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July 21, 2015

Adult Student
[redacted]
Olympia, WA 98507

Parent
[redacted]
Olympia, WA 98507

John Clough, Special Services Director
Orting School District
121 Whitesell St NE
Orting, WA 98360

Lynette M. Baisch, Attorney at Law
Porter Foster Rorick LLP
800 Two Union Square
601 Union St
Seattle, WA 98101

In re: Orting School District
OSPI Cause No. 2015-SE-0025
OAH Docket No. 04-2015-OSPI-00039

Dear Parties:

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

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

Sincerely,

Johnette Sullivan
Administrative Law Judge

cc: Administrative Resource Services, OSPI
Michelle C. Mentzer, Acting Senior ALJ, OAH/OSPI Caseload Coordinator

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

IN THE MATTER OF:	OSPI CAUSE NOS. 2015-SE-0025
	OAH DOCKET NO. 04-2015-OSPI-00039
ORTING SCHOOL DISTRICT	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Johnette Sullivan in Orting, Washington, on May 26-28, 2015, and June 2-3, 2015. The Adult Student whose education is at issue[1] appeared through his Parent, his designated agent for educational purposes through a Power of Attorney. She was accompanied and advised by educational advocate Kristine Manning, of Parent Learning Solutions, LLC. The Orting School District (District) was represented by Lynette M. Baisch, attorney at law.

STATEMENT OF THE CASE

Procedural History

On March 31, 2015, the Parent filed a Due Process Hearing Request with the Office of Superintendent of Public Instruction (OSPI), in her capacity as agent for the Adult Student for decisions about education, pursuant to a Power of Attorney granted to her on January 6, 2015. OSPI assigned the complaint Cause No. 2015-SE-0011. OAH assigned the complaint Docket No. 02-2015-OSPI-00012. On April 13, 2015, the District filed its Response to Due Process Hearing Request.

At a Prehearing Conference held April 29, 2015, the parties informed the ALJ the District agreed to consider the independent educational evaluation (IEE) obtained by the Adult Student, and to reimburse the Parent for the costs of the neuropsychological evaluation. The parties identified the issues for hearing, agreed to strike the original hearing date of May 13, 2015, and agreed to continue the hearing to allow more time to present evidence. The hearing was continued to a three-day hearing on May 26-28, 2015. *See* Prehearing Order dated May 4, 2015. The order was amended to clarify stay put and participation in a graduation ceremony. *See* Amended Prehearing Order dated May 12, 2015. At the May 15, 2015, readiness conference, the parties agreed to add a fourth day to the hearing schedule, set on June 2, 2015. *See* Prehearing Order dated May 15, 2015. While the hearing was in progress, on May 27,

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

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2015, the parties agreed to add a fifth day to the hearing schedule, set on June 3, 2015. On June 3, 2015, the parties agreed to submit post-hearing briefs by June 19, 2015.

Due Date for Written Decision

The due date for the written decision was continued 15 days from June 15, 2015, to June 29, 2015, due to the need for a three-day hearing. The addition of a fourth hearing date resulted in a five day continuance of the decision due date from June 29, 2015 to July 4, 2015. The addition of a fifth hearing date and request to submit post-hearing briefs extended the close of record date by 17 days, from July 4, 2015, to July 21, 2015. The due date for the written decision is therefore **July 21, 2015.** *See* Order Extending Decision Due Date dated June 4, 2015.

Evidentiary Ruling

On the morning of first day of hearing, the ALJ and parties reviewed the lists of exhibits exchanged by the parties five days prior to hearing. The Parent[2] objected to admission of one District exhibit, D3, and the ALJ admitted the remaining District exhibits into evidence without objection. The Parent and her lay advocate quickly reconsidered and stated an objection to Exhibits D12 and D14. The ALJ clarified her ruling to admit all District exhibits without objection and reserved a ruling on Exhibits D3, D12 and D14. On the second day of hearing, Exhibits D3 and D14 were admitted into evidence. On the fifth day of hearing during the testimony of the District's special education director, the Parent questioned him about Exhibit D12, a form for consent for reevaluation and prior written notice dated March 23, 2015. If not clear on the record, by this evidentiary ruling the District's Exhibit D12 is admitted into evidence over objection.

Evidence Relied Upon

The following documents were exchanged five days before hearing and were admitted into evidence:

Joint Exhibits:	J1 and J2;
District Exhibits:	D1 through D15;
Student Exhibits:	S1 through S6, S8 pp. 1-2 and 4-5, S9 through S11, S13, S16 through S18, S34 through S36, S41 through S45, S48, S49, S50 p. 1, S52 and S53.

[2] The Adult Student did not personally appear at the hearing, and references to actions during the hearing process by the Parent are to be understood as actions undertaken on behalf of the Adult Student in her capacity as agent under the Power of Attorney.

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The following documents were not exchanged five days before hearing but were disclosed at hearing and without objection were admitted into evidence:

Student Exhibits: P59 and S60, S62.

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

The Student's Mother
The Student's Sister
Caryn Pekarek, District special education teacher
Audrey Gallager, former District behavior intervention specialist
Lisa Sorell, District track coach
Rica Rostad, District school psychologist
Sarah Smith, District general education teacher
Scott Lundgren, District general education teacher
Tyler Polly, District general education teacher
Loni Parks, District general education teacher
Leon Matz, District school counselor
Marla Veliz, New Horizon School administrator
Lori Gosney, District speech and language pathologist
Ruby Lorber, Ph.D., neuropsychologist
Nancy Harris Clement, District special education teacher
Phathanna Kin, New Horizon School transition educator
William Edward Hatzenbeler, District high school principal
John Clough, District special services director
Martina Bencze, District general education teacher
James Scannell, District general education teacher
Colleen AlMousawi, District special services secretary

Exhibits Not Considered

The following documents were withdrawn by Parent and not considered:

S21, S38 through S40.

The following documents were offered by Parent but not admitted and not considered:

S7, S8, p. 3, S12, S14, S15, S19, S20, S22 through S32[3], S33, S37, S50 pp. 2-4, S51, S54 through S57, S58[4], S61 and S63.

[3] S26 and S37 (copies of materials published by Barbara D. Bateman, Ph.D.) were considered as persuasive argument as part of Student's Prehearing Brief.

[4] The document marked as S58 was identified by Parent as their Prehearing Brief.

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ISSUES

The issues for hearing are whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Adult Student a free appropriate public education (FAPE) by:

a. Failing to appropriately evaluate the Student in September 2013 by:
    i. Not conducting a sufficiently comprehensive evaluation in the areas of focus, organization, executive function, study skills, social skills and behavioral issues, related to indications Student was awkward, has anxiety, fixates on things and picks at his skin, picks his nose; only off-the-record supports offered;
    ii. Not addressing all the Student's needs;
    iii. Failing to identify appropriate categories for evaluation;
    iv. Not using a group of qualified people to conduct an evaluation;
    v. Not appropriately considering information from a variety of sources in addition to the Student's self-evaluation;
    vi. Not appropriately considering Parent concerns.
b. Failing to develop an appropriate IEP for 2013-2014 school year by:
    i. Failing to provide adequate and appropriate transition services and goals tailored to the Student's specific needs to prepare him for post-secondary education, employment and independent living in the following ways:
        i. Failure to identify appropriate measureable postsecondary goals based upon age appropriate transition assessments related to training, employment and independent living skills;
        ii. Failure to invite participating agency representative that is likely to provide or pay for transition services (DVR);
        iii. Failure to advise Student of 2 year language requirement for college entrance;
    ii. Failing to give appropriate consideration to the Parent's input in the development, review and revision of the Student/Adult Student's IEPs;
    iii. Failing to discuss and appropriately record elements in an IEP meeting for goals, placement, related services and transition plans by:
        i. Failure to provide verbally promised services and then did not include in IEP even though the IEP team agreed upon the services in the meeting;
    iv. Failure to provide Prior Written Notice (PWN) when Parent requested services for Adult Student;
    v. Failure to provide appropriate special education and related services that should have been reasonably calculated to lead to meaningful educational benefit for the Student/Adult Student by:
        i. IEP team included in the IEP social/emotional/behavioral as a related services;
            A. Only Student's self-evaluation (BASC assessment) was used to determine whether or not social/emotional/behavioral SDI was appropriate;

