data for the Student's initial IEP. She used information she found in the Wonderland evaluation. Testimony of Brooks. However, the Wonderland evaluation did not include baseline data for the IEP goals the District adopted. See J-1. Neither are zero baselines for these goals found in the IEP's PLOP. See J-11:3-4.

23. It is found that all of the goals in the December 2011 IEP lacked baseline data, and that the Student's baseline was not zero on all of his goals. His baseline was simply not measured. If Sorenson staff lacked access to the Student in December 2011 to take these measurements before he entered Sorenson, they could have stated in the IEP that it would be amended to add baselines after he arrived in early-January 2012.

24. The Parents next contend that the goals were vague and immeasurable. They are correct as to immeasurability because they all lacked baselines. As to three of the goals, they would be vague and/or immeasurable even if they had baselines. The expressive language goal was the following: When given opportunities throughout the school day,

[the Student] will use language for a variety of functions, improve expressive vocabulary and spontaneous use of language improving expressive language from inconsistent (less than 80%) to consistent (80% or more) as measured by monthly SLP or classroom data.

J-11:5. This goal is vague and immeasurable. *What is meant by "a variety of functions"? How many such functions will constitute meeting the goal? How many words added to his vocabulary will constitute meeting the goal?*

25. The receptive language goal was not vague, but was immeasurable even if a baseline had been included. It stated that when given opportunities throughout the school day,

[the Student] will demonstrate understanding of spatial concepts, pronouns and body parts improving receptive language from inconsistent (less than 80%) to consistent (80% or more) as measured by monthly SLP or classroom data.

Id. To be measurable, this goal would need to state how many spatial concepts, pronouns, and body parts the Student currently understands, and how many he would need to learn to meet the goal. His current level in these three areas is not clear from the PLOP, and the goal does not include a target of how many new concepts he must learn to meet the goal. It is therefore immeasurable on both ends. The 80% figures that appear in this and the previous goal give an appearance of measurability, but they are not attached to anything.

26. One of the Student's social/emotional goals was also immeasurable even if a baseline had been included. It provided that, when given opportunities to choose his own toys,

[the Student] will investigate and play with a variety of toys and games improving play skills from less than 80% of the time to more than 80% of the time as measured by teacher observation and collected data.

J-11:6. To be measurable, this goal would need to state how many types of toys he currently investigates and/or plays with, and how many types added to his repertoire would constitute

meeting the goal. The PLOP does not give usable information on his current level, stating only that he shows a "somewhat restrictive" interest in play. J-11:3.

27. The Parents' expert witness, Dr. Beate Peter,⁸ believes the Student's articulation goal was not sufficiently specific and measurable. That goal provided that when given opportunities throughout the school day,

[the Student] will increase vocal imitation, ability to produce a variety of syllable shapes and early developing consonants (p, b m, t, d, f, v) improving articulation from inconsistent (less than 80%) to consistent (80% or more) as measured by weekly SLP or classroom data.

J-11:5. While the specificity Dr. Peter would add to this goal would be helpful (e.g., specifying which syllable shapes will be worked on), the PLOP lists six syllable and multi-syllable shapes and states that some of them would be selected for inclusion in the Student's articulation goal. While no such selection was made in the goal, when the goal is read in light of this list in the PLOP and the specific list of consonants to be targeted, it is sufficiently focused to avoid vagueness. However, the goal is immeasurable as to syllable shapes because it has no baseline data and no target: It does not state how many syllable shapes need to be acquired for the goal to be met. By contrast, it is measurable regarding individual consonants because the PLOP states his current level (intermittently successful only with "b" from among the seven consonants listed), and the target is for him to be successful 80% of the time articulating all seven of these consonants.

28. The Parents also contend that the goals of this IEP were not appropriate. There was no other evidence regarding inappropriateness -- aside from vagueness and immeasurability discussed above -- except with regard to the articulation goal. Dr. Peter testified that the articulation goal was misdirected and not appropriate for the Student. The crucial skill to focus on for a child with CAS is producing transitions between sounds; less focus should be placed on learning new consonants in isolation. At the time this goal was written, the Student had a repertoire of three consonant sounds ("k," "g" and intermittently "b") and some low, neutral vowel sounds such as "ah" and "uh". According to Dr. Peter, the focus of the Student's articulation goal should have been to use the consonant and vowel sounds already in his repertoire and work on combining them, i.e., transitioning between them, to form syllables. For instance, the goal should have focused more on forming simple syllables using "k," "g" or "b" plus the vowel sounds he knew (e.g., CV, VC),⁹ and increasing the complexity of these syllables (e.g., CVC, VCV, CVCV, VCVC), and less on adding so many new consonants in isolation.

⁸ Beate Peter, Ph.D., CCC-SLP, is a Research Assistant Professor in the Department of Speech and Hearing Sciences at the University of Washington, where she earned her Ph.D. in 2006. The focus of her research is on speech sound disorders. Several of her journal articles and conference presentations focus on CAS. She is currently managing a research study concerning the genetics of families with CAS. The Student and his family were subjects in this study. That is how they met Dr. Peter. Among the graduate courses Dr. Peter has taught is a course concerning treatment dosages for speech sound disorders. Earlier in her career, Dr. Peter worked as an SLP for the Shoreline School District in Washington for three years. P-33; Testimony of Peter.

⁹ In these abbreviations, "C" stands for consonant and "V" stands for vowel.

29. Another problem with the articulation goal is that the consonants "f" and "v" were inappropriately included, according to Dr. Peter. These consonants are not acquired by 50% of four-year old children. The Student had just turned three years old and was extremely delayed in articulation compared to same-age children, let alone children one year older than him.

30. Dr. Peter's criticism of the articulation goal is persuasive. However, the IEP progress reports indicate that therapy did, in fact, focus on transitions between sounds rather than on learning numerous new consonants in isolation. Only two new consonants were worked on through the end of the school year: the related early-developing consonants "p" and "m". While there is no indication that therapy focused on building syllables from sounds the Student already had in his repertoire, Ms. Brooks worked on transitions between sounds by inserting a delay between them to assist in acquisition (e.g., p---a), a teaching technique endorsed by Dr. Peter. Ms. Brooks worked toward "t" and "d" with exercises to raise the tongue to the alveolar ridge, which appears to be appropriate and did not receive criticism from Dr. Peter. Finally, the consonants "f" and "v" were not addressed at all during the IEP year, and were dropped from his next-year's IEP altogether. There was therefore no time wasted on these consonants. See J-12:1; J-15:6. It is found that the Student's articulation goal was immeasurable (like the other goals) due to lack of a baseline, but that the other problems with it were not enough to render it inappropriate in other ways.

31. The Parents also contend the IEP goals should have been measured by objective instruments, such as standardized, nationally-normed tests, rather than by "subjective" monthly SLP or classroom data. P-12:2. The Conclusions of Law, below, address whether there is any requirement under the IDEA that goals be measured by standardized testing rather than by teacher/service provider data.

Implementation of SLP services

32. The Student's December 2011 IEP provided for 30 minutes, twice a week, of SLP service, for a total of 60 minutes per week. However, Ms. Brooks' testimony and the SLP service logs establish that the actual plan was to provide one 20-minute session (1:1 therapy) and one 40 minute session (Language Group) per week. J-13; J-23; Testimony of Brooks. The IEP also provided that the Student's classroom teacher would address his communication and social skill goals throughout the day. J-11:9.

33. The Student's assigned SLP throughout his time at Sorenson has been Ms. Brooks. Ms. Brooks had 54 students on her caseload by the end of the 2012-13 school year.¹⁰ (She did not testify to the number on her caseload in the 2011-12 school year.) Very shortly after the Student entered Sorenson in early-January 2012, Ms. Brooks went on medical leave for four months. She returned at the end of April or beginning of May 2012. Testimony of Brooks. In the interim, the Student was served by another SLP.

¹⁰ Since students enter Sorenson when they turn 3 years old, not necessarily in September, there are more students by the end of the school year than at the beginning. Testimony of Brooks.

34. Until Ms. Brooks returned from medical leave and explained to the Parents otherwise, the Parents believed that all 60 minutes of SLP time in the Student's IEP was delivered 1:1. The Mother had attended the December 2011 IEP meeting and heard nothing about Language Group or about part of the 60 minutes being in a group format. The Parents had been working with SLPs from Wonderland and BPHT for more than a year before the Student entered Sorenson, and all speech therapy he received was 1:1. The Parents never heard of group speech therapy until Ms. Brooks returned from leave four months after the Student started at Sorenson. At that time Ms. Brooks explained that one of the Student's weekly SLP sessions was 1:1, and the other was Language Group with his whole class. Testimony of Mother.

35. Thereafter, the Parents believed the Student was receiving 30 minutes per week 1:1 SLP time, and 30 minutes per week of Language Group. This division of time was discussed at meetings, and the IEP clearly listed two 30-minute sessions per week. Testimony of Father.

36. However, the SLP time logs show that throughout the term of the December 2011 IEP, the Student almost always had 1:1 sessions of 20 minutes. J-13; J-23. Ms. Brooks acknowledged that the default practice was to provide a 20-minute 1:1 session under that IEP. Testimony of Brooks. Indeed, only twice in the year covered by that IEP was a 1:1 session longer than 20 minutes (two sessions were 30 minutes). J-13; J-23. Given the high degree of cooperation that the Student showed in his 1:1 sessions (discussed below), it cannot be argued that the sessions were shortened to 20 minutes because of the Student's lack of cooperation.

37. When the December 2011 IEP was expiring in December 2012, the Father sent an email to three Sorenson staff: the principal, the Student's classroom teacher, and SLP Brooks. In that email he wrote: "[The Student] has had 30 minutes of individual therapy and 30 minutes of group therapy weekly for the past year." He argued the Student needed more than this. P-12:3. None of the three recipients of this email responded that the Father was incorrect about the 30/30 split. Testimony of Father.

38. Ms. Brooks testified that the Parents were told the amount of 1:1 vs. group time was not determined in advance and would be variable. Testimony of Brooks. This testimony is not credited in light of other evidence: Both the time logs and Ms. Brooks' testimony show that 20 minutes was selected as the default amount for 1:1 sessions (contradicting the IEP, which provided for two 30-minute sessions). Also, the Father's email, quoted here, corroborated his testimony that the Parents were told there was 30/30 split.

39. The Parents continued in the belief that the Student had received 30 minutes per week of 1:1 SLP therapy under the December 2011 IEP until mid-2013, when they received the SLP service time logs pursuant to a discovery request in this case. Testimony of Father.

40. Concerning the IEP's requirement of a total of 60 minutes per week of SLP service, the time logs show the District offered significantly less than 60 minutes for the first four months of the December 2011 IEP, as explained below. J-13; J-23.

41. The calculation of the number of minutes of SLP service offered to the Student under the December 2011 IEP is done here in a way most advantageous to the District. Instead of using calendar weeks, only days that Sorenson was actually open were counted: Not only were school breaks removed, but also individual holidays, conference days, and snow days were removed. The remaining number of days in a month was divided by four (because Sorenson is

open four days a week) to arrive at the number of "weeks" in a given month. Where the word "week" appears in quotes below, the reference is to these reformulated weeks rather than calendar weeks.¹¹

42. Days when therapy was available, but the Student was absent, were counted as days the District offered therapy. (There were only two such days, but to account for them, the table below is titled Speech Therapy "Offered" by District rather than "Provided" by District.) Days when therapy was not offered (e.g. due to school activity, therapist absence, structured observation, evaluation of the Student, or speech meeting with Parents) were not counted as therapy being offered.¹²

TABLE 1

December 2011 IEP – Speech Therapy Offered by District

Month	1:1 therapy	Group therapy	Total therapy
Jan. 2012	7 mins. per "week" ¹³	13 mins. per "week"	20 mins. per "week"
Feb. 2012	9	19	28
Mar. 2012	9	31	40
Apr. 2012	12	15	27
May 2012	19	38	57
June 2012	20	40	60
Sept. 2012	30	35	65
Oct. 2012	21	42	63
Nov. 2012	18	47	65
Dec. 2012	40	40	80

Sources: J-13; J-23; J-26; Testimony of Brooks:

¹¹ These reformulated "weeks" are not appropriate to use in an IEP, and are not appropriate to use in every due process hearing decision. If this decision were finding against the *Parents* on the issue of failure to implement, then the calculations in question would likely have been done in a way most advantageous to the *Parents*. This is to ensure that the decision is correct no matter how the evidence is calculated.

¹² It is appropriate not to count the therapist's time meeting with the *Parents* or performing observations and evaluations as the delivery of therapy to the *Student*. First, it is not the delivery of therapy to the *Student*. Second, the IEP states the *Student* will receive 60 minutes of therapy per week; it does not state this time will be reduced by a host of other activities that do not constitute therapy. Finally, the District's "SLP Severity Intervention Chart" puts these types of activities in a separate category from the delivery of therapy. The chart lists the number of minutes of service appropriate for each level of severity. The chart then allows therapists to assign additional amounts of their time to particular cases that make unusually high demands on their time due to auxiliary activities. It is clear from the chart that these activities do not constitute the delivery of therapy, but rather are factors to help determine whether fewer students should be assigned to an SLP's caseload, or more SLPs should be assigned to a school. P-30; Testimony of Durkin.

¹³ See text above for meaning of "week" in quotes.

43. There was a major failure in implementation for the first four months of the December 2011 IEP: January through April 2012. Ms. Brooks was on medical leave during these months, and a substitute SLP was providing the Student's therapy. During these four months the Student received an average of only 29 minutes per "week" of combined 1:1 and Language Group ("week" being construed in a way most generous to the District, as mentioned above). This is less than half of the 60 minutes per week required by the IEP.

44. Even after Ms. Brooks returned, and the total SLP time reached approximately 60 minutes per week, the IEP's provision for *two 30-minute sessions* continued not to be implemented. As mentioned above, one of the weekly sessions (the 1:1 session) was longer than 20 minutes only twice during the year covered by the December 2011 IEP. The District offered an average of only 18.5 minutes per "week" of 1:1 SLP therapy to the Student under the December 2011 IEP. (July and August are not counted as zero in this calculation; they are simply left out, as seen in the table above.)

45. The District arrives at a calculation of the Student's SLP time that is much more favorable to the District. See District Brief at 19-21. However, the District does not state how it treated days when therapy was scheduled, but the time was used instead for such activities as an evaluation of the Student, structured observation, or speech meeting with the Parents. More importantly, the District averaged the Student's SLP time over the life of the IEP. It missed the fact that for four months (nearly half of the 9-month school year), the Student's total SLP time averaged only 20, 28, 40, and 27 minutes per week respectively, instead of 60 minutes. The IEP promised a certain amount of SLP time *per week*, not per school year. (The table above calculated the amount of SLP time offered *per month* in order to be more generous to the District, reformulating "weeks" to obtain an average weekly amount for each month, as discussed above.)¹⁴

Facts regarding the appropriate type and amount of SLP services

Type of therapy: individual vs. group

46. In whole-class Language Group, all of the Student's goals were worked on, not just the motor production of speech. Language Group also addressed his goals in receptive language, expressive language, and social skills. The group works on such things as prepositions, multi-syllable words, asking for a turn, movement and music, and art projects. Testimony of Brooks. The Student enjoys Language Group and is very engaged during it. Testimony of Knapp.

¹⁴ As mentioned in text, averaging service over large periods of time is inappropriate for assessing whether an IEP has been implemented where that IEP requires a certain number of service minutes *per week*. Elsewhere in this decision, the Student's progress over larger periods of time is examined in comparison with the amount of SLP therapy he received during those periods of time. In that context, looking at the amount of therapy received over larger spans of time is appropriate because progress itself is not measured weekly, but rather is measured several times a year (e.g., IEP progress reports) and at even larger intervals (e.g. evaluations). For these reasons, Tables 1 and 4 below (which assess implementation) do not have a row at the end of them showing an average for the whole period covered, while Tables 2 and 3 (which assess the amount of therapy received to compare it with the progress made during the period) do have such a row.

47. There were 10 – 12 children in the Student's class in the 2011-12 school year. Testimony of Gregson. There were 8 – 10 in his class in the 2012-13 school year. Testimony of Brooks. All of these children participated in Language Group if they were present. The principal, Annette McNabb, estimates that during Language Group, each student has the opportunity to participate at least five times in 10 minutes (or at least 15 times in 30 minutes). Those with more severe language needs tend to receive more opportunities, and the non-disabled children in the class receive fewer. Testimony of McNabb. Ms. Brooks estimates that the Student had the opportunity to do 5 – 10 repetitions of each sound or syllable he was working on during Language Group. Testimony of Brooks.

48. The Parents contend the Student required much more 1:1 therapy than the December 2011 IEP provided, and that whole-class Language Group did not meet this need. The Parents and their expert witness, Dr. Peter, rely in significant part on a 2007 technical report from the American Speech-Language-Hearing Association (ASHA) titled *Childhood Apraxia of Speech*. The report states that it provides general interim recommendations for assessment and treatment, and awaits further research to devise specific guidelines. P-36:54. Concerning individual vs. group treatment for CAS, the report states:

As long as the primary goal is to improve the motoric aspects of the child's speech production (i.e., more time for motor practice), individual therapy should be the preferred approach regardless of age. For children whose severity of involvement has decreased and whose treatment goals have begun to move toward language and pragmatic skills enhancement, a combination of both individual and small group therapy may also be optimal for some children, providing that a treatment focus is maintained on speech production.

P-36:56.

49. Dr. Peter concurs with ASHA about individual vs. group therapy. She also relies on a treatise by Margaret Fish in support of individual over group therapy for the Student. Dr. Peter read the following paragraph from that treatise during her testimony, and agrees with its conclusions:

Maas et al. (2008) recommend that large numbers of practice trials help to establish movement patterns and improve recall of motor plans. It makes sense then that treatment should be provided in a format that allows for as many practice opportunities as possible. A child with significant needs in motor speech planning would not receive a large number of practice opportunities while working for 30 minutes in a group of 3 or 4 peers. Group or classroom treatment formats would restrict the multiple practice opportunities suggested in the motor learning literature. One caveat, however, is that many children with speech disorders demonstrate needs in other areas including language and social interaction. To meet all of the needs of a child with multiple deficit areas, flexibility in service delivery is essential. For instance, a child with severe apraxia may benefit from intensive individual treatment to address motor speech planning along with dyad or small group treatment to address social language needs.

Testimony of Peter.

50. According to Dr. Peter, children with CAS require many, many opportunities to produce sounds, and should receive 100 – 200 such opportunities per SLP session. The more individuals in a group session, and the more the session focusses on other goals beside motor speech production, the fewer such opportunities the child has.

51. Another reason Dr. Peter believes the Student needs more 1:1 instead of group sessions is that PROMPT¹⁵ is not done in group sessions, only in 1:1 sessions. Ms. Brooks concurred that PROMPT cannot be done in group sessions, and that the Student receives significant benefit from PROMPT. Testimony of Peter and Brooks.

52. Another factor points to the limited role that Language Group can play in treating the Student's apraxia. It is likely that most of the children in the Student's class have different disorders than he does, so they would not need to practice the motor planning and production of speech during Language Group. (Only 6 – 7 children out of Ms. Brooks' caseload of 54 had characteristics of apraxia in 2012-13. The number in her 2011-12 caseload is not in the record.) Testimony of Brooks.) When Dr. Peter reevaluated the Student in July 2013, shortly before the due process hearing, he continued to be in the early stage of speech development that warranted 1:1, as opposed to group therapy. P-28:5-6.

53. Ms. Brooks testified that what is important is the total amount of SLP therapy the Student receives – not whether it is individual vs. group. The District argues in its brief that the Parents focus solely on the Student's CAS diagnosis and not his other needs, which the school must address. District Brief at 1.

54. The Parents and Dr. Peter, on the other hand, contend the Student's motor difficulties with speech are by far his most severe need, and in fact underlie his broader language and social skill deficits. The District's own evaluation stated this as well. J-9:7. Moreover, numerous portions of the ASHA report support the view that problems in broader language skills and social skills tend to arise from CAS. See, e.g., P-36:5, 14, 15, 22, 23, 54.

55. Dr. Peter testified that social problems often arise from the inability to communicate with others. She saw this in particular with the Student during all three of her sessions with him from December 28, 2012 through March 2, 2013. In these sessions, the Student shut down and refused to talk part-way through each session. He became angry at his Father when the Father could not understand what the Student was attempting to say. The Student did not initiate any conversation with the researchers. He did not spontaneously request any objects or information. P-21:2; Testimony of Peter. When Dr. Peter saw the Student in July 2013, after the intelligibility of his speech had greatly improved, his social interactions were also greatly improved. He interacted socially with the researchers, engaged in conversation, appeared happy, completed the session without shutting down, and did not become angry or frustrated at not being understood. Dr. Peter believes the advances in social interaction that she observed were tied to the increased intelligibility of his speech. P-28; Testimony of Peter.

56. Based on all of the evidence discussed above, the following findings are made. Language Group with the Student's whole class is valuable, addressing his goals in receptive language,

¹⁵ See footnote above, concerning Ms. Brooks' credentials, for an explanation of PROMPT.

expressive language, and social skills. However during the two-year period concerned here, the Student has been at an early stage in learning the motor skills for intelligible speech, and Language Group did not address those skills in a significant way. The Student requires 1:1 service to address those skills, which are fundamental to his other goals. Advancement in receptive and expressive language, as well as social skills, will be significantly restricted unless and until the Student acquires intelligible speech.

57. It is not found, as the District asserts, that the District varied the amount of 1:1 vs. group time for the Student based on his individual needs and level of engagement. Language Group was scheduled for the whole class for certain days and times. Its length did not vary depending on the Student's individual needs. Occasionally the Student was involved in something and wanted to continue with that activity (or continue a little longer) when the SLP came to pull him out for a 1:1 session. This occurred more with the substitute (apparently Meg Bolan, per J-12) than with Ms. Brooks. When this occurred, the substitute would work with the Student 1:1, but they would remain in the classroom or on the playground. Testimony of Brooks.¹⁶

58. District witnesses testified that the Student has a very strong relationship with Ms. Brooks and she was always able to engage him. Testimony of Brooks and McNabb. On only two dates did Ms. Brooks write that there was some lack of engagement in a 1:1 session. She sent home "Speech Notes" on most days that the Student had therapy. Not all were preserved, but Speech Notes covering 38 dates are in evidence. On only two dates (October 1, 2012 and February 11, 2013) did Ms. Brooks note less than full cooperation. P-46:2, 8. As mentioned above, given this high degree of cooperation and the default practice of using 20-minute 1:1 sessions, it cannot be argued that the sessions were shortened to 2- minutes due to the Student's lack of cooperation.

59. It is found that the predominance of Language Group over 1:1 therapy in the Student's program was not caused by his individual needs. Perhaps it was caused by limitations on staff SLP time, but that need not be determined.

Amount of therapy

60. The District points to some incremental progress the Student made in speech with the amount of SLP time provided by the December 2011 IEP, and argues that he therefore did not need more. Testimony of Brooks; J-12. Much of the District witness's testimony regarding progress concerned not speech production, but the Student's increasing comfort as he acclimated to Sorenson, and his increased willingness to participate and play in class. Testimony of McNabb and Gregson. Concerning his ability to speak, the weight of the evidence establishes that the Student remained at an extremely low level and did not make significant progress during this critical period for language acquisition.

¹⁶ If the substitute considered any of these instances as "G" (group) sessions rather than "I" (individual) sessions, records show that she did so only twice. Tuesday was the day for Language Group, and Thursday was the day for the Student's 1:1 session in the 2011-12 school year. See J-13. Only twice in the four months the substitute worked with him (January through April 2012) did she record a "G" session as occurring on a Thursday, the day when a 1:1 session would normally occur.

61. Before examining the Student's progress, it should be noted that the Parents greatly supplemented the 1:1 SLP therapy the Student received. Eighty-nine percent of his 1:1 therapy during the term of the December 2011 IEP was privately purchased. Only 12% of his 1:1 therapy was provided by the District.¹⁷

62. The Student's first IEP progress report from Sorenson (in March 2012) stated that when he first came to Sorenson he cried a lot, hid, was attached to only one adult, and did not want to participate in the SLP room. J-12:1-2; Testimony of Brooks. By March 2012, he was coming out of his shell and willing to participate more. No data measuring progress was provided on any of this three communication goals in the March 2012 IEP progress report. He was rated at the lowest level of progress (emerging skill) on his expressive language and articulation goals, and the next lowest level of progress (insufficient to meet goal within duration of IEP) on his receptive language goal. J-12:1-2.

63. The next IEP progress report, in June 2012, stated as follows. On his articulation goal, the Student was imitating a variety of vowel shapes (whether they were new vowel shapes, and what percentage of the time he was able to successfully imitate them, are not stated), starting to close his lips more consistently to produce "p", "b" and "m", and starting to speak CV combinations if a short pause was inserted between them (e.g., p--a). No data measuring any part of the goal was provided. "Starting" to do something tells virtually nothing about the amount of progress. Four of the seven consonants in the goal had not been addressed since the IEP went into effect six months earlier, according to the progress reports. Nevertheless, the Student was graded as making sufficient progress to meet his articulation goal. J-12.

64. On the expressive language goal, Ms. Brooks wrote in the June 2012 progress report that the Student was using language for a variety of functions 61% of the time. There is no explanation (in either the goal or the progress report) what this measurement means. Its meaning was not explained in testimony, either. The progress report scored the Student at less than 50% on demonstrating knowledge of familiar vocabulary and using spontaneous language. (The next progress report, in combination with the PLOP in the next IEP, clarified the meaning of this measurement: The Student was using consistent approximations for familiar vocabulary less than 50% of the time, and using language -- as opposed to pointing and gesturing -- during classroom activities less than 50% of the time). Nevertheless, the Student was graded as making sufficient progress to meet the goal. *Id.*

¹⁷ This is calculated as follows. From January through July 2012, the Student received eight 1:1 sessions paid for by the Parents from Wonderland SLPs (even though he had moved to Sorenson). From July through December 2012, the Student received 33 1:1 sessions from private SLP Darcy Kelley. P-43; Testimony of Kelley. Ms. Kelley's sessions were 45 minutes long. See P-10:1. The record does not include the length of the Wonderland sessions. However, the charges for the Wonderland sessions were comparable to Ms. Kelley's charges, and to the charges of another private SLP, Alice Stroutsos, who later saw the Student for 50-minute sessions. See P-44. It is therefore likely that Ms. Snedden's sessions were at least 45 minutes long. The Student thus received 1,845 minutes of private 1:1 SLP therapy during 2012. By contrast, he received a total of 240 minutes of 1:1 SLP therapy from the District during 2012. J-13. Thus, 89% of the 1:1 therapy the Student received during 2012 was private, and 12% of it was from the District.

65. On the receptive language goal, Ms. Brooks wrote that the Student demonstrated understanding of body parts with 61% accuracy on himself, but less on others. He demonstrated less than 50% accuracy on understanding spatial concepts and pronouns. One cannot know how much, if any, progress this represented because the goal included no baseline measurements. The Student was graded as making insufficient progress to meet this goal. *Id.*

66. In the November 2012 IEP progress report, one month before the end of the IEP, no information or measurement was given on the Student's ability to produce syllables shapes (i.e., combine a consonant with a vowel). This was the most important part of his articulation goal. Testimony of Peter. The report states the Student was "approximating" "p", "b" and "m" consistently. What this means is unclear and no measurement data is provided. Does it mean the Student's approximations were understandable only to those familiar with his speech because he now consistently made *the same sound* whenever he was asked to say "p"? (Using inconsistent sounds for the same letter or syllable is a hallmark of CAS.) Or would a stranger hearing the sound recognize it as sounding like "p"? Ms. Brooks did not provide this information in her testimony, either. Other parts of the progress report are more clear: Three vowel shapes are named, together with the percentage of the time the Student was able to say them (one of them, "ah" he had been able to say since before he entered Sorenson). The Student was not able to say or approximate "t" or "d," but had started raising his tongue to the alveolar ridge (needed for these consonants) in 38% of trials. Other consonants targeted by the goal ("f" and "v") were not addressed all year. The Student's final grade in articulation under the December 2011 IEP was that he made insufficient progress to meet the goal. *Id.*

67. On the expressive language goal in the November 2012 progress report, progress was measured and was significant. On using language for a variety of functions, he improved from 61% to 83%. (It is still unknown what this means, but an increase in something was found.) He also improved from less than 50% to 70% on using consistent word approximations for familiar vocabulary. *Id.* The Student now said "ba" for bus, and "ca-ca" for cracker. Testimony of Brooks. He also improved from less than 50% to 73% on using language (as opposed to pointing and gesturing) during classroom activities. The Student was graded as making sufficient progress to meet the goal. J-12. Ms. Brooks testified he actually met it. Testimony of Brooks.

68. Likewise on the receptive language goal in the November 2012 progress report, progress was measured and was significant. The Student improved from 61% to 92% accuracy on understanding body parts, both on himself and others. He improved from less than 50% on understanding spatial concepts to 83% on understanding five of them. He also improved from less than 50% on understanding early pronouns (you, me, I) to 83%. The Student was graded as having met this goal. *Id.*

69. In summary, by the end of the term of the December 2011 IEP, the Student had made significant progress in expressive and receptive language. Unfortunately, he had made only slight progress on motor speech production, his greatest deficit.

70. Other evidence indicates the Student remained at a profoundly low level of functional speech after attending Sorenson for a full year. In January 2013, he was assessed at Group Health, his health care provider. P-16. (The Student did not receive SLP services at Group Health; he was only evaluated there.) SLP Andrew Madsen found the Student was unable to

produce even simple CVC (consonant-vowel-consonant) words. He was "nearly unintelligible" to Mr. Madsen except for a few short words like mommy, and "go up". (The Student was more intelligible to those who had become acquainted with the Student's personal approximations for words, such as "bà" for bus.) Mr. Madsen found the Student's speech production deficits were "profound." He stated they were secondary to CAS. P-16:3.

71. In February 2013, the District reevaluated the Student in all areas. In communication, the reevaluation report stated he made "marked progress" during 2012, but did not differentiate between expressive and receptive language (where it is found he did make meaningful progress) and articulation (where it is found he did not). The February 2013 reevaluation concluded as follows: The severity of the Student's speech delay continued to make his speech difficult to understand, so that even his Parents had significant difficulty understanding him absent contextual cues. He used word approximations and pointing, including pointing to a "speech mat" for colors, letters, pictures, etc., in combination with vocalizations. He was able to use at least 10 nouns, but only 4 verbs. He combined no more than 3 word approximations together. The mean length of his utterances was 2.17 words. J-17:12-15.

72. The District's February 2013 reevaluation used a standardized test of articulation, the Clinical Assessment of Articulation and Phonology. The Student's standard score of <55 was 2.33 standard deviations below the mean, and below the 1st percentile. A standardized test of expressive language could not be completed due to the Student's unwillingness to continue speaking. By contrast, standardized testing of receptive language found the Student had improved to the point where he no longer qualified for services in this area: He scored at the 30th percentile on one test and the 55th percentile on another. *Id.*

73. During three sessions between December 28, 2012 and March 2, 2013,¹⁸ Dr. Peter tested the Student and similarly found an extremely low level of functional speech. On the Goldman-Fristoe Test of Articulation-2, the Student's standard score was 59, which is at the 0.3 percentile. The Kaufman Speech Praxis Test for Children has four parts. Each part tests more complex oral skills, but all are designed to test children in his age group. On the first part, the Student's score was at the 7th percentile. On the second part, his score was below reportable range (below 0.1 percentile). The third and fourth parts were therefore not administered. Dr. Peter's research team also did a group rating of the Student's speech intelligibility, using a scale of 1 (completely intelligible) to 5 (completely unintelligible in conversation). They rated the Student at 4 (mostly unintelligible in conversation). The general consensus is that children at age 4 should produce conversational speech that is 100% intelligible to unfamiliar listeners. (The Student was 3 years, 3 months old when Dr. Peter's evaluation was completed.) P-21:1.

74. While the Parents are not speech professionals, they did have extensive opportunity to observe the Student over time. They saw very little progress in intelligibility during 2012, as contrasted with significant progress during 2013. Testimony of Mother and Father.

75. Under the December 2011 IEP, the Student generally had one session per week of 1:1 SLP therapy. For the PROMPT methodology -- used by Ms. Brooks and endorsed by both her

¹⁸ Testing was conducted over three sessions, instead of the usual one session, because the Student stopped speaking partway through each session. Testimony of Peter.

and Dr. Peter -- it is recommended that students receive it twice a week. Testimony of Brooks. PROMPT cannot be used during Language Group. *Id.* Therefore, under the December 2011 IEP, the Student received PROMPT once a week instead of the recommended twice a week.¹⁹

76. The Parents' contention that the December 2011 IEP provided too little SLP therapy is supported by the ASHA report. ASHA's recommendation of 1:1 as opposed to group therapy for children still learning the motor aspects of speech has been discussed above. Concerning the appropriate amount of 1:1 therapy, ASHA stated as follows:

Given the need for repetitive planning, programming, and production practice in motor speech disorders, clinical sources stress the need for intensive and individualized treatment of apraxia, especially for children with very little functional communication. There is emerging research support for the need to provide *three to five individual sessions per week* for children with apraxia as compared to the traditional, less intensive, one to two sessions per week . . .