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B. Instead of specially designed instruction because the evaluation was not appropriately comprehensive to determine if this services qualified as an SDI service;
C. The District did not provide the social/emotional/behavioral services stating the Student "fell under the radar" and "I'm so sorry we forgot to provide those services";

ii. Failing to provide appropriate accommodations and modifications;

vi. Failing to provide IEP progress reports.

i. Failing to provide adequate systematic, empirical methods involving rigorous data analysis to measure Student progress;

c. Failing to appropriately respond to a request for an Independent Education Evaluation (IEE) in 2014 by:

i. No PWN provided approving or denying the request;

i. Parent's March 10, 2015, request for reimbursement for the IEE has been resolved; District has agreed to reimburse Parent.

d. Undue delay of process by failing to provide timely information to Dr. Lorber for the Parent's IEE by:

i. After District agreed to support the IEE, the teacher did not turn in Dr. Lorber's requested teacher assessment until January 13, 2015, delaying the IEE report completion until February 2015;

e. Failing to provide an appropriate IEP for 2014-2015 school year by:

i. Failing to provide adequate and appropriate transition services and goals tailored to the Student's specific needs to prepare him for post-secondary education, employment and independent living by:

i. Failure to identify measureable postsecondary goals based upon age appropriate transition assessments related to training, employment and independent living skills;
ii. Failure to invite participating agency representative that is likely to provide or pay for transition services (DVR);
iii. Failure to provide plan for how to regain the foreign language missed the previous year in order to qualify for 4-year college entrance requirement;

ii. Failing to give appropriate discussion and consideration to Parent's input and requests for more IEP meeting to develop, review, and revise IEP and transition plans;

iii. Failing to appropriately record elements in an IEP meeting related to goals, placement, related services, and transition plans:

i. Failure to appropriately provide PWN when Parent requested services for Adult Student;
ii. When PWNs were provided (like in the IEPs), District failed to include specific Parent requests for service from the IEP meetings and ignored requests and did not respond;

iv. Failing to appropriately consider and provide special education and related services should have been reasonably calculated to lead to meaningful educational benefit for Student by:

i. Exiting Student from social/emotional/behavioral services;

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A. Making unilateral change to Student's program without issuing a PWN, obtaining Student's consent or providing any meaningful data to support exiting of services;
B. The District did predetermine services by:
    1. Removing the service prior to IEP meeting and declining to include Parent input into the IEP;
    2. In IEP meeting 2/24/2015, the District claimed 9/19/2013 inclusion of social/emotional/behavior services was placed into the IEP in error;
    3. District contends Adult Student did not qualify for social/emotional/behavioral services because he did not create problems in class, and District stated at next meeting that behavior is off the table and will not be considered;
    4. The District said in the next meeting (to discuss transition services) it will be exiting the Student from services (his IEP);
C. Not appropriately identifying the need for further assessments, even at Parent request at September IEP meeting;

v. Failing to provide appropriate technology services;
vi. Failing to provide IEP progress reports by:
    i. Failing to provide adequate systematic, empirical methods involving rigorous data analysis to measure Student progress;
vii. Failing to use appropriate /qualified persons to interpret evaluation recommendations in order to provide meaningful educational implications to the IEP team;

f. Failing to consider IEE obtained at Parent expense by:
    i. Failing to provide persons in the 2/24/2015 IEP meeting qualified to interpret the 9/13/2014 IEE results and resulting educational implications by:
        i. Acts of unprofessional conduct/ unauthorized professional practice;
g. Whether the Student is entitled to the requested remedies, or other equitable remedies, as appropriate, including:
    i. New evaluation in speech and language as recommended in the 9/13/2014 IEE;
    ii. An appropriate IEP developed to include recommendations in the 9/13/2014 IEE:
        i. Appropriate/qualified persons to interpret the 9/13/2014 IEE data and recommendations for educational implications be present in all meetings to develop Adult Student's IEP;
        ii. Creation of an appropriate transition plan for the Adult Student:
            A. Use appropriate/qualified persons to appropriately evaluate Adult Student with college, vocational and independent living assessments;
            B. Appropriately/qualified persons to develop a transition plan;
            C. DVR to be present at next meeting, and to be part of the IEP team regarding transition assessment;

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iii. Implement an appropriate transition plan:
    A. Qualified persons to interpret the results of such evaluations;
    B. Provide Adult Student appropriate guidance and counsel qualified persons;

iii. Extended School Year (ESY) services for summer 2015, as he will be in the midst of emerging skills (as the school has significantly delayed implementing appropriate services;
iv. Compensatory services in social/emotional/behavioral areas for two or more years as appropriate;
v. Compensatory Transition services;
vi. Compensatory education in the form of placement at the New Horizon School (NHS) Transition Extension, for two or more years as appropriate, to help Student be appropriately prepared for life after high school, moving into college, employment and independent living skills;
vii. Transportation related to transition services placement;
viii. Compensatory education of one year of foreign language studies;
ix. Transportation related to the foreign language studies;
x. A laptop with Inspiration 9 to complete school work and homework away from school;
xi. Reimbursement of educational advocate's fees;
xii. Reimbursement of attorney's fees, if attorney is engaged and other due process related costs.

See Amended Second Prehearing Order dated March 27, 2015.

FINDINGS OF FACT

Background

1. The Student is 18 years of age and resides with his Parent in the District. He entered the District at the start of 11th grade in September 2013 with two medical diagnoses: Attention Deficit Hyperactivity Disorder (ADHD) and Obsessive Compulsive Disorder (OCD). He qualified for special education under the category of Health Impaired.

2. As of January 2015, the Student had met all state requirements for high school graduation. He had met requirements to earn a certificate of individual achievement[5]. The District opted to require a culminating project for students graduating in 2015. The Student had not yet completed the culminating project. The Student had a cumulative grade point average (GPA) of 3.594 through the end of 1st semester in 12th grade. The GPA is calculated using a zero-to-four point system in which an "A" grade counted as 4.0 points. Exhibit D13; Testimony of John Clough.

[5] A certificate of individual achievement is available to special education students who are not appropriately assessed by the Washington high school assessment system. RCW 28A.155.045.

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3. On February 2, 2015, the Parent presented to the District an independent educational evaluation (IEE) which contained two diagnoses for the Student: Attention Deficit Hyperactivity Disorder (ADHD) (combined presentation); and, Autism Spectrum Disorder, Level 1. Exhibits J2, D9. The Student and Parent, with an educational advocate, attended an IEP team meeting on February 24, 2014. The Parent was dissatisfied with the District's response to the IEE and the outcome of the IEP meeting. The Parent, acting as agent on behalf of the Student under the Power of Attorney, filed this due process hearing request on March 31, 2015. Testimony of Parent.

Registration in the District

4. On or about August 23, 2013, the Student and his Parent met with the District's school counselor to register the Student for 11th grade. The Student was 16 years old. The Student had completed 10th grade at a private school, and he was not credit deficient. Testimony of Leon Matz, Parent. Before transferring to the District, the Student's semester GPAs for 9th and 10th grades were 3.286, 3.657, 3.857 and 3.627, respectively. Exhibit D13.

5. The school counselor has a standard question he asks high school students: What do you plan to be doing ten years from now? He cannot recall the Student's response. He cannot recall if the Student said he wanted to go to a four-year college. He cannot recall if he told the Student about college admission requirements for foreign language credits. The Parent does recall the Student stated a desire to attend college. The school counselor did not discuss college admission requirements although at the time he registered in the District, the Student expressed a desire to go to college after high school.

6. The Parent told the school counselor that the Student had received special education services when he attended public school in the Kent School District (Kent). The District hired a new special services director effective July 1, 2013, but he had not yet reported for work in the District. The school counselor informed a school psychologist the District had a newly registered student with a history of special education. Testimony of John Clough, Rica Rostad.

7. The District employed two school psychologists but one was on maternity leave in fall 2013. Rica Rostad was the school psychologist assigned to evaluate the Student's eligibility for special education. She was responsible to communicate with the Student, his Parent, and his Father who lived out-of-state, to conduct or arrange for assessments, gather relevant information, and complete an initial evaluation report. She has a master's of education in counseling and development, and is a Washington certified school psychologist. Testimony of Rica Rostad; Exhibit D3, p.2.

8. The Parent told the school counselor and psychologist that she wanted a smaller-sized school setting for the Student, who was bright and smart but had difficulty with social conversations and speaking up for himself. She reported that the Student had benefited from speech therapy at Kent where he participated in "boy groups" and had the opportunity to build friendships and social skills. She wanted the District to provide a similar school experience, and also mentioned her hope that he could have a lunch buddy. She told the school psychologist the Student picked at his skin, lost focus, and fixated on things. The Parent explained the

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Student was seeing a therapist, and that his medical conditions of ADHD and OCD were treated by medication prescribed by his physician. The Parent claims the school counselor and school psychologist promised "amazing things" for the Student.

9. The District policy in 2013 did not allow immediate enrollment of a transfer student with a history of special education services. The enrollment process was not to be completed until an evaluation, and after an IEP was in place if the evaluation showed the transfer student continued to qualify for special education. Testimony of Rostad, Clough.

10. Although not officially enrolled, the Student nevertheless attended general education classes in the high school at the start of the 2013-2014 school year. The observations by teachers during the first week of school, together with results of assessments and tests, were included of the evaluation process. Testimony of Rostad.

11. *Consent to evaluate.* The school psychologist did not present an official District form to the Parent to begin the evaluation. She accepted from Parent a signed consent to evaluate handwritten on a plain sheet of paper.

Orting School District evaluation September 2013

12. The District's school psychologist communicated with the private school at which the Student had finished 10th grade in spring 2013. The record of evidence does not include educational records from the private school. Testimony of Rostad.

13. *Kent IEP.* The record of evidence does not include the 2009 evaluation by Kent, but it was reviewed by the District's school psychologist. She also reviewed the Student's 2010 IEP for 8th grade, with annual goals in the areas of behavior, writing, functional communication, language-concepts, and written expression. Exhibit S2.

14. The Student and his Father completed social/emotional/adaptive surveys in 2009. The Student's Father rated him at risk in leadership and clinically significant in the area of atypicality, withdrawal, attention span and functional communication. The Student self-rated as at risk in atypicality, anxiety, somatization and very close to at risk in attention problems and interpersonal relationships. The Student rated himself as average in having good relationship with parents, interpersonal relationships, self-esteem, self-reliance and personal adjustment. In the general education setting, the Student's behaviors at Kent included reading a book instead of working on classroom work, difficulty socializing with other students in class (though this had decreased), and picking at his arm or leg. By 8th grade he initiated conversations with staff with more frequency, but did not initiate interpersonal relationships with peers. Exhibit S2, p. 7.

15. At Kent, the special education teacher, speech teacher and counselor had facilitated opportunities for the Student to practice social skills and to build friendships. Exhibit S2, p. 5. The Kent speech and language therapy services provided the Student an opportunity to work on communication with a small group of peers in a therapy setting. Given a cue from the therapist, the Student recognized that he was off-task. The speech and language therapist observed in October 2010 the Student's participation was limited to when directly asked to contribute. He

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did not participate in work times with his elbow partner. He did not appear to attend to instruction often, was distracted picking at his skin or fiddling with work materials (such as reloading mechanical pencil). Exhibit S2, p. 8.

16. The Kent IEP provided the Student with the following accommodations:

a. Behaviorally related: provide opportunities in school environment in natural matter to help build peer relationships (use peer pair time by choosing peers that have like interests);
b. Content area: daily, in general and special education classrooms, give short, concise directions, present information visually (not solely oral presentation), provide a copy of the notes/study guides, and extra time to respond;
c. Testing: during testing in general and special education classrooms, individual or small group space, cue to stay on task; increased time on tests in all testing locations.

Exhibit S2, p. 11. At Kent, the Student spent nearly 82% of the school week be in a general education setting. His IEP provided for nearly 300 minutes per week in a special education setting as follows:

a. Written expression, 45 minutes/1 time daily, by a special educational teacher/instructional assistant;
b. Speech language, 30 minutes/3 times monthly, by a speech language pathologist;
c. Behavioral instruction, 10 minutes/1 time daily, by an SES[6].

Exhibit S2, p. 14.

17. *Current medical.* The Parent identified the Student's therapist and physician so that information could be released to and considered by the District for the evaluation. The school psychologist made several attempts to contact the medical providers identified by the Parent, but did not receive a response before she decided to convene an evaluation meeting. The school psychologist did not believe the Student presented with any obvious serious issues. He did not appear to lack the ability to understand direction or instruction, and there were no reports of suicidal ideation or self-harm or psychosis. Her intent was to complete the evaluation in order to get him into school as soon as possible (ASAP).

18. *District assessments, tests, observations.* The school psychologist met with the Student over several days to complete testing. On August 29, 2013, the school psychologist administered the Behavior Assessment System for Children, Second Edition (BASC-2), and the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV). On August 30, 2013, she administered the Kaufman Test of Educational Achievement, Second Edition (KTEA-II). She

[6] The acronym SES is not defined in the IEP or the record.

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administered the California Occupational Preference Survey, Second Edition (COPS-2) on September 4, 2013. She conducted a 25-minute classroom observation of the Student in sixth period oceanography, but failed to note the date. She also arranged for the Student to be assessed by the speech and language pathologist and the behavior intervention specialist. She also interviewed several general education teachers about their impressions of the Student in the first week of school. Testimony of Rostad.

19. During the test sessions, the Student made appropriate eye contact, was cooperative and willing, worked hard, and only occasionally became preoccupied with outside stimuli. He followed directions, participated appropriately, and was compliant with adult requests. The assessors each concluded the tests administered produced results which were valid and an accurate reflection of the Student's abilities (except for the BASC-2 as described below). Testimony of Rostad, Audrey Gallagher, and Lori Gosney.

20. During two days of testing, including during the KTEA-II, the school psychologist observed the Student picking his skin when he was not directly engaged in testing or waiting for further instructions. When redirected he quickly got back on track. She interpreted the behavior as a nervous habit or out of boredom. She asked the Student directly about picking but he indicated nothing was wrong and that he would stop. Exhibit D1, p. 13.

21. *Evaluation meeting.* The school psychologist scheduled an evaluation meeting for September 9, 2013. She prepared a three page Evaluation Summary form, which attendees reviewed and signed without change: Student, Parent, school psychologist, a principal/building designee, a general education teacher, the case manager, a speech language pathologist, a behavior intervention specialist, and one other. Exhibit D1, pp. 3-5. Several witnesses confirmed they attended the September 9, 2013, evaluation meeting, including the Parent, school psychologist, case manager Caryn Pekarek and behavior intervention specialist Gallager.