If toddler and preschool-age children are seen for early intervention that targets their speechmotor [sic] deficits, the frequency of treatment may be able to be reduced over time.

If repetitive practice of speech-motor patterns is targeted in a therapy session, many children in the younger age ranges can remain engaged for only a maximum of 30 minutes per session. There are certainly those children for whom "adjustment" time is necessary prior to the introduction of more intensive treatment activities. . . . Given the option between two 1-hour sessions and four 30-minute sessions, many clinical researchers strongly recommend the latter . . .

P-36:56-57 (italics added).

77. ASHA also discussed the critical need for intensive services in the early stages of a child's development if they are to ultimately develop normal speech:

Although the specific forms of treatment may change over time, the Committee recommends that children with CAS receive intensive services, especially in the earlier stages of intervention. The rationale for this recommendation is based on the assumption that the child's potential for normalization of speech and prosody may be substantially reduced if not addressed during early periods of growth and development.

P-36:58.

¹⁹ More details on this recommendation are not known. SLP Brooks cited it in her testimony, but did not state how strongly it is recommended, i.e., whether this is for optimum service or is needed for even reasonably acceptable service. She stated that *more* than twice a week is not recommended because muscles need to rest between sessions. Testimony of Brooks. It is also unknown whether the SLP who substituted for Ms. Brooks during the first four months of 2012, Ms. Bolan, was certified to use PROMPT. The District did not offer evidence on this. If Ms. Bolan was not, then the Student received no PROMPT therapy during those four months

78. Similarly, Dr. Peter wrote:

The severity of [the Student's] speech disorder and the low intelligibility of his speech necessitate support throughout the school year using the Extended School Year option . . . Intelligible and effective communication skills are crucial for [the Student's] academic and social development in his current preschool setting and when he enters Kindergarten. Toward that goal, intense, continuous, and appropriate treatment is necessary.

P-21:5.²⁰ Dr. Peter recommended 150 minutes per week of 1:1 SLP therapy. She chose the high end of the range recommended by ASHA because of how serious the Student's deficits were. Testimony of Peter.

79. The District argues, in essence, that the ASHA recommendations are one-size-fits-all, and should not be relied on in the face of a contradictory opinion from District staff based on the Student's individual needs. The ASHA recommendations are not, however, one-size-fits-all. They do not make a single recommendation for all children with apraxia, but rather provide ranges from which treatment dosage should be selected based on individual needs. The ranges are three to five sessions per week, with session length of 30 minutes to an hour.²¹ Factors mentioned by ASHA in selecting the appropriate dosage for a child from within this range are: age, severity of the apraxia, tolerance for therapy, early or later stages of intervention, and the existence of other therapeutic services in the child's program. P-36:56-58.

80. The District also argues that more 1:1 SLP therapy would short-change the Student's other goal areas that are addressed in the classroom; these other areas would suffer if he were pulled out for more 1:1 sessions. The District's argument is not persuasive for several reasons. First, under the December 2011 IEP, he was pulled out only once a week, for 18.5 minutes per "week" on average (see Table 1, above). That was 3% of his total weekly 600 minutes of school. He could have been pulled out for more than 3% of his time without unduly impairing his other goal areas. Second, his other deficits are tied to the fundamental and underlying deficit of lack of intelligible speech, as discussed above. Addressing his speech motor planning deficit would address his other deficit areas as well. Finally, providing more 1:1 therapy time to the Student did not have to diminish his classroom time at all. The Student only attended class 10 hours a week. If all of that classroom time was educationally necessary, and more 1:1 SLP time was also educationally necessary, the District acknowledged it would need to provide 1:1 SLP time outside of his class hours. Testimony of Durkin.

²⁰ Another SLP who evaluated the Student, Mr. Madsen of Group Health, likewise discussed this being a critical period for language acquisition by the Student: "[The Student] is at a critical stage in acquiring speech. [Cites ASHA report quoted in text, above.] Intensive early intervention is also highly recommended due to the emerging concerns regarding [the Student's] social and emotional development as well as his future academic performance. The more significant these concerns the more special education resources will be required in the future." P-16:4.

²¹ One hour is implied as a general maximum length by ASHA, though this is not explicitly stated. P-36:56-57.

81. It is helpful to determine how much 1:1 SLP therapy the Student received from all sources during certain periods of time, so that later we can examine how much progress he made in speech while receiving that amount of therapy. This will be done for the period covered by the December 2011 IEP (Table 2) and the period covered by the December 2012 IEP (Table 3). These tables use a different definition of weeks than Table 1, above. Table 1 used reformulated "weeks" to assess whether the District faithfully implemented the minutes of therapy required by the December 2011 IEP. That was done to give the most advantageous interpretation of the facts to the District before concluding it failed to properly implement the IEP. In the present context, however, actual calendar weeks are used. This is because recommendations from professionals regarding the amount of therapy a child should receive are stated in terms of actual weeks. Also, the purpose of Tables 2 and 3 is to show how much 1:1 therapy the Student actually received, and consider how much progress he made during the time he received it. In the calculations for Tables 2 and 3, the number of weeks in each month is based on the number of days in that month divided by 7 (e.g., April has 30 days, and 30 divided by 7 yields 4.29 weeks in April).²²

TABLE 2

1:1 Speech Therapy Received by Student During Term of December 2011 IEP

Month	District 1:1 Therapy	Private 1:1 Therapy	Total 1:1 Therapy
Jan. 2012	4 mins. per week	average 17 mins. per week ²³	21 mins. per week
Feb. 2012	7	average 17	24
Mar. 2012	7	average 17	24
Apr. 2012	9	average 17	26
May 2012	18	average 17	35
June 2012	9	average 17	26
July 2012	--	average 17	17
Aug. 2012	--	average 17	17
Sept. 2012	9	63	72
Oct. 2012	23	91	114
Nov. 2012	12	52	64
Dec. 2012	18	81	99
Average	10 minutes per week	35 minutes per week	45 minutes per week

Sources: J-13; J-23; P-10; P-43.

²² Because Table 2 counts only therapy *actually received* (not just offered), dates on which the Student was scheduled to receive 1:1 therapy from the District, but he was absent, are excluded. There were five such absences during the year in question. J-13; J-23.

²³ An "average" for the months of January through August 2012 is used in the column for private SLP services in this table. This is done because, during those months, the private SLPs did not use contemporaneous billing. He received a total of 585 minutes of private 1:1 therapy during those eight months, but how that time was distributed among the months cannot be ascertained. It is therefore averaged over the number of weeks in those eight months, resulting in an average of 17 minutes per week.

ESY for summer 2012

82. Ms. Brooks testified that ESY services were unnecessary in 2012 because there was no evidence the Student regressed over breaks and could not recoup his skills thereafter. However, the Student had not yet been in the District over a summer break, or even a winter break, since he arrived at Sorenson in January 2012. The longest breaks he had experienced prior to summer 2012 were the one-week mid-winter and spring breaks. Ms. Brooks testified that looked at in retrospect, he did not, in fact, regress when he returned to school after summer 2012. The problem with this argument is that, because the District offered no ESY services, the Parents purchased a significant amount of private SLP services during summer 2012. See P-43. Ms. Brooks cannot know whether, absent those private services, the Student would have regressed during summer 2012.

83. The District acknowledged that regression/recoupment is not the only basis for providing ESY. Sorenson's principal, Ms. McNabb, explained that ESY may also be provided if a student is at a critical period for learning. She testified that ESY was not needed in summer 2012 because the Student was not making large gains that spring; by contrast, ESY was needed the following summer because the Student was making large gains in spring 2013. Testimony of McNabb.

84. Dr. Peter wrote as follows regarding the Student's need for ESY. She wrote this in early 2013, but the reasoning makes it equally applicable to summer 2012:

The severity of [the Student's] speech disorder and the low intelligibility of his speech necessitate support throughout the school year using the Extended School Year option, with direct continuation of the treatment type and dosage. Children with apraxia of speech require intense and regular intervention to develop intelligible speech. A long gap in treatment makes it likely that [the Student] would regress and lose his gains. Intelligible and effective communication skills are crucial for [the Student's] academic and social development in his current preschool setting and when he enters Kindergarten. Toward that goal, intense, continuous, and appropriate treatment is necessary.

P-21:5.²⁴

²⁴ The Group Health SLP, Mr. Madsen, who evaluated the Student but did not testify at the hearing, also advocated for ESY. His evaluation occurred in January 2013, so he was advocating for ESY in summer 2013. But his reasoning applies equally to the preceding summer of 2012:

Extended School Year (ESY):

A 12-month therapy program (extended school year – ESY) is highly recommended. Children with apraxia need continual and intensive speech therapy. Interrupting his speech therapy for the summer months would make [the Student's] speech regress significantly. [The Student] is at a critical stage in acquiring speech.

P-16:4.

85. The Conclusions of Law, below, will consider the facts and make conclusions about whether the District had a duty to offer the Student ESY for summer 2012.

Individualization of IEP to address the Student's unique needs

86. The Parents argue the December 2011 IEP was not individualized to address the Student's unique needs. This appears to be an umbrella argument that encompasses all of the issues discussed above, plus the motor skills/occupational therapy issue discussed below. The Parents presented no evidence on this matter that is not considered in these other sections of the decision.²⁵

December 2012 IEP²⁶

Facts regarding the appropriate amount of SLP services

87. The Parents asked for an increase from two to three SLP sessions per week. Their private SLP, Ms. Kelley, recommended a minimum of three sessions per week of *individual* therapy. P-10:6. In response, instead of adding more therapy time to the Student's IEP, the District cut one of his sessions in half. Rather than one 30-minute session of 1:1 therapy per week, he would now receive two 15-minute sessions. These, combined with Language Group, provided the recommended three sessions per week, in the District's view. This is not correct. The recommendation from Ms. Kelley was for three *individual* sessions per week. Ms. Brooks stated the change was in response to the Parents' request rather than Ms. Kelley's. Testimony of Brooks. However, the Parents never requested that one session be cut in half to achieve three sessions per week. Neither did Ms. Kelley.

88. Dr. Peter has never heard of an SLP session as short as 15 minutes. Testimony of Peter. Group Health's SLP, Mr. Madsen, wrote that sessions shorter than 30 minutes would be unlikely to make a significant impact. P-16:4. Each session begins with a warm-up period of approximately two minutes. Testimony of Brooks. These minutes are wasted when they have to be repeated twice in a week. Two may seem a small number of minutes, but given that the IEP provided for only 30 minutes per week of 1:1 therapy (and the Student actually received less than that), two minutes becomes significant over time.

89. Table 3, below, shows the total amount of 1:1 SLP therapy the Student received from both District and private sources in the first six months of 2013 (District evidence does not extend

²⁵ The tribunal is aware of the Parents' claim that the District had a maximum of 60 minutes per week for SLP therapy, and this is a claim of lack of individualization. This matter is sufficiently addressed in the sections on the appropriateness of the amount of SLP time the District offered in the various IEPs.

²⁶ The Parents did not challenge the appropriateness of the goals of the December 2012 IEP, as they did the goals of the December 2011 IEP. They also do not contend there was a failure to implement the services of the December 2012 IEP, as there was for the December 2011 IEP. There is no need to repeat here the contentions of the parties with regard to the appropriateness of 1:1 vs. group therapy. We therefore begin with the facts regarding the appropriate amount of SLP services.

past June 2013, because the Parents did not utilize District ESY during summer 2013, and the due process hearing began in September 2013). As with the immediately preceding table, actual calendar weeks are used here, not the reformulated "weeks" employed earlier to judge the District's implementation. The purpose of the chart is to show how much total 1:1 therapy the Student actually received, and consider how much progress he made during that time.

TABLE 3

1:1 Speech Therapy Received by Student During First 6 months of 2013

Month	District 1:1 Therapy	Private 1:1 Therapy	Total 1:1 Therapy
Jan. 2013	23 mins. per week	90 mins. per week	113 mins. per week
Feb. 2013	25	88	113
Mar. 2013	18	68	86
Apr. 2013	28	105	133
May 2013	18	101	119
June 2013 ²⁷	30	82	112
Average	24 mins. per week	89 mins. per week	113 mins. per week

Sources: J-23; P-43.

90. It is undisputed that the Student made significant progress in his speech in the first half of 2013. P-28; J-24; Testimony of Mother, Father, Peter, Brooks, Knapp. The Parents did not challenge the appropriateness of the goals in the December 2012 IEP. For both of these reasons, detailed findings on the IEP and the Student's progress during 2013 will not be made. The Parents did place at issue whether this IEP was individualized to address the Student's unique needs, but the only evidence they offered concerned a lack of individualization in the amount of 1:1 SLP therapy provided.²⁸

91. The Parents attribute the significant progress the Student made in the first half of 2013 to a new private SLP, Alice Stroutsos, who began working with the Student in early-January 2013. P-43. Ms. Stroutsos specializes in the treatment of CAS and is considered a leading local expert in such treatment. P-28:4; Testimony of Peter. Ms. Stroutsos sees the Student for 50-minute sessions. Testimony of Mother. He had almost two sessions per week with Ms. Stroutsos (average of 1.8 sessions per week) from January through June 2013. P-43.

92. The Parents attribute the much greater progress the Student has made in 2013 than he did in prior years to Ms. Stroutsos' work with the Student. They discount the value of the District

²⁷ School was in session for half the month in June. The District provided an unusually large amount of 1:1 therapy in a short period of time in June 2013 (130 minutes in 2.5 weeks). But this therapy stopped mid-month, so what the Student received on average over the whole month was significantly lower. As mentioned above, the purpose of Tables 2 and 3 is not to assess the District's implementation, but to focus on what the Student actually received over a given period and look at the progress he made.

²⁸ The Parents also challenged the absence of occupational therapy from the December 2012 IEP, and the provision of what they believe was an inadequate ESY program. Those matters are addressed elsewhere in this decision.

therapist (Ms. Brooks) and all of the private SLPs they employed prior to Ms. Stroutsos. While Ms. Stroutsos may be an excellent therapist, another reason the Student made much more progress in 2013 than in 2012 may be that he received much more 1:1 therapy that year. In 2012, he received an average of 10 minutes per week from the District plus 35 minutes per week privately, for a total of *45 minutes per week* of 1:1 therapy. See Table 2, above. In 2013, he received significantly more than double that amount: 24 minutes per week from the District plus 89 minutes per week privately, for a total of *113 minutes per week*. See Table 3, above. Ms. Brooks has a significant amount of experience treating Students with apraxia and using PROMPT. She is able to engage the Student for maximum participation and, judging from her progress reports and Speech Notes, she is a conscientious therapist. During 2013, she has also consulted frequently with the Student's private therapist, Ms. Stroutsos. Testimony of Brooks. This coordination provides significant benefit to the Student. There is no evidence of a problem with the quality of the 1:1 therapy Ms. Brooks provided. The problem was that so little of it was provided.

ESY for summer 2013

93. ESY for summer 2013 was not discussed at the December 2012 IEP meeting. However, it was both discussed and offered at the March 2013 IEP meeting. It was added to the Student's IEP at that time. The offer of ESY 2013 services is discussed below, in the section on the March 2013 amended IEP.

Individualization of IEP to address the Student's unique needs

94. The Parents argue the December 2012 IEP was not individualized to address the Student's unique needs. Again, this appears to be an umbrella argument that encompasses the issues discussed above concerning this IEP, plus the motor skills/occupational therapy issue discussed below. The Parents presented no evidence on this matter that is not considered in other sections of this decision.

March 2013 IEP Amendment

Facts regarding the appropriate amount of SLP services

95. The Student's IEP was amended on March 26, 2013, and the amendments were effective April 2, 2013. J-21:15. The amended IEP provides for the following SLP services: 20 minutes, twice a week, plus 50 minutes once a week. J-21:12. Testimony and the SLP time logs made clear that the two 20-minute sessions were to be 1:1, and the 50 minute session was to be Language Group. Testimony of Brooks; J-23. The Student was thus supposed to receive 40 minutes of 1:1 therapy, plus 50 minutes of Language Group per week. The table below shows what was actually offered, using reformulated "weeks" to be most advantageous to the District.