22. The school psychologist had not finished Section I of the Evaluation Summary. Under Review of Existing Data, she typed the date of referral, "08/23/2013 - ", but following the hyphen the space was left blank. The Parent's reasons for the special education referral were omitted. The school psychologist left unfinished the space to describe strategies and interventions used to date and the effectiveness on Student achievement and/or or adjustment, and the existing academic record information. However, she included some of the information she gathered from the Student's parents and previous educators in the Areas of Evaluation forms. Exhibit D1, p. 3; Testimony of Rostad.

23. The Evaluation Summary stated the Student met eligibility criteria under the disability of Health Impairments. The school psychologist described the effects of the disability on Student's involvement and progress in the general curriculum as follows:

> [Student] has ADHD (inattentive type) and OCD as well as dyslexia. He can become distracted which may cause him to miss vital instruction or classroom information. His OCD can manifest itself in a variety of ways, which may cause him to become distracted from the classroom environment, lose precious time while engaging in

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compulsive behaviors, and can be a deterrent for positive social interactions. He has trouble with handwriting which can lead to the reader's inability to comprehend what [Student] is trying to write.

Exhibit D1, p. 3.

24. The Evaluation Summary recommended to the IEP team that the Student receive special education services including specially designed instruction (SDI) in the area of written language, as follows:

> [Student] requires SDI in the area of Writing in order to bring his skills up to grade level. He needs to focus on his punctuation and the use of capital letters within words and within sentences.

The school psychologist left blank the section for recommended related services. She typed "Intervention Specialist" in the recommendation for supplementary aids and services with no further description. Exhibit D1, p. 4.

25. The 3-page Evaluation Summary was presented at hearing as part in a 21-page document offered by the District. Additional forms labeled Areas of Evaluation addressed Medical-Physical, General Education, Social/Emotional, Behavior, Cognitive, Academic, Communication, Vocational, Observation, and Age Appropriate Transition Assessment. Exhibit D1, pp. 6-20.

26. The evidence is unclear if the Areas of Evaluation forms were distributed and reviewed at the September 9, 2013, meeting. The second sentence of the Areas of Evaluation for General Education is written in the past tense: "A full initial evaluation has been completed with a meeting held on 9/9/2013." In an email to the Student's Father three days after the meeting, September 12, 2013, the school psychologist explained that she was behind on reports. "I will send you a copy of his evaluation as soon as I finish typing it, which hopefully is pretty darn quick," she wrote. Exhibit D3, pp. 2-4. The Student's IEP case manager made handwritten notes during the evaluation but made no mention of the distribution or review of forms. The brevity of the minutes does not reflect the detail contained in the Areas of Evaluation forms. Exhibit D2. On September 13, 2013, the school psychologist wrote the Parent to provide a copy of the initial evaluation discussed at the meeting. Exhibit S59. After carefully considering the above findings, it is improbable that the Areas of Evaluation in the form offered at hearing were distributed and reviewed at the September 9, 2013, evaluation meeting.

27. The meeting notes identified the Parent as the source for information that the Student saw a therapist every two weeks and that Parent preferred the Student not be pulled from any class. The meeting notes include some details about the written expression scores, a reference to "supplemental services in behavior" without any other detail, a few details about a vocational survey, and that the Student likes to finish work at school. The discussion included "maybe" or "possibly" having a person to check in with the Student, of needing to work on advocacy skills, of a book suggestion for being a highly effective teenager, allowing Student to listen to music for independent seat work, and using a fidget tool or rubber band. The notes end with three "?" marks followed by the words "picks at self." Exhibit D2.

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28. *Areas of Evaluation - Medical-Physical.* The school psychologist noted the Student's diagnoses were being treated with prescription medications. He had dyslexia, dyscalcalia (sic), dysgraphia, and difficulty with language processing. The Student reported no history of serious head injuries, physical trauma, or overnight hospitalizations, other than a broken collarbone. He reported no major illnesses or diseases but used a C-PAP machine at night in order to help him breathe better due to sleep apnea. The educational implications were summarized as follows:

> [Student] may have a difficult time paying attention in class and may appear not to be listening. Gentle reminders for him to focus are suggested, seating in close proximity to the teacher is recommended, visual outline of class presentation is suggested, with frequent checking to determine student understanding.

Exhibit D1, p. 6.

29. The Parent faults the District for completing the Medical/Physical areas without waiting to receive the requested medical records from the Student's therapist and physician. The Parent did not challenge the accuracy of the medical-physical summary. The record of evidence does not contain documents from a therapist, physician, or other medical provider who served the Student in 2013. No findings can be made about what information relevant to the evaluation they would have provided in September 2013.

30. *Areas of Evaluation - General Education.* After teaching the Student for about one week, general education teachers in Oceanography, History, Algebra, English and Pre-Carpentry related their impressions of him to the school psychologist. He was quiet, respectful, polite, and tended to keep to himself. He corrected the Oceanography teacher when she counted him missing when he had been testing with the speech language pathologist (SLP), which was interpreted as an ability to stand up for himself. He reminded the History teacher about what the class was supposed to be doing and what assignment they were on, and yet the History teacher remarked if Student could speak up more for his needs it would probably serve him well. In Algebra, the Student answered correctly 10 of 10 on a quiz and seemed to work well with others. The English teacher expected independent reading at home, and talked with the Student about what book he wanted to read. The Pre-Carpentry teacher noted the Student had offered to help out, had picked up nails off the floor and given them to the teacher, and appeared to wantito stay busy. The Student worked hard on first-week carpentry projects and was quick to get them done. Exhibit D1, p. 7.

31. *Areas of Evaluation - Social/Emotional.* The BASC-2 is a self-report survey to help identify areas of concern regarding social, emotional, behavioral, or adaptive skills. The Student reported he had not slept well the previous night and was unused to getting up early. The school psychologist took a walk with him around the school, to help the Student awaken and stay focused for the remainder of the survey. He completed the survey without questions or concerns. The Student's responses yielded scores within the average range on both clinical and content scales. All of his responses were acceptable except for an elevated "L" index. The L index detects an attempt to deny problems, either intentionally or inadvertently ("faking good"). It can also be characterized as social desirability. The school psychologist identified several

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reasons to account for an elevated L-index score: a high degree of psychological naiveté and below-average insight into one's own behavior and feelings; an indication one is defensive or unwilling to share information about oneself; or, a tendency to present an idealized view of the self. She did not identify a reason to explain why the Student's L-index was elevated. She cautioned that the high L-index score could suggest the self-report survey scale scores may be overly positive. She concluded it would be wise to view the Student's results on the BASC-2 with some degree of caution. Exhibit D1, p. 8.

32. *Areas of Evaluation - Behavior.* The behavior intervention specialist had a master degree in counseling, and was certified in Washington as a school counselor and a school psychologist. She did not administer any tests to the Student in 2013. She did not review the Kent IEP. She met the Student one-on-one, interviewed and observed him in the high school environment, and during a classroom observation. Exhibit D1, p. 10; Testimony of Gallagher.

33. The Student explained that he was not accustomed to the larger class sizes at Orting. The behavior intervention specialist reported he may need frequent checks for understanding to be successful in a larger classroom setting. The Student remarked about the longer distance between classrooms, which the behavior intervention specialist noted might impede his ability to keep things in his short term memory. The Student preferred a quiet learning environment and could be distracted by too much noise. He liked to listen to music to drown out background noise and maintain his focus. He reported his handwriting was a barrier to note taking. The behavior intervention specialist reported that the Student would benefit from having class notes provided to him to which he could add his own notes, and benefit from typing longer assignments. He may need extra reiteration of steps and work to be explained in multiple ways to be successful. She recommended the use of a fidget to help focus, and as an appropriate alternative to picking at his skin. The Student described himself as not very social, and reported that since Kindergarten he needed support in becoming more social while participating in group work. The behavior intervention specialist observed the Student hyper-focused, which she felt could be both positive and negative. The Student told her that he enjoyed running, track, cross country, reading mysteries and science fiction, and doing puzzles of all kinds. Exhibit D1, p. 10.

34. The behavior intervention specialist received input from the general education teachers, the school psychologist, and the Student, to reach her recommendations. She described the Student as eager, willing to follow directions, to participate appropriately, and compliant to adult requests. She concluded the Student could receive the assistance he needed in the classroom setting from teachers and paraeducators. Due to the Student's quiet and polite demeanor, she reported that teachers needed to be observant and to check in with the Student frequently. She recommended teachers contact her for consultation if the need arose. Exhibit D1, p. 10.

35. *Areas of Evaluation - Cognitive.* A full scale intelligence quotient (FSIQ) from the WISC-IV was considered by the school psychologist as the most representative estimate of global intellectual functioning. The Student's standard score of 112 placed him in the high average range. His verbal comprehension was in the high average range and perceptual reasoning index in the superior range. His processing speed was average, but working memory index was low average. The Student's abilities to sustain attention, concentrate and exert mental control were a weakness relative to his verbal comprehension and perceptual reasoning abilities. The

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Student's difficulty repeating long strings of numbers backward was evidence of weak mental control, which may make the processing of complex information more time-consuming, drain mental energies more quickly as compared to same-age peers, and perhaps result in more frequent errors on a variety of tasks. Exhibit D1, pp. 11-12.

36. *Areas of Evaluation - Academic.* The Student's standard scores on the KTEA-II placed him in the average range in clusters of Reading Composite, Math Composite, and Written Language Composite. He was average range in the composite subtest areas, grade equivalent at 11 or 12th grade, with the exception of the written expression subtest. In the written expression subtest the Student's standard score of 84 was in the low average range of 75-93, equivalent to grade level 6.2. His spelling subtest fell in the average range, but the grade equivalent was 7.8. An Oral Language Composite was not administered. Exhibit D1, pp. 13-14.

37. *Areas of Evaluation - Communication.* A speech and language pathologist (SLP) assessed the Student's language skills using the CASL. The date of assessment is unknown but it included a file review to gather baseline information from the Kent records. The SLP has a master's degree in speech and language and a certificate of clinical competency from the American Speech and Hearing Association. She considered the test results to be an accurate reflection of the Student abilities. Exhibit D1, p. 15; Testimony of Lori Gosney.

38. The CASL assesses receptive and expressive language skills of children aged 3 to 21. The CASL utilizes situational questions which correlate to skills needed by a high school student in assessing social language. The SLP administered the core requirements and subtests for a child of the Student's age in synonyms, grammaticality judgment, nonliteral language, meaning from context, and pragmatic judgment. Exhibit D1, p. 15; Testimony of Gosney.

39. Standard scores on the CASL are age based. CASL's manufacturer labels as "normal" a score in the 85 to 115 range. The Student's standard scores were normal as follows: synonyms, 114; grammaticality judgment, 102; meaning from context, 97; nonliteral language, 91; and pragmatic judgment, 85. Exhibit D1, p. 16. The standard scores are also analyzed by calculating deviation from the mean score of 100. In two areas (lexical/semantic skills and syntax skills), the Student's standard scores were +0.95 and +0.15 standard deviations above the mean, respectively. In supralinguistic skills testing using three subtests, the Student's scores placed him -0.6, -0.2, and -1.0 standard deviations below the mean. These tests measure how well he comprehended complex language when meaning was not directly available from context (reading between the lines). His core composite score of 98 placed him in the 45th percentile, and -0.3 standard deviations below the mean. A student qualifying for special education in the area of speech and language services must have a composite score of -2.0 or more standard deviation below the mean. The SLP concluded the testing showed that the Student no longer qualified for special education in the area of speech and language. She opined that the Student's communication skills did not appear to be impeding his access to education. Exhibit D1, p. 15.

40. *Areas of Evaluation - Vocational.* The school psychologist administered the COPS-2, a self-administered survey to help students identify their likes, dislikes, interest areas, and types of preferred work environments. The Student gave some answers considerable thought and

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others he seemed to know exactly what he wanted to say. He appeared to answer honestly and seemed interested in knowing what his responses would reveal. There was no observation of picking skin during the COPS-2 assessment. Exhibit D1, p. 17.

41. The Student's responses on the COPS-2 resulted in two career clusters as top areas of interest: professional technology, and skilled technology. Three clusters tied for third interest: professional science, communication, and professional service. The results indicated the Student had an interest in work which involved a hands-on approach, conducting research, or involved people/animals in a caring manner, in ways that use his critical thinking skills. Exhibit D1, pp. 17-18. The school psychologist claimed she considered results from a Your Careers assessment and a third assessment, the name of which she could not recall. She did not report results from any other assessments at the time and did not report them at hearing.

42. *Areas of Evaluation - Observation.* The Areas of Evaluation summarized a 25-minute observation of the Student in sixth period oceanography, but did not state the date of observation or identify the observer. The evidence at hearing identified the school psychologist as the observer and author.

43. The Student was seated at the start of an oceanography class and appeared to listen to the teacher's instructions and to take notes. He began to pick at his arm. He stopped picking to listen to the teacher and then began picking at his other arm. The Student arose, asked the teacher a question about his paperwork, returned to his seat, lifted up his T-shirt and looked at his stomach. He stopped, stared vacantly across the table for about 30 seconds, blinked a few times and seemed to be present again to the classroom. He started picking again, stopped to stare blankly and was not working. The school psychologist thought he may have finished the paperwork. The Student became fixated with something he picked up off the floor and played with it in his hands for several minutes. When it was time to create an octahedron, the Student arose to get scissors for himself and his table mate. He continued to cut along the outline for this shape until it was time to clean up and end the class. The school psychologist observed the Student stopped picking without being prompted. She did not observe his behavior had an impact on the class. She could not determine if the Student was bored during the beginning of class or if he was preoccupied with other thoughts. Exhibit D1, p. 19; Testimony of Rostad.

44. *Areas of Evaluation - Age Appropriate Transition Assessment.* The Areas of Evaluation form for age appropriate transition assessment did not identify the method(s) of assessment, the date of assessment, or the identity of the assessor.

> Needs. [Student] needs a small class environment, the opportunity to ask questions, to have written class outlines given to him, to use the computer instead of writing when appropriate, and to get more sleep. He also needs support and understanding, and for people to know that it is hard for him to say he needs help.
>
> Strengths. [Student] is bright, personable, and tries very hard. He stated he is good at math, has good relationships with family members, and is a fast runner. He added that he is physically fit.

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Preferences. He prefers small classes or small groups.

Interests. [Student] likes to read science fiction or any kind of fiction, he likes to run, be outside, and hike. He also enjoys completing word puzzles such as crossword puzzles, or any kind of puzzle.

45. The Parent faults the transition assessment for its failure to identify the Student's need related to the picking of his skin, his reaction to noise, his lack of social and conversational skills, and absence of interests in college and career. The Parent faults the District for failure to identify the Student's interest in going to college after high school. Exhibit D1, p. 20.

46. *Prior Written Notice.* The school psychologist prepared a PWN dated September 9, 2013, to propose to initiate an initial evaluation and an eligibility category. It summarized the proposed action as "Student qualifies for services in Written Expression as well as supplemental services by the Behavior Interventionist." It noted the "evaluation was conducted ASAP so our knowledge of [Student] is somewhat limited as he has only been in attendance for one week." The date the proposed action was to be initiated was stated as September 23, 2013. Exhibit D1, p. 21.

Student's 11th Grade IEP dated September 19, 2013

47. An IEP was developed for the Student's junior year of high school on September 19, 2013. Findings are not made regard every element of the IEP. Findings are limited to the contents of the IEP which are relevant to the issues presented. Exhibit D4.