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TABLE 4

March 2013 Amended IEP – Speech Therapy Offered by District

Month	1:1 therapy offered	Group therapy offered	Total therapy offered
April 2013	34 mins. per "week"	57 mins. per "week"	91 mins. per "week"
May 2013	30	43	73
June 2013 ²⁹	58	22	80

Source: J-23. In two of the three months, the Student was offered significantly less than 40 minutes per "week" of 1:1 therapy. In only one of these months was he offered 90 minutes per "week" of total SLP time. In the other two months he was offered significantly less.

96. For the same reasons discussed above, the Parents contend that 40 minutes per week of 1:1 therapy (even if it had been provided) was inadequate. For the same reasons discussed above, the District contends it was adequate. Those contentions need not be repeated. However, there is one additional argument raised by the District that is relevant to the March 2013 amended IEP.

97. Ms. Brooks and the classroom teacher, Ms. Knapp, testified that following implementation of the March 2013 amended IEP -- when the Student's pull-out time increased from two 15-minute sessions to two 20-minute sessions per week -- he sometimes said "no speech" and initially did not want to leave class. Because of her strong skills and relationship with the Student, Ms. Brooks was always able to engage him to come with her to the SLP room and participate in therapy. The District contends the Student's initial resistance means he was saturated with 1:1 speech therapy and could not benefit from any more.

98. This contention is not accepted for several reasons. First, the difference between being pulled out twice a week for 20 minutes vs. twice a week for 15 minutes is likely to be barely perceptible to the Student.

99. Second, there was less actual change than this on the ground, except in the half-month of June 2013.³⁰ In April 2013, only 28 minutes per week of 1:1 therapy was actually provided, and in May 2013, it was only 18 minutes per week. See Table 3, above. This is significantly less than the intended 40 minutes per week of 1:1 therapy. Actual calendar weeks are used here because we are concerned with the actual amount of pull-out time the Student experienced per week, and his reaction to it. (Even using the reformulated "weeks" that are more advantageous to the District, and giving the District credit for offering two 1:1 dates in May on which the Student was absent, there was still significantly less than 40 minutes per "week" of 1:1 therapy offered: In April 2013, 34 minutes per "week" were offered, and in May 2013, it was 30 minutes per "week.")

²⁹ See footnote concerning June 2013 in Table 3, above.

³⁰ The District provided an unusually large amount of 1:1 SLP service in the 2.5 weeks of school in June 2013. See footnote concerning June 2013 in Table 3, above.

100. Third, the District's saturation argument is contradicted by documentary evidence. As mentioned above, on most days that the Student had 1:1 therapy, Ms. Brooks sent home a Speech Note. It included sections on the Student's cooperation, the amount of reminders he needed, and any narrative comments Ms. Brooks wished to add. P-46. For the period prior to implementation of the March 2013 amended IEP, the Student was fully cooperative on 91% of the days and needed no reminders on 96% of the days. There were narrative comments on two days about the Student being less than fully cooperative. For the period after implementation of the March 2013 amended IEP, he was fully cooperative on 100% of the days, needed no reminders on 100% of the days, and there were no days with narrative comments about him being less than fully cooperative. *Id.* Thus, if anything, the Student's engagement with his 1:1 services appeared to increase, rather than decrease, following implementation of the March 2013 amended IEP.

101. Finally, Ms. Brooks never told the Parents that the Student was more resistant to 1:1 services after the March 2013 amended IEP went into effect. Testimony of Mother. Nor did Ms. Brooks make any such indication in his IEP progress report for the last quarter of the school year. J-24.

ESY for summer 2013

102. In March 2013, the District offered the following ESY program for the summer of 2013: Three weeks of SLP services, consisting of two 30-minute sessions per week, for a total of 3 hours in the summer. The SLP would not be Ms. Brooks. The District did not yet know who the provider would be, or what prior experience the provider would have treating apraxia. D-6.

103. The Parents declined the ESY program a few days after it was offered in March 2013, without waiting to see what qualifications the summer SLP would have. They decided to use only private SLP services for the summer. D-6; Testimony of Father.

104. Regarding the qualifications of an SLP to treat the Student, Dr. Peter stated that the Student needs an SLP with substantial experience with CAS and extensive familiarity with appropriate treatment approaches. P-21:4; P-28:6. Mr. Madsen, the Group Health SLP, wrote that the Student should be seen by an SLP who is experienced with CAS and proficient with a therapy approach, like PROMPT, that works on the foundational oral-motor skills for speech such as graded jaw and lip movement. P-16:4. It is found that the Student requires an SLP with significant experience treating apraxia and with certification in PROMPT or an equivalent methodology.

Individualization of IEP to address the Student's unique needs

105. The Parents argue the March 2013 IEP amendment was not individualized to address the Student's unique needs. Again, this appears to be an umbrella argument that encompasses the issues discussed above concerning this IEP. The Parents presented no evidence on this matter that has not been considered above.

Student's current speech needs

106. The most recent evaluation of the Student's speech was done in late-July 2013 by Dr. Peter, two months before the due process hearing began. P-28. Dr. Peter readministered

the standardized tests she had used in her late-2012/early-2013 evaluation of the Student. Ms. Brooks testified that nationally normed, standardized tests may not be administered to a student more than once a year, so Dr. Peter's re-administration was invalid. Testimony of Brooks. Dr. Peter, on the other hand, testified that standardized tests of speech articulation are routinely administered more than once a year in her experience. Unlike with other tests, where knowledge of the content of the questions might produce a practice effect on students, tests of speech articulation do not run that risk. Testimony of Peter. Dr. Peter's testimony is found more persuasive than Ms. Brooks' on this matter.

107. On the Goldman-Fristoe Test of Articulation-2, the Student's score did not increase since Dr. Peter's first evaluation, and in fact decreased slightly. His standard score was 53 (at the 1st percentile), lower than his previous standard score of 58. P-28:2. However, although the *number* of errors he made did not decrease, the *type* of errors he made were different, and signaled to Dr. Peter that a great deal of progress had been made in the interim. Previously, 34 of his 59 consonant errors were omissions. In her second testing, only 4 of his errors were omissions. He was still using incorrect consonants, but intelligibility is improved when a child uses *some* consonant, even if the wrong one, rather than omitting it entirely. Also, the incorrect consonants he used were closer to the target sound: Previously, 15 of his 59 errors were consonants replaced by "h". Now only 11 were replaced by "h" or a glottal stop, both of which give the listener almost no clue as to the nature of the target sound. Also, the Student's consonant inventory had grown from 9 to 12 during the five intervening months. P-28:2.

108. On the Kaufman Speech Praxis Test (KSPT), the Student's score on the lowest level of testing was below his previous score. It was now at the 2nd percentile instead of the 7th percentile. The decrease was due to a decline in the ability to pucker his lips. The score on the second level of testing was still below reportable range, and there was, again, no attempt at the third or fourth levels. Nevertheless, Dr. Peter saw improvement in the second level of testing. Previously, the Student omitted initial consonants 47% of the time, and this was now reduced to 3% of the time. On medial and final consonants, the Student had previously omitted them 19% of the time; on retesting he now omitted none. P-28:3-4.

109. Although the Student's scores on these standardized tests did not increase, the change in the type of errors he made rendered his speech more intelligible. The group of researchers now rated him at a 3 (somewhat intelligible in conversation), up from the previous rating of 4 (mostly unintelligible in conversation) on the 5-point scale. P-28:1.

110. The Student's social interactions were also markedly improved. There were no instances where testing had to be stopped because of an unwillingness to speak (he had such instances on all three testing dates previously, and that is why testing had to be done over three dates instead of one). There were also no instances of the Student becoming frustrated with others over not being understood, as there had been previously. The Student laughed several times, whereas he had not laughed once during the previous three sessions. He also engaged in spontaneous conversation with researchers, which he had not done previously. P-28:1.

111. While pointing out the Student's improvements, Dr. Peter nevertheless concluded as follows:

Despite these improvements, however, [the Student's] speech production is still very far below expectation for his age in terms of accuracy and intelligibility, his phoneme

inventory is still very small, and his speech sound errors are atypical, all of which are consistent with childhood apraxia of speech. The KSPT scores comparing [the Student's] sound and word imitations to those in typically developing children his age document the continued severity of his disorder. As a reminder, 100% of the speech of a typically-developing child is expected to be understood by age 4, even by unfamiliar listeners. We saw [the Student] recently when he was 4 years, 6 months and his speech was far from completely intelligible.

P-28:4.

112. For these reasons, Dr. Peters continues to state:

Group sessions are less productive for [the Student] at this point, because few other children will share his treatment goals of motor speech processing; group sessions can be added later when he works on more commonly shared goals.

P-28:5-6. She continues to recommend 150 minutes per week of 1:1 speech therapy, but changed her recommendation of delivery in 5 sessions to delivery in 3 – 4 sessions per week. She did not discuss the reasons for this change, but she did note that the Student was making progress with sessions 50-minutes in length with his private SLP, Ms. Stroutsos. P-28:6.

Motor Skills Evaluation and Occupational Therapy

113. Wonderland's September 2011 evaluation, when the Student was 2 years, 9 months old, found the Student's motor skills were 18% delayed, at the level of a child 2 years, 2 months old. J-1:1. Wonderland qualifies children for services in an area if they are 25% delayed, and the Student did not meet that threshold. J-1:1.

114. The Parents point out that the assessment Wonderland used, the Developmental Assessment of Young Children (DAYC), provided a *combined* score for fine and gross motor skills. *Id.*; P-1. The Parents argue the District should have been aware of this and should have tested these skills separately. They believe that if fine motor skills had been tested separately, it is more likely the Student would have been found to have a fine motor disability at the time of the District's initial assessment in December 2011. However, the Parents fail to note that the narrative portion of Wonderland's evaluation did discuss the Student's fine and gross motor skills separately. Regarding fine motor skills, it found: "[The Student] is reaching, grasping, and manipulating things with the hands *near age level*. . . . [The Student] was able to scribble on paper, holds crayons with fingers on top forearm turned so thumb is directed downward and points with his index finger." J-1:3 (*italics added*). The separate narrative on his gross motor skills likewise found them to be "near age level." *Id.*

115. In October 2011, the Mother, who is an internal medicine physician (though not a pediatrician), was interviewed for the Birth-to-Three program. She stated there were no problems with the Student's motor skills. Her concern was for his communication and social skills. J-2. The Mother also filled out a form for the District that month in which she stated that, except in the area of speech, the Student's early development was equal to other same-age children. J-3:1.

116. In November 2011, the Mother signed consent for the District's initial special education evaluation. On the consent form, a District representative had checked the following boxes as the areas to be evaluated: communication, social/emotional, and health. The areas of fine motor and gross motor were not checked. The form solicited from parents any other areas they suggested should be assessed. The Mother did not add any. J-8.

117. In December 2011, a meeting was held with one or both of the Parents to review the District's evaluation. The meeting notes state, regarding motor skills, that "no concerns" were raised. J-10. The New Student Profile form filled out by the Mother that day rated the Student at the highest of three levels on the areas of motor and sensory skills. P-2.

118. The Student's teacher from January to June 2012 was Ms. Gregson. At the beginning of each day the class did fine motor activities, and the Student liked them and was always willing to try. She does not recall how successful he was. She was more focused on his level of interest, because children often are not adept at fine motor tasks at 3 years old. She does recall that he was partially able to use a tripod grasp, which is fairly advanced for age 3. She did not have any concerns about the Student's fine motor skills while he was in her class from January to June 2012. Testimony of Gregson.

119. In late-April 2012, the Mother sent an email to Ms. Gregson about a number of topics. In that email the Mother also wrote: "To me and my husband it looks like he may have a motor problem and some features of apraxia." P-6:3.³¹

120. In June 2012, the Mother met with Ms. Gregson, Ms. Brooks, and the Sorenson principal, Ms. McNabb. They discussed the Student's speech and language needs, and the Mother also raised concerns about his motor skills. The Mother stated it took him longer than other children to ride a tricycle, hold a pen, try to write – things that require coordination. Testimony of Mother, P-7.

121. In September 2012, the Father wrote to the Student's private SLP, Ms. Kelley, that the Parents think the Student has fine motor/sensory integration problems, "which are more apparent now that he is older." P-8. There is no evidence this email was shared with the District.

122. On or about October 9, 2012, the Student began seeing a private occupational therapist (OT), Marla Cox. P-44.

123. Later in October 2012, the Student's private SLP, Ms. Kelley, wrote to the Mother that she (Ms. Kelley) thought the Student may have global praxis issues that would require an occupational therapy evaluation. Ms. Kelley wrote that the Student may have a sensory processing disorder and incoordination disorder. P-9:4. Ms. Kelley explained at the hearing that incoordination disorder is a global movement disorder, more than just in speech production, and more than in one area of the body. She also explained that children with apraxia of speech sometimes also have incoordination disorder. Dr. Peter confirmed this as well in her testimony.

³¹ The quoted sentence is in bold in Exhibit P-6:3, but the Father testified that he bolded it for purposes of the exhibit. It was not bolded in the original email sent to the teacher. Testimony of Father.

Testimony of Kelley and Peter. It is also discussed in ASHA's report. That report states that the non-speech motor signs of CAS that are most commonly proposed in the literature include general awkwardness or clumsiness, mild delays in motor development, and mildly low muscle tone. P-36:17. The ASHA report also states that although the research is incomplete, there appears to be a research consensus that children suspected of having CAS often have deficits in domains including non-speech motor behaviors. P-36:26. The report recommends referral to an occupational therapist for any sensory-motor or fine motor issues. P-36:54.

124. Ms. Kelley's written report on the Student, issued in October 2012, focused on his communication skills, but also included the following:

Overall Coordination Impacting Communication Skills: Incoordination was noted in gestural language movements in addition to articulatory and oral movements consistent with incoordination disorder. An occupational therapy evaluation was recommended to determine an accurate diagnosis as global incoordination disorder cannot be diagnosed by this SLP.

P-10:6. The Mother sent Ms. Kelley's report to the District by certified mail together with other medical records sometime after October 24, 2012. See P-9:3.

125. Also sometime in October 2012, the Mother observed the Student in class and discussed his fine motor skills with his teacher, Molly Knapp. The Mother told Ms. Knapp that she (the Mother) had concerns about the Student's fine motor skills. The Mother shared that he had just started receiving therapy from a private OT. Ms. Knapp responded that the Student was still fairly new to her, but she would be on the look-out for fine motor issues. Testimony of Mother.

126. At parent-teacher conferences in mid-November 2012, Ms. Knapp told the Mother that she (Ms. Knapp) likewise had concerns about the Student's fine motor skills. Ms. Knapp subsequently asked District OT Paula Busch, to conduct an informal observation of the Student. Testimony of Knapp.³² Neither Ms. Knapp, Ms. Busch, nor any District representative asked the Parents for records from the Student's private OT, or authorization to communicate with the private OT, at that time.³³

127. It was not until approximately one month later, shortly before winter break in December 2012, that Ms. Busch did the informal observation. She noted "emerging" abilities, and saw

³² Ms. Busch testified that Ms. Knapp told her the *parent* was concerned about fine motor skills, but that Ms. Knapp herself did not have particular concerns and thought he was functioning fairly well in class. Testimony of Busch. However, Ms. Knapp stated twice during her testimony that she herself had fine motor concerns about the Student and raised them with the Mother at the November 2012 parent-teacher conference. Testimony of Knapp; J-26:2. The testimony of Ms. Knapp regarding her own perceptions of the Student and her own statements is found more reliable than the testimony of Ms. Busch on these matters.

³³ Ms. Busch testified that she did not know the Student was receiving private occupational therapy at that time. Testimony of Busch. Either Ms. Knapp failed to convey this information to Ms. Busch, or Ms. Knapp conveyed it, but Ms. Busch does not recall it.

immature grasping patterns that she stated were not unusual for the Student's age. She also noted some incoordination in manipulating classroom tools. Testimony of Busch.

128. Ms. Busch decided to include the Student in her fine motor group, where he could practice fine motor skills that he did not generally gravitate toward. She testified that after he got this practice, they could see whether an evaluation was needed. She suggested that the IEP team discuss including the Student in this fine motor group. Testimony of Busch. It is apparent from this testimony that Ms. Busch planned to include the Student in her fine motor group even without an evaluation qualifying him for OT services: Ms. Busch wanted to use his performance in this group to determine *whether* to conduct an OT evaluation.

129. However, this did not occur. Ms. Busch did not attend the IEP meeting of December 16, 2012 and apparently no one raised participation in the fine motor group at the meeting: The IEP makes no mention of a fine motor group, and there is no mention of it in the meeting notes taken by a District representative. See J-11; D-3. There is no evidence the Student participated in any fine motor group until 3.5 months later, after the IEP was amended on March 26, 2013.

130. On December 4, 2012, the Father sent written comments to the District regarding a draft IEP. In his comments the Father requested that fine motor skills be added as an area of service. He wrote that the Student had difficulties with manual dexterity, visual-motor control, copying motor patterns, and needed more processing time to carry out motor plans. He stated the IEP team would shortly receive a private OT's written report. P-12:4.

131. The District received Ms. Cox's OT report by the time of the IEP meeting on December 16, 2012, and at that meeting decided to evaluate the Student in the area of motor skills as part of a broader reevaluation.³⁴

132. Ms. Cox administered the Peabody Developmental Motor Scales 2 (PDMS-2). The Student scored 2.0 standard deviations below the mean, at the 2nd percentile compared with same-age peers, on fine motor skills. Ms. Cox observed the following:

[The Student] lacked refined prehension patterns. He still utilized an immature raking motion or three finger grasp to pick up small raisins rather than a mature neat pincer grasp. He grasped small blocks with a palmar grasp and a mature radial digit grasp was not observed. He held markers with his whole hand and exerted so much pressure that the point of the marker broke during testing. [The Student] had difficulty grading fine motor movements and exhibited an exaggerated release pattern when he attempted to build with blocks. He did not exhibit the in-hand manipulation skills needed to button and unbutton one large button.

[The Student] had difficulty with visual-motor skills. He primarily scribbled with a marker and was unable to color between lines, trace along a line or connect two dots. He was only able to imitate vertical lines and circular scribbles. He attempted

³⁴ A prior written notice dated December 6, 2012 states that the private OT report had already been received. However, this prior written notice appears to be misdated: It discusses events that occurred *after* December 6th, at the December 12, 2012 IEP meeting. J-15:13.

to copy a cross. [The Student] was not able to copy simple lines and forms that are expected for his age. He reportedly has made efforts to copy some letters but did not exhibit this ability during testing. [The Student] was only able to stack a tower of 6 cubes. He needed a lot of encouragement to build structures with blocks but eventually was able to imitate building a train and a 3 cube bridge. [The Student] was not able to manipulate scissors with one hand. He used two hands to crudely hold and snip with scissors. [The Student] tended to prefer his right hand for fine motor tasks. However, difficulty with bilateral coordination was noted as [the Student] switched hands in midline and did not hold paper with his other hand when attempting to draw or cut. He was unable to lace a string through holes and was hesitant to string small beads. He was later able to string two beads when given extra time to do so. He was not successful catching a small ball.

P-13:3.

133. Ms. Cox's report went on to state:

[The Student] evidenced a number of challenges during the evaluation that suggests [sic] he has deficits in the area of praxis. During informal play [The Student] had a hard time following the therapist's lead and joining in her play activities. He often watched with interest but appeared to have difficulty organizing and planning what his body needed to do. He had a hard time imitating motor actions even when the activity appeared interesting to him. For example, he could not use his hands to roll play-doh into a ball or a snake in imitation of the examiner's model[.]

P-13:5. Ms. Cox recommended a minimum of 30 minutes per week of individualized OT at school, plus another 30 minutes per week of services from an OT in the classroom. She stated the Student needed specialized instruction and repeated practice to acquire the fine motor skills needed for success in the classroom. P-13:6. Ms. Cox has been treating the Student approximately once a week for one-hour sessions. Testimony of Mother; P-44.

134. The IEP meeting at which the District decided to conduct a fine motor evaluation occurred immediately before winter break 2012. Immediately after winter break, on January 2, 2013, the Parents provided written consent for the evaluation. J-16:2. There is no evidence as to when the Parents received the consent form.

135. The District OT, Ms. Busch, did not repeat the PDMS-2 administered by Ms. Cox. She used Ms. Cox's results because the PDMS-2 is a test utilized and accepted by the District. Ms. Busch administered a second test, the Beery-Buktenica Developmental Test of Visual-Motor Integration, 6th edition, which assesses a number of skills not measured in the PDMS-2, as well as some that are measured in the PDMS-2. Testimony of Busch; J-17:16-18.

136. The fine motor evaluation was completed at the evaluation review meeting of February 11, 2013. Ms. Busch presented, and the team adopted, the following results. The Student was in need of OT due to fine motor and visual-motor coordination problems. His fine motor skills were in the 5th percentile and 2.0 standard deviations below the mean for same-age children. His motor coordination skills were in the 9th percentile and 1.33 standard deviations below the mean. Finally, his visual-motor integration skills were in the 33rd percentile and 0.33 standard deviations below the mean, which is within the average range. J-17:16-18.

137. The evaluation concluded that the Student has fine motor and visual-motor coordination deficits that may negatively impact his ability to manage classroom tools and materials. He requires specially designed instruction to address hand strength, grasp, fine motor coordination, and visual motor skills for participation in classroom programming. J-17:16.

138. According to Ms. Busch, preschool-age children with motor skills deficits tend to have similar deficits both earlier and later in their preschool years. She therefore thought it likely that, had the Student been evaluated a few months earlier than he was, he would have been found eligible for OT services at that time as well. Testimony of Busch.

139. The IEP of March 26, 2013 provided the Student with 30 minutes per week of 1:1 OT, 10 minutes per week of OT service in the classroom, and 39 minutes, four times a week, of classroom motor work with the classroom teacher. J-21:12. Testimony of Busch. The Parents do not challenge the appropriateness of this level of service.³⁵

Facts Regarding IEP Decisions Allegedly Made Outside the IEP Team

140. The only decision the Parents argue was made outside the IEP team concerns a prior written notice that followed the March 2013 IEP meeting. See Parents' Brief at 5. The Parents' argument is based on the following facts.

141. The IEP meeting was held on March 26, 2013. At the meeting, the IEP team decided, among other things, to increase the Student's SLP time from 60 minutes to 90 minutes per week. The next day, March 27th, Sorenson principal Ms. McNabb wrote a draft prior written notice reflecting what had been decided at the IEP meeting. Ms. McNabb was a member of the IEP team. She sent her draft of the prior written notice to her superior, Kim Durkin, the Director of Elementary Special Education, for comments. Ms. Durkin was not a member of the IEP team. Ms. Durkin suggested that a change be made in the section of the draft notice that read:

Parents requested 150 minutes of direct SLP services per week. This level of SLP service was considered [sic] and rejected. The school team increased the number of SLP minutes from 60 to 90 minutes per week as a compromise.

P-24:1. Ms. Durkin suggested that the final phrase "as a compromise" be dropped. P-23:2. Ms. McNabb agreed. In the final version of the prior written notice, Ms. McNabb changed the sentence in question to read: "The school team increased the number of SLP minutes from 60 to 90 minutes per week as we believe this level of service will meet [the Student's] speech and language needs at this time." J-21:15

Additional Facts Relevant to Remedies Requested

142. The Parents request reimbursement for private OT and SLP services they purchased to supplement the District's services. The private services the Parents purchased for the Student

³⁵ Although the Parents raised an issue concerning the *appropriateness* of the District's motor skills evaluation – in addition to its timeliness – all of their evidence went to the issue of timeliness. They presented no evidence that the evaluation was otherwise inappropriate.

during 2012 and 2013 are found to have been appropriate. OT Marla Cox's report on the Student is in the record, and is found to establish her competence and understanding of the Student's needs. P-13. Regarding the SLP Ms. Stroutsos, her competence and the appropriateness of her services were testified to by Dr. Peter, and this testimony is accepted. The SLP Ms. Kelley testified at the hearing and is found to have provided appropriate services. The SLP Ms. Snedden did not testify at the hearing, but an evaluation report she wrote about the Student, as well as a progress report she wrote, are in the record. J-1; J-6. They are found to establish her competence and understanding of the Student's needs. Also, Ms. Snedden is on the staff of Wonderland Developmental Center. The District has a long history with Wonderland and trusts its work. Testimony of Michel. The Parents were not as pleased with Ms. Kelley's and Ms. Snedden's services as with those of Ms. Stroutsos. However, this does not establish that the other two SLPs provided inappropriate services, only that the Parents thought them less effective.

143. Health insurance through the Father's employment pays for up to 60 SLP sessions and 60 OT sessions per year, except for a \$15.00 deductible per session. P-43; P-44; Testimony of Father.

144. In the calendar year 2012, the Student received 40 private SLP sessions. The Parents paid a deductible of \$15.00 per session, for a total of \$600.00. They did not exceed the maximum of 60 SLP sessions per year, and so \$600.00 was their total out-of-pocket expenditure. P-44; Testimony of Father.

145. In the first nine months of 2013 (through September 20, 2013), the Student received 67 private SLP sessions. This exceeded the annual 60-session cap for the calendar year, which was reached in late-August 2013. Since then, the Parents have been paying the full cost of the Student's private SLP services. The deductibles for the first 60 sessions totaled \$900.00. The full cost of each additional session is \$115.00. The Parents have been paying the full \$115.00 cost for private SLP services since they reached the 60-session cap on insurance coverage. *Id.*

146. Regarding private OT services, in the calendar year 2012 the Student received nine sessions (in October and November 2012). The Parents paid a deductible of \$15.00 per session, for a total of \$135.00. They did not exceed the 60-session maximum for OT services in 2012. P-44; Testimony of Father.

147. In the calendar year 2013 through August 14, 2013 (the date of the last bill the Parents received prior to the due process hearing), the Student received 19 private OT sessions. The Parents paid a deductible of \$15.00 per session, for a total of \$285.00. At this rate of usage, they will use 30 sessions in 2013, which is under the 60-session insurance cap. *Id.*

148. The Parents argue the District should be responsible for the full charges of all the private services mentioned above, not just the Parents' out-of-pocket costs that were not covered by insurance. The Father testified that, were it not for the need to have health insurance to cover SLP and OT services, he could have become an independent contractor and earned more than he does as an employee. The Parents offered no further evidence on this matter. Moreover, they did not explain what the family (which also includes the Student's two siblings), would do for health insurance if the Father were an independent contractor. It is too speculative to assume the family would have chosen to go without health insurance if the District had provided FAPE to the Student. (Also, as discussed in the Conclusions of Law, below, school districts

may not be ordered to reimburse parents under the IDEA for expenses the parents did not pay and have no legal obligation to pay.)

149. As discussed in the Conclusions of Law, below, compensatory education is an equitable remedy that depends in part on the comparative equities of the parties' conduct. The following findings are made regarding those comparative equities.

150. The Parents worked cooperatively with the District. There is no evidence of any conduct that should diminish the equitable relief they might otherwise be awarded.

151. For its part, the District was less than candid with the Parents about the SLP services it provided. First, the District did not mention at the December 2011 IEP meeting or later, that approximately half of the SLP time listed in the Student's IEP would be spent with his whole class. The Parents did not know this for almost half of his first year at Sorenson, so they were unable to advocate for more 1:1 time, or purchase more such time privately if they chose. With SLP therapy being the Parents' central concern -- and the Parents having made this well known to the District -- it is notable that District staff never mentioned that half of the Student's SLP time would be spent with his 10 - 12 member class.

152. Second, once the Parents learned that some of the Student's SLP time was spent with his whole class, the District repeatedly told the Parents that one of his two 30-minute sessions was 1:1, and the other session was with the class. This was untrue, and the District knew it was untrue because it kept careful track of the minutes of service the SLP provided, and whether they were individual or group. Ms. Brooks testified that the Student's default weekly schedule was 20 minutes of 1:1 therapy and 40 minutes of Language Group. Testimony of Brooks. In fact, during the year covered by the December 2011 IEP, only twice was a 1:1 therapy session longer than 20 minutes (on those two occasions it was 30 minutes). See J-13; J-23. This schedule was not disclosed to the Parents. They believed, based on discussions with the District and based on the IEP stating the Student would receive *two 30-minute sessions* per week, that he received 30 minutes of 1:1 therapy per week. Instead, the majority of his SLP time was shared with a 10 -12 member class.

153. Third, the District did not inform the Parents during the Student's first four months at Sorenson that he was receiving less than half of the 60 minutes per week of service required by the IEP. He received 20, 28, 40 and 27 minutes per "week" during those four months, respectively, instead of 60 minutes. See Table 1, above. The District knew this was occurring because it kept careful track of the SLP's minutes of service in the service log. The Parents should have been informed that the District was unable to deliver the required SLP services so they could have taken steps to address the matter at the time. They could have purchased additional private SLP services, advocated with the District to implement the IEP, or filed for a due process hearing if this was unsuccessful. The Student was basically mute at this time, severely delayed in his language skills at a critical time for language acquisition. Almost half a school year should not have passed without the District informing the Parents that it was unable to deliver anywhere near the 60 minutes of service required by the IEP.

CONCLUSIONS OF LAW

The IDEA

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 USC §1401 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) § 300 *et seq.*, and Chapter 392-172A Washington Administrative Code (WAC).

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

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

Rowley, supra, 458 U.S. at 207; 102 S. Ct. at 3051.

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

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

Rowley, 458 U.S. at 188-189; 102 S. Ct. at 3041-3042.

4. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but instead a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Rowley*, 458 U.S. at 200 - 201; 102 S. Ct. at 3048. "District must provide Student a FAPE that is 'appropriately designed and implemented so as to convey' Student with a 'meaningful' benefit". *J.W. v. Fresno Unif'd Sch. Dist.*, 626 F.3d 431, 432 - 433, (9th Cir. 2010); see also *J.L. v. Mercer Island Sch. Dist.*, 575 F.3d 1025, 1038, n. 10, (9th Cir. 2009).

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

Procedural Compliance with IDEA

6. Procedural safeguards are essential under the IDEA:

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

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882, 103 LRP 53170 (9th Cir. 2001).

7. Procedural violations of the IDEA amount to a denial of FAPE 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 decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

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

Did the District make IEP decisions outside of the IEP team?

8. On March 26, 2013, the IEP team met and decided to amend the Student's IEP. The next day, the District sent the Parents a prior written notice concerning the amendments and stating they would be implemented effective April 2, 2013.

9. Prior written notices are not IEPs. They are not generally drafted at IEP meetings, but are drafted by District staff. The IDEA describes them as notices that "the agency" (i.e., the local education agency, or school district) writes and provides to parents. 20 USC § 1415(c).

10. Even if Ms. McNabb had consulted her superior regarding the wording of a *draft IEP* (instead of a draft prior written notice), this would not have violated the IDEA. WAC 392-172A-05000 describes the rights of parents to participate in meetings. Subsection (2)(c) provides, in pertinent part: "A meeting also does not include preparatory activities that school district personnel engage in *to develop a proposal or response to a parent proposal that will be discussed at a later meeting.*" (Italics added.) See 34 CFR § 300.501. A school district staff member consulting a superior about the wording of a draft document falls within this exception to parent meeting rights.

11. The Parents have not established that the District violated the IDEA by making decisions outside of the IEP team.

Substantive Compliance with the IDEA

Did the District have a duty to evaluate the Student's motor skills prior to the February 2013 reevaluation?

12. School districts are required to evaluate students "in all areas of suspected disability." 20 USC § 1414(b)(3)(B); see WAC 392-172A-03020(3). The question presented is: At what point in time should the District have suspected that the Student may have a disability in the area of fine motor skills?

13. By October 31, 2012, the District had sufficient information to suspect the Student might have a disability in the area of fine motor skills. October 31, 2012 is found to be the triggering date for the District's duty for several reasons. The Parents' passing mention of motor concerns in April and June 2012 were insufficient to raise motor skills to the level of a suspected area of disability in light of Wonderland's evaluation finding no disability in that area, and in light of no District staff or private provider noting any concern about the Student's motor skills. The Parents contend that Sorenson staff should have been able to spot the Student's motor deficiencies sooner because of their professional training. Although, had assessment instruments been used sooner, the disability would likely have been found (per OT Busch), this does not mean the deficits were apparent even to professionals at an earlier time. Many three-year olds are not adept at fine motor tasks. Testimony of Gregson. The Father acknowledged that the Student's motor deficits became more apparent as he got older.

14. The record establishes that, as compared with children who do not have CAS, children with CAS have some greater likelihood of having other motor disabilities as well. However, there is no evidence in the record as to how much greater this likelihood is – 5%, 40%, 80%? Given this lack of evidence, the fact that the Student exhibited characteristics of CAS throughout the period in question was insufficient, in and of itself, to trigger the District's duty to evaluate him for motor disabilities.