48. The case manager was responsible to facilitate the development of an IEP based on the evaluation. The case manager has an associate's degree in technology and a bachelor's degree in liberal studies, and is a Washington certificated teacher with endorsements in history, social studies, and special education. She has taken continuing education each year since becoming a special education teacher in 2004, including post-secondary transition planning for students with Autism.

49. Of the evaluation meeting attendees, only Parent and the case manager also attended the IEP meeting on September 19, 2013. The addition of a special education Writing class to Student's class schedule resulted in a change in his assigned English class. His new general education English teacher was invited to the IEP. His Pre-Carpentry general education teacher also attended and a second special education teacher. Testimony of Pekarek, Scott Lindgren.

50. The case manager did not expect any agency would likely be responsible for providing or paying transition services to the Student. Therefore, she did not invite an agency to the IEP meeting. There is no evidence that any participant including the Parent addressed a concern in this regard at the IEP meeting.

51. The case manager drafted an IEP for consideration in advance of the meeting. The Parent's copy of the draft IEP listed by title twelve potential attendees. Exhibit S4, p. 3. She has since lost trust in the District, and she felt confused and suspicious when the District's

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version of the signed IEP page listed the same twelve titles but inexplicably in a different order than the draft the Parent had received. Exhibit D4, p. 3. A careful review of the two documents revealed that the contents were identical. The draft was reviewed by the meeting attendees and signed without any changes to the content. Testimony of Pekarek, Parent, and Lindgren. Exhibit D4, p. 3. Some sections incomplete in the draft were left unfinished. For example, under "Team Considerations" of student strengths and parent concerns, the section for parental concerns was left blank. Exhibit D4, p. 4.

52. The Student's Father inquired by email about attending an IEP meeting by telephone. Exhibit D3, p. 1. He and his wife are identified in the list of persons invited to the September 19, 2013, IEP meeting. The name of the wife is struck through on the IEP signature page but not the Father's name. The case manager did not document the Father's attendance by telephone. The witness testimony about his attendance by telephone at an IEP meeting related to the 2014 IEP. Exhibit D4, pp. 1, 3; Testimony of Pekarek. No finding is made about the participation of Student's Father in the 2013 IEP meeting. He is not a party to this hearing.

53. By the time of hearing, the English teacher had no independent recollection of the 2013 IEP meeting, but confirmed his signature. He explained it was customary for the case manager to explain the evaluation and he had faith in his colleagues. He had no recollection of the Parent asking to add behavioral or other services to the IEP during the meeting. Testimony of Lindgren.

54. Regarding assistive technology devices and services needs, the IEP stated:

> When possible, [Student] should be allowed to type his work on classroom computers, library computers or allowed to return to the resource room to access computers there.

55. Regarding behavior which impedes the learning of the Student or others, the IEP stated:

> At times, [Student] can become hyper-focused which can be both a positive and negative thing. [Student] appears to want to do well and may need frequent checks for understanding to be successful in a larger classroom setting. He will lose focus if there becomes a lull in the classroom routine or he is not interested in the topic being discussed. Teachers need to use direct eye contact and develop a method to help him stay focused within their classrooms. **He will have access to meet with the behavior interventionist when needed.** (Emphasis added)

Exhibit D4, p. 4.

56. The Present Level of Education Performance section described the effects of the Student's health impairment upon his involvement and progress in the general education curriculum in areas of Medical-Physical, General Education, Behavior, Cognitive, Math, Reading, and Writing. The Age Appropriate Transition Assessment section repeated verbatim the Areas of Evaluation form. The Behavior section restated the last two paragraphs of the Areas of Evaluation form, which included the sentence, "**The teachers can contact the**

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behavior specialist for consult if the need arises." (Emphasis added.) The Student's statements about becoming distracted by too much noise and that he needed help becoming more social while participating in group work, and the picking behavior, were not mentioned under Behavior. Exhibit D4, pp. 5-6.

57. The IEP's Secondary Transition planning to facilitate the Student's movements from school to post-school activities was based on a projected graduation date of June 18, 2015. It listed two post-secondary goals/outcomes in Education/Training and Employment. For Education/Training, the goal within one year of graduation was to be employed in a field related to animals or people. The Transition Services for the goal were that while in high school, the Student would take elective courses which interested him and exposed him to areas in which he would like to be trained, and would take offered field trips to post-secondary educational institutions. The case manager admitted she made a mistake, a typographical error, in the content area under the Education/Training goal. She meant to refer to being enrolled in a field related to animals or people (not employed in the field).

58. The Employment goal was that within two years of completing post-secondary training, the Student would be employed in a career which involved caring for people or animals. The Transition Services for the goal are that while in high school, the Student would take a careers class and research different career opportunities, demand, wages, and benefits. A responsible individual on staff or at an agency is not named in either of the Transition Services sections. They refer generally to contracted District staff and student. Exhibit D4, p. 7.

59. The coursework to achieve the Student's desired post-secondary goals identified two electives for junior year (pre-carpentry and oceanography), and two unspecified electives for senior year. The IEP stated the Student "should explore elective courses to help him decide on a future career." The IEP stated post-school support agencies were not appropriate at that time. It is unlikely there was any team discussion about outside agencies. The Secondary Transition section ended with "other" and the statement that if any career field trips are offered, the Student should consider participating to help him decide on a career pathway. Exhibit D4, pp. 7-8; Testimony of Ms. Pekarek.

60. The process by which the Student's elective courses were chosen in fall 2013 is not known. It is not known if he selected them on his own, or with the help of one or both of his parents, or was guided in his selections by District staff, or some combination of the above. His Parent faults the District's school counselor and school psychologist for failure to inform the Student that admission requirements of four-year colleges and universities in Washington included two years of study in a foreign language. Due to lack of information, the Student lost the opportunity to make an informed choice of elective courses and choose a foreign language his junior year.

61. The 2013 IEP described two measurable annual goals for Writing-Development and Writing-Variety of Forms/Genres, with progress toward the goals to be written in the report card on a quarterly basis. Over a one year period, progress toward the goals was to be measured using a 6-trait-State writing rubric to move from level 1 to level 2, as measured by student work

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samples. Exhibit D4, p. 9. The IEP did not include similar measurable annual goals for the Transition Plan (TP).

62. The IEP included the following accommodations/modifications for the period September 20, 2013, to September 19, 2014:

Accommodation/modification	Frequency	Location
Access/Use: Word processor/ computer	When he needs to type his written work	Library, resource room
Behaviorally related: Reinforcement Other/some type of fidget for his hands	 When [Student] has lost focus When [Student] is demonstrating inappropriate behavior	 All classroom settings All settings
Content Areas: Difficult assignments to be completed in resource room Check work frequently to ensure understanding	 When he requests an alternate setting When assignments are given	 General education classes General education classes
Testing Accommodation: Alternate Setting Use of computer with features turned off DAPEMS[7]	Testing periods State Testing period Testing period	Testing locations Testing room Testing room

The curriculum was not modified. Exhibit D4, p. 10; Testimony of Pekarek.

63. The Parent faults the District's failure to list accommodations mentioned in the Areas of Evaluation forms. For example, the IEP accommodations did not mention seating in close proximity to teacher, visual outline of class presentation, providing class notes in advance to ease the Student's note taking, or initiating a conversation to determine if help is needed as the Student may not ask questions of his own accord. The case manager did not have an explanation for the omissions. She admitted the evaluation would have reasonably supported including as an IEP accommodation the provision of class notes in advance to address barriers presented by the Student's handwriting. Regarding head phones, the case manager explained

[7] The meaning of the acronym DAPEMS is not clear from the record and not relevant to the resolution of this dispute.