15. This situation changed in October 2012, when the Mother told the Student's teacher, Ms. Knapp, that she had concerns about the Student's motor skills and that he had just started receiving private OT services. The fact that the Mother, who is a physician, had now twice told the District (in June 2012 and October 2012) that she believed the Student had motor skills problems – combined with the fact that he had strong characteristics of CAS and was now receiving therapy from a private OT – all of these facts together were sufficient to trigger the District's duty to evaluate the Student in this suspected area of disability.³⁶

16. The next question is *when* in October 2012 the Mother had the above-referenced conversation with Ms. Knapp, which conversation, together with other factors, raised motor skills to the level of a suspected disability. The Mother testified that the conversation occurred sometime in October, on a date she observed in the classroom, just after the Student started seeing private OT Marla Cox. The Student started seeing Ms. Cox on or about October 9, 2012. "Just" after that could be a few days or a few weeks, depending on the context of the conversation and the mental state of the speaker. Because the Parents have the burden of

³⁶ An additional factor that might be considered on this matter is the date the District received Ms. Kelley's SLP report strongly suggesting the Student had motor skills problems and recommended an OT evaluation. The Mother planned to mail Ms. Kelley's report to the District, together with other medical reports, sometime shortly after October 24, 2012. See P-9:3. However, because it is unknown how soon after that date she actually mailed them (perhaps it took additional time to gather the other reports), the date the District received Ms. Kelley's report is unknown, except that it was sometime after October 24, 2012.

proof and have not produced more specific evidence as to the date, other than that it was after October 9, 2012, the date is deemed to be at the end of the month – October 31, 2012. Since Ms. Kelley's report recommending an OT evaluation was not sent to the District until sometime after October 24, 2012 (see footnote above), this is a reasonable date to pick.

17. School districts have 35 school days after receiving parental consent in which to complete their evaluations. See former³⁷ WAC 392-172A-03005(3); WAC 392-172A-03015(3); see also 34 CFR § 300.301 and § 300.303. The District's duty to evaluate the Student in the area of motor skills arose as of October 31, 2012. The Parents could have been given a consent form on that date and it is found they would have signed it. Thirty-five school days after October 31, 2012 was January 17, 2013. The District completed its evaluation on February 11, 2013. The District was therefore 3.5 weeks late in complying with its statutory duty to evaluate the Student in the area of motor skills.

December 2011 IEP

Did the December 2011 IEP fail to provide appropriate measurable annual goals?

18. IEPs must contain "*measurable* annual goals" and progress on them must be measured. 20 USC § 1414(d)(1)(A)(i)(II); WAC 392-172A-03090(1)(b)(i) (*italics added*).

19. Regarding the Parents' contention that the Student's IEP goals should have been measured by standardized tests rather than by SLP and teacher data, neither the IDEA nor its implementing regulations require this. See *R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1122-23 (9th Cir. 2011) (rejecting parents' argument that goals measured by "subjective" teacher data were unacceptable). Also, many standardized tests can only be administered once a year to a given student (though not speech articulation tests), so they could not be used for quarterly or trimester progress reports.

20. There were other problems with the annual goals of the December 2011 IEP, however. None of them included a baseline measurement. Other evidence indicates the Student's baselines were not zero (as District witnesses asserted), but the actual baselines are not discernible from the goals or from other evidence. It is impossible to measure progress without knowing where the Student began.

21. Three of the annual goals were vague and/or immeasurable even if baselines had been added. As discussed in the Findings of Fact, above, they were the goals in expressive language, receptive language, and the social/emotional goal regarding playing with toys.

22. The Parents have established that the December 2011 IEP failed to provide appropriate measurable annual goals.

³⁷ Selected regulations in Chapter 392-172A WAC were amended effective October 25, 2013. The events in this case all occurred prior to that date, when the former regulations were in effect. The word "former" will appear before a citation to a regulation only if that particular regulation was among the ones amended.

Did the December 2011 IEP fail to offer appropriate speech-language services?

23. As stated in the Findings of Fact, above, throughout the period at issue the Student has been at an early stage in developing the motor skills for intelligible speech, and Language Group did not address those skills in a significant way. The Student requires 1:1 therapy to address those skills, which are fundamental to his other goals. Under the December 2011 IEP, the District intended to provide 20 minutes per week of 1:1 SLP therapy (though for the first four months, only 9 minutes per "week" were actually offered). Twenty minutes is only 22% of the bottom of the range recommended by ASHA – 90 minutes per week of 1:1 SLP therapy. The Student has severe apraxia. During the years at issue in this case, he has also been in a critical time for speech acquisition. For these reasons, even the bottom of the ASHA dosage range would not have provided him with FAPE, let alone 22% of that minimum dosage.

24. The District argues that the ASHA dosage recommendations (and Dr. Peter's recommendation based on them) may be appropriate for the clinical setting, but are not appropriate for the school setting, where time must be spent on children's other needs besides apraxia. This argument is not accepted. ASHA knows that all children are in school. Its recommendations are *not* limited to private practice. Rather, the ASHA report considers as a factor in selecting a dosage that some children with apraxia receive other therapeutic services during the day, such as OT or physical therapy. ASHA also discusses the limitations of certain settings, but does not hold back on its recommendation that CAS be treated with intensive 1:1 therapy:

Some service providers are allotted a certain number of minutes or hours per week of therapy time per child. . . . There are treatment constraints (e.g., limited funding, limited staff availability) in certain settings that make it challenging to secure intensive, individual therapy. Resources need to be made available to insurance companies, school districts, and specialized programs to provide children with CAS the best opportunity to develop functional communication.

P-36:57-58. Because the Student attended preschool only 10 hours per week – half the time that Sorenson was in session – the services he needed could have been delivered outside of those 10 hours. There was no need to compress them all within 10 hours, and displace the classroom time he needed for his other goals in order to accommodate the 1:1 therapy he needed to develop the ability to speak.

25. The District also argues that there is no denial of FAPE if a child fails to make progress on some IEP goals, as long as the child progresses on a majority of them, citing *Alexis v. Bd. of Educ. for Baltimore Pub. Schs.*, 40 IDELR 7 (D. Md. 2003) (student was not denied FAPE merely because he did not improve in one area for one-half of a school year) and *R.P. v. Prescott Unif'd Sch. Dist.*, *supra*, 631 F.3d at 1123 (student made progress despite not progressing at a constant, linear rate). The simple tallying of IEP goals – on the assumption that all are of equal importance to a child's development – may be appropriate in some cases but is inappropriate here. The evidence established that the Student's inability to process and produce the motoric aspects of speech is his most severe deficit, and is key to improving his broader language skills as well as the ability to interact socially. The District itself stated this in its initial evaluation of the Student.

26. Because apraxia is a relatively rare condition, it was possible to do a search for all court

cases under the IDEA mentioning apraxia or dyspraxia (an alternative term for apraxia), and review them to find those discussing the amount of speech therapy provided, and whether it was individual vs. group. Because there are many more administrative decisions under the IDEA than court decisions, it was not possible to do the same search among administrative decisions. However, by reviewing all court decisions, a good sample could be obtained of decisions on this topic.

27. The eight decisions discussed below were found.³⁸ In some, where indicated, the appeal to district court did not challenge the portion of the underlying administrative decision concerning SLP dosage, but focused other matters. Citation of these court decisions does not imply that the court affirmed the administrative decision on SLP dosage. Rather, the purpose of the search was to locate a representative sample of decisions on this topic by limiting it to a search of court decisions.

28. *O.J. v. Bd. of Educ. for Union County*, 61 IDELR 158 (E.D. Tenn. 2013), concerned an eight year old child with severe CAS. The appeal to district court concerned other issues, and left undisturbed an ALJ decision finding, in favor of the school district, that 150 minutes per week of 1:1 SLP therapy was adequate. The parents had argued for more.

29. *M.M. v. San Ramon Valley Unif'd Sch. Dist.*, 61 IDELR 39 (N.D. Cal. 2013), concerned a 7th grader with speech and language impairments including severe CAS. The appeal to district court concerned other issues, and left undisturbed an ALJ decision finding, in favor of the school district, that 120 minutes per week of SLP services – consisting of 90 minutes 1:1 and 30 minutes group – was adequate. The parents had argued for more.

30. *L.R. v. Bellflower Unif'd Sch. Dist.*, 59 IDELR 105 (C.D. Cal. 2012,) concerned a preschool student with mild autism, social skill and communication deficits. The student's speech was 75% intelligible, and only one evaluator among several believed there was an apraxia component in the student's speech. The ALJ determined that the opinion of this one evaluator was entitled to little weight. The court agreed, and affirmed the ALJ's decision that 20 minutes per week of 1:1 plus 40 minutes per week of group SLP services was adequate, and that an earlier IEP providing only 40 minutes per week of group SLP service had also been adequate.

31. *Rachel G. v. Downingtown Area Sch. Dist.*, 57 IDELR 4 (E.D. Pa. 2011), *aff'd*, 61 IDELR 93 (3rd Cir. 2013), concerned a 3rd grader with numerous serious disabilities including apraxia. The District offered an IEP that provided 120 minutes of SLP therapy per week but did not specify 1:1 or group. In prior years, the District provided all 120 - 150 minutes of the student's SLP therapy 1:1, but now believed it appropriate for some of that time to be in a group. The court found, in favor of the school district, that now moving to part of the 120 minutes being in a group setting was acceptable.

32. *J.H. v. Los Angeles Unif'd Sch. Dist.*, 54 IDELR 195 (C.D. Cal. 2010), concerned a 4

³⁸ One additional decision concerned 1:1 vs. group therapy, but for a child with autism. *E.L. v. Chapel Hill-Corboro Bd. of Educ.*, 62 IDELR 4 (M.D.N.C. 2013). A footnote in the case mentioned that the parents alleged the child also had apraxia, the District questioned this, and no finding was made about it.

year old student with autism and apraxia. The court enforced stay-put as to an ALJ decision, in favor of the parents, that the student required 150 minutes per week of 1:1 SLP therapy. The school district had offered 60 minutes per week of 1:1 therapy. The ALJ found that was insufficient. The court only enforced stay-put; it did not reach the merits of the ALJ's ruling.

33. *M.S. v. Fairfax County Sch. Bd.*, 47 IDELR 289 (E.D. Va. 2007), *aff'd in part and vacated in part on other grounds*, 553 F.3d 315 (4th Cir. 2009), concerned a 19 year old student with mental retardation, severe oral motor dyspraxia/apraxia, and auditory processing delays. The court affirmed a hearing officer decision, in favor of the student, that he required 180 minutes per week of 1:1 SLP therapy. The school district had provided 120 minutes, and later 180 minutes per week, but the majority of that time was in a group setting. The district argued it was in the student's interest for staff to flexibly determine at various times whether it was best to serve him 1:1 or in a group. The court rejected this argument, concluding: "The County's flexible IEPs did not adequately address this essential need [for 1:1 therapy] and were thus inadequate to provide M.S. with a basic floor of opportunity." *Id.* This comment by the court is applicable to the present case, as well.

34. *Sch. Bd. of Independent Sch. Dist. No. 11, Anoka-Hennepin v. Renollett*, 42 IDELR 83 (D. Minn. 2004), *aff'd*, 440 F.3d 1007 (8th Cir. 2006), concerned a 16 year old student with severe oral apraxia/dyspraxia, a mild to moderate mental impairment, and a behavioral disorder. The appeal to the district and appellate courts concerned other issues, and left undisturbed the hearing officer and review officer decisions, in favor of the parents, awarding 150 minutes per week of 1:1 SLP therapy.

35. Finally, *Moubry v. Independent Sch. Dist. No. 696*, 951 F. Supp. 867 (D. Minn. 1996), concerned a preschooler with verbal apraxia and fine and gross motor deficits. The appeal to district court concerned other issues, and left undisturbed the following administrative decisions. A hearing officer ruled, in favor of the parents, that the student required 120 minutes per week of 1:1 SLP therapy. The review officer added another 100 minutes per week of private SLP therapy, and a requirement that the district SLP be provided with training in apraxia.

36. In the apraxia cases discussed above, nothing nearly as low as the 20, 30, and then 40 minutes per week of 1:1 SLP therapy that the District planned to provide under the three IEPs in question was found adequate (let alone the smaller amounts that the District actually offered). The one exception is *L.R. v. Bellflower Unif'd Sch. Dist.*, but in that case the ALJ and the court rejected the opinion of the one evaluator who diagnosed an apraxia component to the child's speech, which speech was 75% intelligible. These facts are quite distinct from the facts in the present case. In the three cases where apraxia was the student's primary or only disability (as in the present case), 1:1 therapy in the amounts of 150 minutes, 90 minutes, and 220 minutes per week, respectively, were found necessary. See *O.J. v. Bd. of Educ. for Union County*; *M.M. v. San Ramon Valley Unif'd Sch. Dist.*; *Moubry v. Independent Sch. Dist. No. 696*.

37. Turning to the authorities cited by the District, they do not help the District's case. In *Princeton Indep. Sch. Dist.*, 107 LRP 36759 (SEA Minn. 2007), SLP services of 3 – 5 sessions per week were rejected for a two-year old child with apraxia specifically because such intensive services are *not* recommended for a child under three years old. In the present case, the Student has been three years or older at all relevant times. In *Menlo Park City Elementary Sch. Dist.*, 110 LRP 44198 (SEA CA 2010), the ALJ found a *denial* of FAPE to a kindergartener with apraxia who was offered 120 minutes of SLP therapy per week, 60 minutes of which would be

1:1. The ALJ found the student needed *more* SLP time to address her adaptive augmentative communication technology needs. In *Montgomery County Intermediate Unit*, 111 LRP 50862 (SEA PA 2011), the hearing officer found the district provided FAPE to a preschooler with apraxia who received 135 minutes per week of SLP therapy and, over the course of three years, had become fully intelligible to peers. (The case does not mention group therapy at all; it appears that all 135 minutes were individual.) In *Union County Sch. System*, 61 IDELR 59 (SEA TN 2012), the ALJ found appropriate a district's offer of 150 minutes per week of direct SLP therapy to an eight year old with apraxia. In the present case, the District has never offered nearly as much individual therapy as the ALJs concluded was appropriate in these three cases.

38. Finally, the District relies on *Houston Indep. Sch. Dist.*, 110 LRP 36319 (SEA TX 2010). There the parents of a young child (apparently preschool-age) with symptoms of apraxia supplemented her school-based SLP services with two private SLP sessions per week (the decision does not specify the length of these sessions). The parents did this because they did not believe the district's provision of 30 minutes per week of combined individual and group service, or the district's later provision of 60 minutes per week of combined service, was sufficient to meet the child's needs. All witnesses agreed the child made progress with the combined school and private therapy. Without citing any authority in support of this approach, the hearing officer stated the following, which is contrary to Ninth Circuit law, as discussed below:

Whether the child was making progress due to the services the child was receiving at school, or due to the private services being provided to student, or due to a combination of the two, cannot be determined. *No evidence was presented in an attempt to segregate the different services being provided to the child, and how each service was benefiting the child exclusive of the others.* As such it would be impossible for this hearing officer to determine the cause for the child's progress without credible evidence in this area. . . . *Therefore, the [parents] have failed to carry their burden of proof and this issue must fail.*

Id. (italics added).

39. In *Adams v. Oregon*, 195 F.3d 1141 (9th Cir. 1999) – a case cited by the District but ignored regarding its contradiction of *Houston* – the Ninth Circuit rejected the approach taken by the hearing officer in *Houston*. Instead of focusing on the impossibility of segregating after-the-fact the benefits provided by school district vs. private services, the Ninth Circuit held the district court should instead have focused on the point in time when the IEP was created. The district court should have assessed whether, in light of what was known at that time, the IEP was reasonably calculated to confer a meaningful educational benefit. There was no need for the parents to try to segregate the benefits from public and private service:

The district court stated that it was "virtually impossible to determine whether [Lucas] would have received a meaningful benefit towards his overall development," because the IFSP was supplemented by private tutoring. . . . *We hold that such a finding was clearly erroneous.*

Instead of asking whether the IFSP was adequate in light of the [sic] Lucas' progress, the district court should have asked the more pertinent question of

whether the IFSP was appropriately designed and implemented so as to convey Lucas with a meaningful benefit. *We do not judge an IFSP in hindsight; rather, we look to the IFSP's goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer Lucas with a meaningful benefit. . . .* While separate findings as to the independent effectiveness of the private tutoring and the public services may shed light on the adequacy of the early intervention services, such evidence is not outcome determinative:

Actions of the school systems cannot . . . be judged exclusively in hindsight. . . . An individualized education program ("IEP") is a snapshot, not a retrospective. In striving for "appropriateness," an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.