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she had not included in the IEP that the Student sometimes wore head phones because school-wide each teacher decided the conditions under which listening to electronic devices was suitable in a classroom setting. The case manager expected a classroom teacher to identify when wearing head phones was not an avoidance tactic. The case manager did not recall that the Parent asked about the availability of noise-cancelling headphones. The English teacher had no personnel recollection of the Parent asking for services to be added to the 2013 IEP. Testimony of Lindgren.

64. The IEP contained a page headed Special Education and Related Services, on which two tables displayed eight columns similarly shaded and labeled. The first table headed Services 09/20/2013 – 09/19/2014, identified "Written Language" special education services provided by a special education teacher, monitored by a special education teacher, 53 minutes 5 times weekly, in a special education setting. Following the first table was a calculation of the total minutes per week the Student would spend in school (1,680 minutes), the total minutes per week the Student was served in a special education setting (265 minutes), and the percent of time spent in a general education setting (84.23%). Exhibit D4, p. 12.

65. Following the calculation of minutes spent in special education, the IEP contained a second table headed Supplementary Aids and Services. It identified "Intervention Specialist" services to be provided by a behavior specialist, monitored by a special education teacher, 15 minutes 1 time weekly, in a special education setting. Exhibit D4, p. 12.

66. The District contends the supplementary service was always a "consult only" service. The behavior intervention specialist understood that the IEP committed her to being available up to 15 minutes per week to consult with teachers and/or the Student. If she consulted one-on-one with the Student, it would have been outside the scheduled school day. As noted in the findings below, by September 2014 the District would explain to Parent that the case manager made a mistake when she included a Supplementary Aids and Services section in the IEP, that the consult services were in the wrong place in the IEP. Testimony of Gallagher, Pekarek, Parent.

67. The Kent IEP had provided behavioral instruction services of 10 minutes 1 time daily, or 50 minutes per week, in the total special education minutes calculation. Exhibit S2, p. 14. The Parent advocated at the September 19, 2013, IEP meeting for more minutes but understood the District team members would not agree. The Parent accepted the 15 minutes per week proposed in the draft IEP primarily because she understood the IEP team could revisit the issue once the teachers had more opportunity to observe the Student in the high school. She failed to note the significance of the fact that, unlike the Kent IEP, the District's IEP did not include the intervention specialist services in the total minutes calculation or the percent of time spent in general education. The fact that elsewhere the IEP referenced the ability of general education teachers to consult with the behavior intervention specialist was not understood by Parent as inconsistent with or contrary to the provision of direct services to Student. Testimony of Parent.

68. *Consent, Prior Written Notice.* At the end of the IEP meeting, the Parent signed a Written Parental Consent for Initial Special Education Services. Exhibit D4, p. 14. The Parent also received at the IEP meeting a PWN prepared by the case manager to initiate the special education placement developed by the IEP team effective immediately (September 19, 2013).

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The PWN stated the Student's evaluation indicated he qualified for "written language services". The team considered and rejected placing the Student in all general education classes with the special education teacher providing the general education teacher with specially designed instruction (SDI) for written language. The team chose to place the Student in one resource special education class with SDI for written language. The PWN stated the team felt the Student would be best served in a resource setting where he could receive SDI for written language in a small class environment. Exhibit D4, p. 15.

The 2013-2014 school year, 11th grade

69. *Classroom and sports activities.* The Student's first semester general education classes for 11th grade were in Level II Fitness, Pre-Carpentry, U.S. History, Algebra I, and Oceanography. In second semester, Weight Training and Zoology replaced Fitness and Oceanography. He received his Writing instruction in a special education setting for both semesters. He participated in high school sports such as the cross country team. Exhibit D14; Testimony of Parent, Lisa Sorrel.

70. The case manager taught the Student Writing in a special education setting and observed the Student pick at his skin. She offered the Student different types of fidgets (squishy balls, for example) to engage his hands and avoid picking his skin. He tried the fidgets a few times then declined to use them. The case manager explained she would not have made specific accommodations for fidgets in the 2013 IEP before they had proven to be useful. She found that what worked best to re-direct the Student's attention to stop picking was a slight tap on his desk or paperwork. Testimony of Pekarek.

71. The Student did not pick at his skin in 1st semester Algebra I. Testimony of Martina Bencze.

72. The Student's 11th grade US History observed the picking behavior. He probably spoke to the case manager or at Friday Team Meetings of teachers and service providers. He spoke to the Student, and arranged to re-direct the Student by mentioning his name. The History teacher observed that the picking behavior was not constant, and could be more prevalent at times but overall the behavior did not increase. He would have consulted the behavior intervention specialist if needed, but the system he arranged with the Student seemed adequate because the Student was responsive. Testimony of Tyler Polly; Pekarek.

73. The behavior intervention specialist introduced herself to the Student during the assessment and enrollment process, explained her responsibility to cover more than one campus, and how to find her if he needed her. She told the Student he could also tell a teacher if he needed to talk to her. Thereafter, she did not meet directly with the Student during the 2013-2014 school year.

74. The behavior intervention specialist attended Friday Team Meetings at the high school, where teachers and service providers discussed a variety of issues and shared ideas. She recalled some teachers asked about strategies to address the Student's picking at his skin. She recalled some teachers reported that reminders seemed to help. They discussed easing

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workload to mitigate anxiety. She recalled being asked about picking when it was becoming socially difficult. She understood the Student did a nice job reducing picking behavior with a level of support from the teacher. She understood the picking behavior had improved.

75. On occasion, the behavior intervention specialist saw the Student during his 11th grade year. She would ask, "How's it going" or the like. The Student did not report any problems or seek her help. To the behavior intervention specialist, the Student did not stand out amongst his peers as odd or peculiar or socially awkward.

76. The Student's track coach observed him picking his arm or leg at team practices but said the Student's behavior was easily redirected. She did not observe the behavior impede his participation at practice. He followed instructions and trained very hard. She was typically very busy during competitive meets and could not recall observing the Student's picking during meets. She reported that he was where he was supposed to be when he was supposed to be there and his behavior did not impede his ability to compete. The sport can be solitary, although the Student successfully competed with peers in relay races. She did not find it unusual that he often spent time alone at meets, because being alone to think and prepare for a race was her preference and habit when she was his age. Testimony of Sorrell.

77. The Student's Parent attended most meets, and was concerned to see other teens easily gather in small groups while the Student was more often alone. To the Parent, he was physically present but always seemed to be on the outskirts and missing the experience of fully being part of a team. The Parent also observed how other students moved away from the Student when he picked at his skin, or lifted up his shirt or pant leg.

78. *Transition.* During the 2013-2014 school year, the case manager oversaw the Student's work on a 35-page workbook with "It's Your Career" on the cover. It is also referred to as The Career Book. None of the pages in the workbook are dated, except for the last page, which bears the Student's printed name, his grade (11) and the date (1/15/14). Exhibit D8, p. 35. It is found that the information in the It's Your Career workbook was considered by the case manager to draft an IEP in 2014 for 12th grade. The Career Book guided the Student's exploration of possible careers, self-awareness, career interest areas, and to focus interest to actual jobs. For example, it began with a discussion of four options: quit school; find work immediately after high school; join the military; or, go to a trade school, technical school or college. Exhibit D8, p. 4. The Student responded to lists of preferences to learn about his personal interests, personal qualities, work values, school subjects, and a willingness to complete preparation and training, and economic returns. He wrote that he was willing to complete community college, trade or technical school with one or two years of training, or a four-year college. He checked "no" that he was unwilling to complete an advanced graduate degree. Exhibit D8, pp. 10-15.