Adams v. Oregon, 195 F.3d at 1149 (italics added; citations omitted).

40. The approach taken by the hearing officer in *Houston*, and advocated by the District here, is fundamentally flawed. It would prevent parents whose child is being denied a FAPE from privately supplementing school services, for fear the child would made meaningful progress from the combined public and private services. If the child did make such progress, the parents could never prove that the district's services alone were inadequate. Parents would purchase private services at their peril, knowing that if they were successful in educating their child there would be no hope of receiving a *free* appropriate education. The basic principle under the IDEA that parents may purchase private services and pursue reimbursement afterward – rather than allowing their child to suffer with inadequate services while they await resolution in a due process hearing – would be undermined by the District's approach.³⁹

41. Applying the approach required by *Adams*, it is concluded that the December 2011 IEP was not reasonably calculated to provide the Student with meaningful educational benefit. The Student was extremely delayed in his speech despite normal intelligence, attempting to make himself understood almost entirely by gestures, pointing and unintelligible vocalizations. Providing him with 20 minutes per week of 1:1 SLP therapy at a critical period for language acquisition was vastly inadequate. In fact, less than 20 minutes was provided in seven of the 10 months covered by this IEP. Whole-class Language Group could not provide the repetitive motor practice the Student's particular disability required, and PROMPT could not be used during Language Group. Language Group helped the Student with other goals of his IEP. It provided opportunities to generalize his receptive and expressive language skills, just as other classroom time did in this language-based preschool (Language Group did this to a greater extent because an SLP was teaching the class rather than the classroom teacher). More 1:1 SLP therapy was needed, not necessarily less Language Group.

³⁹ The District's suggested approach might also encourage parents to unilaterally remove their children to *full-time* private education, instead of merely supplementing public education with private services, because there would be little hope of disentangling the benefits received from public vs. private sources in the latter situation. This unnecessary total removal from public school would contravene the least-restrictive environment mandate of the IDEA and be more costly to school districts that have not provided FAPE.

42. ASHA recommends 3 to 5 sessions per week of 1:1 SLP therapy for children with apraxia, for 30 to 60 minutes per session. This is a range of 90 to 150 minutes, or even higher if 60-minute sessions are used. The particular point within this range is to be chosen, according to ASHA, based on age, severity of the apraxia, tolerance for therapy, early or later stages of intervention, and the existence of other therapeutic services in the child's program. Twenty minutes per week of 1:1 therapy is only 22% of the bottom of the range recommended by ASHA and Dr. Peter. This is despite the Student having severe apraxia, being in an early stage of intervention, and having no other therapeutic services in his IEP at this time. This amount was not reasonably calculated to provide meaningful educational benefit to the Student.

43. Considering all of the evidence from District staff, from outside evaluators, from the ASHA guidelines, and from the case law examined above, the Parents have established that the December 2011 IEP failed to offer the Student appropriate speech-language services.

Did the District fail to implement the speech-language services specified in the December 2011 IEP?

44. Material failures to implement an IEP violate the IDEA. On the other hand, minor discrepancies between the services a school provides and the services required by the IEP do not violate the IDEA. See *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 821-822 (9th Cir. 2007).

45. The District materially failed to implement the SLP therapy required by the December 2011 IEP for the first four months of that IEP. The IEP provided for 60 minutes per week of SLP service. Interpreting "weeks" in a way most advantageous to the District, it provided only 20, 28, 40 and 27 minutes per week, respectively, instead of 60 minutes, during the first four months of the IEP-year. This was a 52% shortfall for almost half of the school year. (The impact of this shortfall was compounded by the fact that, of the therapy provided during those four months, only an average of 9 minutes per "week" was 1:1.)

46. The Parents have established that, for the first four months of the December 2011 IEP, the District failed to implement the 60 minutes per week of speech-language services required by that IEP.

Did the District violate the IDEA by failing to discuss or offer ESY services in the December 2011 IEP?

47. Under Washington regulations, ESY is provided either based on a child's regression without adequate recoupment following school breaks, or "based upon the professional judgment of the [IEP] team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need." WAC 392-172A-02020(6).

48. The evidence establishes that the Student required ESY services during the summer of 2012 but the District did not offer any. The Student was at a critical stage for language acquisition that required continuous, intensive SLP therapy in order for him to gain intelligible speech. Testimony of Peter. The ASHA guidelines on apraxia state that a child's potential for normalization of speech may be substantially reduced if not addressed during early periods of

growth and development.

49. The District's arguments against ESY for summer 2012 are not persuasive. First, the District cited the lack of evidence of a regression/recoupment problem, without noting that the Student had not yet experienced any break from school longer than one week. This is not to imply that *all* young students who have not yet experienced a summer break in their school careers should receive ESY. It is only to point out that the absence of regression/recoupment evidence cannot be used as an *affirmative* argument against ESY in this situation. It should instead be regarded as a factor about which no information is available. Moreover, the unavailability of information regarding that factor cannot be used to negate the need for ESY indicated by other factors.

50. The District's second argument was advanced by Sorenson's principal. She reasoned that ESY was necessary in summer 2013 because the Student was making large gains that spring, but ESY was *not* necessary in summer 2012 because the Student was *not* making large gains that spring. This rationale is perhaps based on WAC 392-172A-02020(5), which states that the purpose of ESY is to maintain skills gained, not to teach new skills. However, subpart (6) of the same regulation states that ESY may be based on the nature and severity of the disability (the Student's disability here was severe), the rate of progress (the regulation does not specify that progress must be very fast in order to qualify for ESY, but instead implies that either very fast or a very slow progress, but not moderate or expected progress, weigh in favor of ESY), or emerging skills (the Student's skills in speech were only emerging and were by no means well-established).

51. For these reasons, the Parents have established that the District violated the IDEA and denied the Student a FAPE by failing to offer ESY services for summer 2012.

Did the District violate the IDEA by failing to offer occupational therapy services in the December 2011 IEP?

52. The District had no duty to offer OT services in the December 2011 IEP because the Student had not yet qualified for services in this area. The District's duty to complete an evaluation of the Student's motor skills had not yet arisen at that time this IEP was adopted, or at any time the IEP was in effect.

53. The Parents have not established that the District violated the IDEA by failing to offer OT services in the December 2011 IEP.

Did the December 2011 IEP fail to address the Student's individualized needs?

54. As discussed in the Findings of Fact, above, the Parents' claim with regard to lack of individualization of the IEP to meet the Student's unique needs is an umbrella claim that encompasses the other issues addressed above. The Parents presented no evidence outside of those issues concerning a lack of individualization.

December 2012 IEP

Did the December 2012 IEP fail to offer appropriate speech-language services?

55. The December 2012 IEP provided 30 minutes per week of 1:1 SLP therapy broken into two 15-minute sessions (though only 23 and 25 minutes per week, instead of 30, were actually delivered during the two months this IEP was in effect). Thirty minutes is only 33% of the bottom of the range recommended by ASHA and Dr. Peter – 90 minutes per week of 1:1 therapy. The Student had severe apraxia. This minimal amount of 1:1 therapy did not nearly provide FAPE.

56. By this time, the IEP team knew additional information that it had not known in December 2011: The Student cooperated well with his 1:1 therapy at Sorenson and was very engaged with his therapist, Ms. Brooks. Nevertheless, he had made “insufficient progress” toward his articulation goal the prior year. J-12:1. He was still at a very early stage of language acquisition, and he continued to have no other pull-out services in his program. Based on all of these factors, 33% of the bottom of the range recommended by ASHA and Dr. Peter was not reasonably calculated to provide meaningful educational benefit.

57. Considering all of the evidence from District staff, from outside evaluators, from the ASHA guidelines, and from the case law examined above, the Parents have established that the December 2012 IEP failed to offer the Student appropriate speech-language services.

Did the District violate the IDEA by failing to discuss or offer ESY services in the December 2012 IEP?

58. It is not relevant whether the District failed to discuss or offer ESY services in the December 2012 IEP, because the District amended that IEP in March 2013 to provide ESY services for the upcoming summer. The adequacy of the ESY services offered is discussed below, in the context of the March 2013 amended IEP.

Did the District violate the IDEA by failing to offer occupational therapy services in the December 2012 IEP?

59. The District had no duty to offer OT services at the time the December 2012 IEP was adopted because the Student had not yet qualified for services in this area. However, as found above, very shortly thereafter, by January 17, 2013, the District should have completed an OT evaluation and found the Student qualified for OT services.

60. The next question is: How soon after January 17, 2013, was the District required to amend the IEP to add those services? Neither the IDEA nor its implementing regulations specify how long a school district has to do this. Therefore, a rule of reasonableness must be applied. Given that the major work of evaluating the Student and determining the particular types areas in which he needed therapy had already been done, and the OT who was going to provide those services had become familiar with him during the evaluation, it would have been reasonable for the District to commence providing services within three weeks. This amount of time may be reasonably necessary to bring an IEP team together, though a regulation encourages districts to consolidate reevaluation and IEP meetings so they are held one right after another on the same date. See WAC 392-172A-03110(2)(e); 34 CFR § 300.324(a)(5).⁴⁰

⁴⁰ WAC 392-172A-03110(2)(e) provides: “To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.”

When the District did complete its reevaluation, the soonest dates it offered the Parents for an IEP meeting were 4 to 5 weeks after the reevaluation meeting. See P-20. It will be assumed in order to be generous toward the District that there was some good reason for this much lag time, and four weeks will be allowed.

61. Four weeks after January 17, 2013 was February 14, 2013. The date the District actually commenced providing OT services was April 2, 2013 (when the IEP amendment of March 26, 2013 IEP went into effect.) There was therefore a delay of 6.5 weeks -- from February 14 to April 2, 2013 -- during which time the Student should have been receiving OT services from the District.

62. The Parents have established that the District violated the IDEA by failing to amend the December 2012 IEP to provide OT services 6.5 weeks sooner than it did.

Did the December 2012 IEP fail to address the Student's individualized needs?

63. The same conclusion is reached on this claim of lack of individualization as on the same claim regarding the December 2011 IEP. See above.

March 2013 Amended IEP

Did the March 2013 amended IEP fail to offer appropriate speech-language services?

64. The March 2013 amended IEP provided 40 minutes per week of 1:1 SLP therapy (though significantly less was actually offered during two of the three months that passed under that IEP by the time the due process hearing was held). Forty minutes is only 44% of the bottom of the range recommended by ASHA and Dr. Peter. This small amount of 1:1 therapy would not have been adequate, even if it had been delivered.

65. Even by July 2013, when Dr. Peter reevaluated the Student after he had made significant gains during 2013, his scores on standardized testing were still rock-bottom. Though the type of errors he was now making rendered his speech somewhat more intelligible, the gains had yet to even move the needle on standardized testing above the bottom level. March 2013 was four months before the Student registered these gains. Even after registering them, he was still only in the early stages of acquiring intelligible speech.

66. One of the relevant factors had changed since the previous IEP was adopted in December 2012: the Student now had a second pull-out service, OT, for 30 minutes per week. There was no actual need to decrease the Student's SLP services due to this, because he only attended school 10 hours per week. An additional 30 minutes per week of programming could have been provided outside of these 10 hours if there was a concern about too much pull-out time. Yet, even subtracting the full 30 minutes from the bottom of the recommended range for SLP services (with no implication that the bottom of the range was appropriate for the Student), 90 minutes minus 30 minutes is still 60 minutes of 1:1 therapy a week -- much more than the 40 minutes the District's IEP provided.

67. Considering all of the evidence from District staff, from outside evaluators, from the

ASHA guidelines, and from the case law examined above, the Parents have established that the March 2013 amended IEP failed to offer the Student appropriate speech-language services.

Did the March 2013 amended IEP fail to offer appropriate ESY services?

68. The March 2013 amended IEP offered a total of 3 hours of SLP therapy during summer 2013. That averages 18 minutes per week. Another way of looking at the offer is that it provided services during only 3 out of the 10 weeks of summer, and those services were only 60 minutes per week – 30% below the very bottom of the range recommended by ASHA and Dr. Peter.

69. The Parents have established that the Student, at this stage in his development, needed intense, continuous SLP therapy. The amount offered by the District was far below his level of need.

70. Nevertheless, the Parents could have waited to see whether an SLP with apraxia experience and PROMPT certification would have been assigned for the summer. The Parents could then have decided whether to accept what the District offered, and supplement it with private services. Because of this, the 3 hours offered by the District will be deducted from the Parents' compensatory education award.

Did the March 2013 amended IEP fail to address the Student's individualized needs?

71. The same conclusion is reached on this claim of lack of individualization as on the same claim regarding the previous IEPs of December 2011 and December 2012. See above.

Remedies

Prospective Placement

72. The Student began to make meaningful progress toward acquiring intelligible speech between January and July 2013. During those months he received an average of 113 minutes per week of 1:1 SLP therapy. While the Parents request 150 minutes per week, the evidence establishes that the Student made significant progress with 113 minutes of 1:1 therapy per week. The IDEA does not require potential-maximizing services, but rather services that are able to provide the student with a meaningful educational benefit. See *Rowley, supra*; *J.W. v. Fresno Unif'd Sch. Dist., supra*. Dr. Peter's recommendation of 150 minutes per week may be based on the desire for "optimum progress" as described by ASHA (P-36:56), but optimum progress is not required by the IDEA.

73. The Parents are happy with the private SLP who has treated the Student approximately twice a week during 2013, Alice Stroutsos. Normally it is left up to a school district to decide whether to serve a student using its own staff or private providers. However, the District has been unable to implement the much smaller number of minutes of SLP service provided for in the IEPs at issue here. This tribunal will not put the Student at further risk of an implementation failure during this critical window for speech development.

74. Therefore, as an alternative to relying on the District to provide all of the SLP services ordered in this decision, the Parents' may elect to have the District follow the procedures in WAC 392-172A-07000 (see also 34 CFR § 300.154), and provide consent for the District to use

their (the Parents') health insurance to cover 100 minutes (two 50-minute sessions) of private SLP services per week. Under WAC 392-172A-07000, the District is required to pay the Parents' out-of-pocket expenses associated with those services. If the Parents choose not to provide the consent described in that regulation, then they do not have the option to substitute private SLP services at District expense for District-provided SLP services.⁴¹

75. The Parents' out-of-pocket expenses for their private SLP services currently consist of a \$15.00 deductible per session for the first 60 sessions per year, and the full cost of sessions above 60 per year. The full cost of each session is currently \$115.00. If the Parents choose this option, the District shall promptly provide the notice required by WAC 392-172A-07000 and, if the Parents provide the consent described in that regulation, the District shall pay the Parents' out-of-pocket expenses for up to 100 minutes (two 50-minute sessions) of private SLP services per week during calendar year 2014.

76. If the Parents chose the option described in Conclusion of Law no. 74, in addition to 100 minutes per week of private SLP services, the District will be ordered to provide some 1:1 SLP therapy to the Student using its own staff. This is done for two reasons. First, the private SLP will only be providing 100 of the 113 minutes found necessary to provide FAPE to the Student. Second, it is important that a District SLP be familiar with the Student's needs and abilities in order to provide support for those needs at school, for instance by consulting with his classroom teacher.

77. Thirteen minutes is too short for an SLP session. The evidence establishes that a session of less than 30 minutes is not recommended for the Student. For these reasons, if the Parents choose the option described in Conclusion of Law no. 74, part of the Parents' compensatory education award shall be used to add 17 minutes per week of District-provided 1:1 SLP therapy during calendar year 2014, to bring the District-provided SLP services to 30 minutes per week.

78. The District SLP who has been treating the Student, Ms. Brooks, is found to have sufficient experience and expertise to serve children with apraxia, and she is PROMPT certified. As discussed above, her inability to provide the Student with meaningful progress in speech production is not found to have been due to lack of expertise, but rather to the small amounts of time she was able to provide him with individual therapy. If Ms. Brooks becomes unavailable during 2014, or she is no longer available to serve the Student once he starts kindergarten in September 2014, then the SLP who provides the Student's 1:1 therapy must have significant experience treating CAS and must have PROMPT certification. If the District offers an SLP who has certification in a different methodology that the District believes serves the same purpose as PROMPT, the Parents must accept that SLP unless either Ms. Stroutsos or Dr. Peter state that

⁴¹ The *current* version of WAC 392-172A-07000, which became effective October 25, 2013, rather than the former version, applies here because this is a matter of *prospective* placement. (In any event, the amendments to the regulation were very minor and do not affect either party's rights.) The regulation is not reproduced here only because it is very lengthy, and all parties have access to it online. To be clear, the Parents are not being *required* to let the District use their private health insurance to provide FAPE. Rather, if the Parents wish to use their private SLP rather than relying on District SLPs to provide the services necessary for FAPE, then the Parents are given the option to have the District use the procedures set forth in WAC 392-172A-07000.

this alternative certification does not meet the Student's needs.

79. If the District is only providing 30 minutes per week of 1:1 SLP service, it must be provided in a single session per week (not broken into two sessions). The "per week" calculation shall be based on actual calendar weeks when school is in session, i.e., excluding only the weeks of winter break, mid-winter break, and spring break. (The reformulated "weeks" used in this decision to be most advantageous to the District when calculating its implementation failures are not to be used for any other purpose.) If the Student is absent on a scheduled day for District 1:1 SLP therapy, the District shall endeavor to make up the session, but is not required to do so. The District is not required to provide its own SLP services during winter break, mid-winter break, or spring break. However, if the Parents choose the option described above, and if the Parents wish to continue with private SLP services during winter break, mid-winter break and/or spring break, the District is required to pay the Parents' out-of-pocket costs for 100 minutes per week of private SLP services during those school breaks. The Parents may not bank service from these school breaks to use at a different time.

80. Regarding summer break 2014, this prospective placement award includes ESY for summer 2014 at the same rate of SLP service as during the school year. The importance of the Student receiving as much in the way of SLP services as possible before entering kindergarten in September 2014 is discussed below, in the section on compensatory education. It is equally applicable here. During summer 2014, the District has the option to replace its own services with services from the Parents' private SLP, at the District's option and at the District's expense. If the Parents have chosen the option described in Conclusion of Law no. 74, the District may utilize the procedures in WAC 392-172A-07000 for summer services just as for school-year services. Any District SLP treating the Student during the summer must meet the same standards of experience and certification as described in Conclusion of Law no. 78. Any SLP services the Parents do not use during summer break 2014, whether due to their own unavailability or the unavailability of their private SLP, may not be banked for use at a different time.

81. If the Parents choose the option described in Conclusion of Law no. 74, and they cancel a private SLP session without providing the amount of cancellation notice required by the private provider, such that the Parents are charged for that session, the session shall count against the 100 minutes per week of private SLP services awarded herein. Outside of school break periods (which are discussed above), if the Student is unavailable to attend a private SLP session (or the Parents are unavailable to take him) and sufficient notice is given to the SLP so that the Parents are not charged for the session, then the Parents may bank the missed session to use at a different time during 2014. Likewise, outside of school break periods, if the private SLP is unavailable for any session, the Parents may bank that session to use at a different time during 2014.

82. If the Parents choose the option described in Conclusion of Law no. 74, but utilize a private SLP other than Ms. Stroutsos, the District's financial responsibility following the 60th session shall be no more than 10% above Ms. Stroutsos' then-current fee. The Parents shall be responsible for any fees above that amount.

83. If the Parents choose the option described in WAC 392-172A-07000, the District shall be responsible for transportation to and from the private SLP's office. The District shall have the option of either providing that transportation itself, or reimbursing the Parents for providing the

transportation. Reimbursement to the Parents shall be at the then-current federal reimbursement rate set by the Internal Revenue Service. To receive transportation reimbursement, the Parents must present the District with a log listing the dates and mileage for transportation to and from the SLP's office. The District shall not be required to provide reimbursement more frequently than every two months. (The award of transportation expenses is prospective only; the Parents did not offer evidence at the hearing regarding their past transportation expenses, so those expenses cannot be included in their compensatory education reimbursement.)

84. The District shall promptly amend the Student's IEP to reflect the prospective placement of 113 minutes per week of 1:1 SLP services. (The additional 17 minutes per week of SLP service that is part of the Parents' compensatory education award must be provided by a District SLP, but they are not part of the Student's prospective placement. Those 17 minutes thus does not need to be included on the IEP's "Special Education and Related Services" page. See, e.g., J-21:12.) The amendment shall be effective the first day that school resumes in January 2014, following winter break. The amendment shall be effective for one calendar year. (By way of shorthand, the term of the prospective placement is referred to herein as the calendar year 2014. While the amended IEP will technically be in effect for a few days into January 2015, school will be closed during such days.) If the IEP team again amends the IEP when the Student enters kindergarten, or amends the IEP for any other reasons, the prospective placement of 1:1 SLP services ordered herein shall be carried forward through the end of 2014.

85. Regarding Language Group, the Student shall continue to be included in it while he attends preschool, and his amended IEP shall reflect this. When he begins kindergarten in September 2014, if a similar language group is available in the kindergarten program in which he is enrolled, he shall be included in it, at the Parents' option.

86. A final prospective remedy is awarded as follows. To help ensure that any implementation failure does not again remain unknown to the Parents for a prolonged period, the District shall provide the Parents with copies of the SLP and OT time logs of service to the Student on a monthly basis throughout 2014. The District shall inform the Parents of the meaning of all abbreviations and codes used on those logs, in case they are new or changed from the codes testified to in this case.⁴²

Compensatory Education

87. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005). Compensatory education is not a contractual remedy, but an equitable one. "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." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid, supra*, 401 F.3d at 523-524. Compensatory education is

⁴² This remedy was not among those requested by the Parents. It is awarded as "other equitable relief as appropriate". See Issue 6, above.

an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid, supra*, 401 F.3d at 524. Compensatory education may consist of the delivery of compensatory services and/or reimbursement to parents for compensatory services they already purchased. *Reid, supra*, 401 F.3d at 522.

Speech-Language Therapy

88. All of the private speech therapy the Parents purchased for the Student in 2012 and 2013 has been found appropriate. See Findings of Fact, above. All of it is therefore eligible for reimbursement if reimbursement is found warranted.

89. During 2013, the amount of private 1:1 SLP services the Parents purchased, combined with the amount the District offered, provided the Student with an average of 113 minutes per week, and he made meaningful progress in speech with that amount. Reimbursement for the privately-purchased services would therefore be sufficient SLP compensatory education for 2013.

90. However, in 2012, the Parents purchased much less private SLP therapy for the Student. Combined with what the District provided, the Student only received an average of 45 minutes per week of 1:1 SLP therapy in 2012, and he did not make meaningful progress in speech. The Parents should be awarded reimbursement for the private SLP services they purchased in 2012, plus compensatory SLP services to make up for the difference between the 45 minutes per week the Student received, and the 113 minutes per week he needed.

91. An award of deficient services at a one-to-one replacement rate is warranted based several factors: the equitable considerations of a lack of candor with the Parents, as discussed above, which harmed the Student; the fact that the District drastically underserved the Student during a critical window for his acquisition of speech; and, though probably of less impact on the Student, the fact that the District provided immeasurable and vague goals in the December 2011 IEP. When classroom time is missed, tutoring is often awarded as compensatory education, but not at a one-to-one replacement rate. This is because learning can be accomplished more efficiently in individual tutoring than in a classroom full of students. Here, by contrast, what was missed was *individual* services. Replacing those on a one-to-one basis is not disproportional, as it would be if classroom time were being replaced by individual services.

92. The difference between the 45 minutes per week of 1:1 SLP service the Student received in 2012, and the 113 minutes needed to provide FAPE, is 68 minutes per week. Assuming the Parents would have taken at least two weeks of vacation without services sometime during the year, compensatory education for 50 weeks of 2012 will be awarded at a rate of 68 minutes per week. That equals 57 hours of 1:1 SLP service. Subtracted from this 57 hours are the 3 hours of therapy that the District offered for summer 2013 and the Parents rejected without waiting to see what apraxia experience the summer SLP would have. Their compensatory education award is thus reduced to 54 hours of 1:1 SLP service.⁴³

⁴³ By combining the Student's prospective placement with the compensatory education award, the Parents might choose to have the Student receive 150 minutes per week of therapy, the amount for which they advocated. To be clear, however, the prospective placement is what the Student requires *going forward* to receive a "basic floor of opportunity" or FAPE. *Rowley, supra*, 458 U.S. at 200 - 201. The

93. The Parents request that the District be ordered to pay the full fees of their private providers even though the Parents only paid a deductible of \$15.00 per session for the first 60 sessions a year. The remainder was paid by the Parents' health insurer. This request cannot be granted. Parents have no standing to seek reimbursement under the IDEA for moneys they have not paid and have no legal obligation to pay. See *Diaz-Fonseca v. Commonwealth of Puerto Rico*, 451 F.3d 13, 39-40 (1st Cir. 2006); *Emery v. Roanoke City Sch. Bd.*, 432 F.3d 294, 299-300 (4th Cir. 2005); *Mr. and Mrs. A. v. New York City Dept. of Educ.*, 769 F. Supp.2d 403, 429-430 (S.D.N.Y. 2011); *S.W. v. New York City Dept. of Educ.*, 646 F. Supp.2d 346, 359-360 (S.D.N.Y. 2009); *In re Student with a Disability*, 59 IDELR 23 (SEA NY 2012).

94. The Parents' out-of-pocket costs for private SLP services totaled \$1,615.00 for January 2012 through August 2013, as set forth in Exhibit P-43. Upon the Parents presenting insurance statements showing private SLP costs for September through December 2013, the District shall reimburse the Parents' out-of-pocket expenses for those services.⁴⁴

95. Regarding the 54 hours of compensatory 1:1 SLP therapy awarded apart from this reimbursement, the District has the option of using either a District SLP who has the qualifications discussed above, or a private SLP selected by the Parents, to deliver the 54 hours. As mentioned above, however, at least 17 minutes per week of this compensatory education award must be provided by a District SLP so that the Student receives at least 30 minutes per week of 1:1 therapy from a District SLP.

96. Regarding the remainder of the 54 hours of compensatory SLP therapy, it is advisable to utilize as many hours as the Student is able to benefit from prior to him starting kindergarten in September 2014. A particular schedule will not be ordered, because that depends on unknown factors such as the family's schedule, the needs of their other two children, and the Student's tolerance for increased services. However, the advisability of utilizing a significant portion of these services prior to the Student beginning kindergarten is based on several reasons. First, if the Student will be in a general education kindergarten (there is no evidence what his placement will be), it is critical that his speech to be as intelligible as possible so that his classmates and teacher can understand him as much as possible. A general education kindergarten is likely to be more than twice as large as his Sorenson class, with students not necessarily accustomed to conversing and socializing with students who have developmental delays. The teacher in a larger class will have fewer opportunities to question the Student in order to clarify the meaning of what he attempts to say. Second, it is unknown from the evidence at hearing whether the Student will be in a half-day or full-day kindergarten program (the District offers both). If he is in a full-day program, there will be significantly less time available for him to receive extra SLP therapy. While he is still in preschool, attending only 10 hours per week, there is more time for

compensatory education award, on the other hand, provides extra services to make up for a denial of FAPE *in the past*. Had the tribunal found 150 minutes per week of therapy was necessary to provide FAPE, then the Parents would have been entitled to a compensatory education award for past denials of FAPE in addition to that.

⁴⁴ The costs for September through December 2013 will be higher than the costs for the first eight months of the year because the Parents reached their yearly 60-session cap on insurance coverage for SLP services in late-August 2013.

this extra therapy. Finally, the earlier the Student can become generally intelligible to others, the sooner he will benefit more fully from his education, both academically and socially.

97. For these reasons, it would be advisable to front-load the Student's compensatory SLP therapy prior to him beginning kindergarten. The District may not object to this front-loading based on the unavailability of its SLP staff to provide the compensatory services during that time. If the Parents wish to have more of the compensatory education utilized prior to September 2014 than the District can provide using its own staff, then the District must pay the Parents' private provider for those services (subject to the fee maximum discussed in Conclusion of Law no. 82).

98. The Parents may decide the rate at which to utilize their compensatory education award, though it would be advisable for the Parents to seek input from school staff and from their own private provider(s) about this matter. The Parents must inform the District of the rate at which they wish to use their compensatory education award at least one month in advance of the beginning of services. If the District chooses to *not* to use its own staff to provide the compensatory education SLP services, then the Parents need not give the District further notice of a change in the rate of usage. If, on the other hand, the District chooses to use its own staff to deliver any part of the compensatory education award, then the Parents must give the District one month advance notice of a change in the rate of usage. Regarding the exact day(s) of the week and time(s) of day of compensatory education service, the parties shall attempt to mutually agree. If they cannot agree, the District shall decide the day(s) of the week and time(s) of day of service, in keeping with the rate of usage the Parents have elected.

99. Whatever portion of the compensatory education award the Parents believe would best be deferred until after September 2014, they may do so. Whatever portion remains unused by the end of calendar year 2014, the Parents must use by the end of the 2014-15 school year in June 2015, or it will be forfeited.

Occupational Therapy

100. As discussed in the Findings of Fact, above, the District violated the IDEA by not evaluating the Student in motor skills 3.5 weeks sooner than it did, and not commencing OT services 6.5 weeks sooner than it did. Awarding compensatory education for both of these periods would be duplicative: the actual harm suffered by the Student was a 6.5-week delay in the commencement of services. The District will be ordered to reimburse the Parents' out-of-pocket expenses for 6.5 sessions with Ms. Cox. Their out-of-pocket cost was \$15.00 per session, so their reimbursement for OT services will be 6.5 times \$15.00, for a total of \$97.50.

101. Ms. Cox's weekly sessions are one-hour long, and the Parents have not challenged the lesser amount of weekly OT service the District provided after completing its evaluation. It is nevertheless proper to reimburse the Parents for whatever OT services they purchased during those 6.5 weeks: the Parents did not know what amount was needed because the District was untimely in evaluating the Student and amending his IEP to provide services. See *Mercer Island Sch. Dist. v. D.M.*, docket no. C03-3952JLR (W.D. WA 12/16/2004) (parents who were denied a timely evaluation were reimbursed for private services purchased during the period in question, even though the child was ultimately determined ineligible for services, because the expenses were incurred due to the district's failure to timely evaluate).


102. Finally, the equitable considerations that weigh against the District all concern its provision of SLP services. They do not concern OT services or the motor skills evaluation. There is therefore no reason to provide the Parents with reimbursement for more OT services than specified above, or to provide additional compensatory OT services going forward.

ORDER

1. The District violated the IDEA and denied the Student a FAPE by failing to evaluate him in the area of motor skills 3.5 weeks sooner than it did.
2. The District violated the IDEA and denied the Student a FAPE in the December 2011 IEP by:
 - a. Failing to offer appropriate speech-language services;
 - b. Materially failing to implement the speech-language services provided for in the IEP;
 - c. Failing to provide appropriate measurable annual goals; and
 - d. Failing to offer extended school year speech-language services for summer 2012.
3. The District violated the IDEA and denied the Student a FAPE in the December 2012 IEP by:
 - a. failing to offer appropriate speech-language services; and
 - b. failing to amend the IEP to add occupational therapy services 6.5 weeks sooner than it did.
4. The District violated the IDEA and denied the Student a FAPE in the March 2013 amended IEP by:
 - a. Failing to offer appropriate speech-language services; and
 - b. Failing to offer sufficient extended school year speech-language services for summer 2013.
5. The District shall promptly amend the Student's IEP so that, effective the first day that school resumes in January 2014 after winter break, and for one calendar year thereafter, the IEP provides the prospective SLP services set forth in the Conclusions of Law, above.
6. As compensatory education in the area of speech-language therapy, the District shall reimburse the Parents' out-of-pocket costs of \$1,615.00 that they expended on private SLP therapy for the Student from January 2012 through August 2013. The District shall also reimburse the Parents' out-of-pocket expenses for private SLP therapy for September through December 2013, upon presentation of insurance documents setting forth those expenses. An additional 54 hours of 1:1 SLP therapy is awarded as compensatory education, to be utilized as described in the Conclusions of Law, above.
7. As compensatory education in the area of occupational therapy, the District shall reimburse the Parents \$97.50, which is their out-of-pocket cost for 6.5 weeks of private occupational therapy services. (As discussed in the Conclusions of Law, above, it would be duplicative to award both 3.5 weeks and 6.5 weeks of this compensatory education.)

8. During the calendar year 2014, the District shall provide the Parents with copies of its SLP and OT time logs for service to the Student. These logs shall be provided to the Parents on a monthly basis.

Signed at Seattle, Washington on December 6, 2013.



Michelle C. Mentzer
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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

Parents



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

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