79. The workbook showed the Student's responses to an Economic Returns worksheet, about how wages are calculated, and how the wage often depends on the kind of job a person does. The Student completed an estimate of monthly amounts he would need to pay for Rent/House Expenses ($2,000), Food ($1,000), Car Payments (not legible), Insurance ($500), Federal, State and Local Taxes ($50), Clothing ($500), Entertainment ($100), and Savings ($1,000), for

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total expenses of $6,150. The Parent claims the Student's estimates demonstrated his lack of realistic information. She faults the District for the Student's lack of knowledge about real-life living expenses. The District countered that the project was to provide structure for the Student to think about many subjects, options, and choices. Also, living expenses are relative and for some might be reasonable amounts. The next step in the workbook considered yearly incomes, and asked the Student to select one range he thought would meet his needs. "Remember you are just guessing, and this guess will help you later in your exploration," the workbook instructed. The Student guessed that for a 40-hour week he would need to earn between $16,704 and $20,880 per year. He calculated that at $10 per hour or $1,740 per month, he could earn $20,880 per year. The Parent claims that the discrepancy between the expense list ($6,150 per month), and the wages earned list ($1,740 per month) was proof of failure on the District's part to prepare her son for independent living. Exhibit D8, pp. 15-16.

80. The IEP did not address independent living needs. There is no evidence that any team member, including Parent, addressed the concerns about ability to live independently. The District typically considers such needs when students have developmental disabilities or lower functioning cognitive skills, which the Student does not have. Testimony of Rostad, Pekarek.

81. The Career Evaluation section of the workbook involved the Student plotting his responses to a 66 item questionnaire to discover his top two career interest areas. The two were Industrial (interest in repetitive, organized activities in an industrial setting), and Scientific (interest in discovery, collecting, and analyzing information about the natural world, in applying scientific research findings to problems in medicine, life sciences, and natural sciences). Career paths in health and human services (accommodating, humanitarian) tied for third and fourth interest areas. Exhibit D8, pp. 23-24. The Student completed Career Awareness Worksheets for the jobs of civil engineer, carpenter, chemical engineer, and a self-awareness worksheet. Exhibit D8, pp. 31-35.

82. *Progress reports: Writing.* The 2013 IEP required the District to report progress toward the two annual Writing goals by a quarterly written report card. Exhibit D4, p. 9.

83. Teachers in the district used an online system called Skyward to report letter grades for all students periodically throughout the school year: progress 1, quarter 1, progress 2, quarter 2 and a cumulative 1st semester grade; followed in the next semester by progress 3, quarter 3, progress 4, quarter 4 and a cumulative 2nd semester grade. The District mails written report cards to parents quarterly. Exhibits D14, S39, p. 4l; Testimony of Clough, Matz, and Nancy Harris Clement.

84. The case manager gave the Student an "A" letter grade in Writing for every reporting period in 11th grade. Exhibit D14, pp. 1-2; Testimony of Pekarek.

85. Teachers had discretion to add a comment to the Skyward letter grades. The case manager used the comment feature to report progress toward the IEP Written Language goals, as follows:

Q1: Emerging skill demonstrated toward Writing goal(s)

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SM1: Emerging skill demonstrated toward Writing goal(s)
Q3: Sufficient progress being made to achieve Writing goal(s) within the duration of IEP
SM2: Mastered Writing goal(s); excellent journal

The Parent received the first three report cards in the mail, but not the 4th quarter/ 2nd semester card. S39, pp. 1-2.

86. The case manager did not report progress toward IEP goals using the language found in the IEP, such as from a level 1 on the state's 6-trait writing rubric to a level 2 as measured by work samples. She did not distinguish one annual goal from the other in the comments. Exhibit D4, p. 9. She was prompted to comment about the Student's journal because he put a lot of thought into his daily writing prompts. She required daily writing prompts of students and most of his peers did the bare minimum journaling. Testimony of Pekarek. The journals may have been some of the Student work samples to which the case manager applied the 6-trait State rubric; however, the progress was not reported as such and thoughtfulness and effort in journaling were not the IEP measures of progress.

87. The case manager erred when she posted comments in 3rd quarter of 11th grade under the Writing grade that the Student was making sufficient progress to achieve Math goals. He was not receiving special education services in Math and his IEP did not include Math goals. Exhibit D14, p. 2; Exhibit S38, p. 2.

88. General education teachers commented that the Student was polite and courteous and a pleasure to have in class. The general education teachers reported A's in Oceanography (and that he had a special aptitude in the field), Algebra I, and Level II Fitness (where he was motivated and making progress). His Pre-Carpentry teacher reported a B+ increased to an A-, and that Student's participation was excellent. The History teacher recorded A- and B grades without comment. The Student's first semester GPA for 11th grade was 3.783. In 3rd quarter, the Student continued to earn grades of A's and B's.

89. The content differences between the District's electronic grade records and the written report cards became known to Parent after the exhibit exchange in preparation for hearing. The written report cards distributed to students and parents are printed on a form with a visible watermark in the background. The District's electronic reports have no background watermark. The written report cards for each semester include a cumulative GPA. The District's electronic reports did not display semester GPAs. The District's electronic reports displayed cumulative grades and comments each quarter and semester. The written report cards reported only for the current periods. Exhibit D14, pp. 1-2. The content differences aroused the Parent's suspicion about the authenticity and accuracy of the District's electronic records.

90. The District did not have a physical address for the Student or Parent. The District's main office used a single post box address for both Parent and Student. The Parent obtained a post box address through the Office of the Secretary of State's address confidentiality program (ACP). The ACP assigned a four-digit box number to Parent. The ACP assigned a letter of the alphabet to follow the box number to distinguish mail addressed to other household members.

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Testimony of Parent. The record does not include the August 2013 registration paperwork from the Parent. It is not known if the lack of separate addresses for Parent and Student at the District's main office was due to Parent error when she completed registration paper work, or building staff error when the information was entered into the District's system.

91. Unbeknownst to the District's main office staff, the four-digit box number followed by the letter "A", which it had used for all mail addressed to either Parent or Student, was the address the ACP had assigned to the Student only. Nevertheless, all certified mail to Parent during the 2013-2014 school year addressed to the box number ending with "A" was accepted by the ACP and was not returned to the District. The preponderance of credible evidence is that during the 2013-2014 school year, regular and certified mail sent to the box number ending in "A" was not returned to the District office as undeliverable. Testimony of AlMousawi.

92. The 4th quarter written report card for 11th grade was not included in Parent's exhibits and she has no recollection of receiving one in the mail. When mail is returned as undeliverable to the District, the custom of the office staff is to check the address and contact the parent or guardian (as happened when mailed was returned in 2015, as noted in the findings below). The District had no record of returned mail addressed to Parent or Student prior to spring 2015, which followed a change in the ACP address. Testimony of Clough, Pekarek, AlMousawi.

93. *Progress reports: Transition Plan (TP).* The District asserts that it was not required to provide periodic reports of student progress toward measureable goals in the area of secondary transition plan services. The TP serves as a guide but students, including this Student, often change their plans. Thus, the District does not measure progress toward TP goals in relation to a fixed annual target in the same manner as it measured the Writing goals. The case manager checked the Student's selection of class electives, and claims Pre-Carpentry, Oceanography and Zoology were courses consistent with his potential career interests.

94. There was no recordkeeping or monitoring of the Student's participation in career field trips or other field trips. The District did not assign a specific person to facilitate or help the Student access field trips. Some field trip opportunities are announced only to students enrolled in select courses. The Student was not enrolled in any of the select courses and there was no effort by the District to facilitate his attendance as part of his IEP. The District did not know whether the Student had taken any field trips during 11th grade. The school counselor makes class presentations to all students, including special education students, but there is no record that the Student attended one of his presentations. Testimony of Pekarek, Clough, Matz.

95. *Progress reports: Intervention Specialist Services.* The District did not document the intervention services or issue progress reports for supplementary aids and services. Throughout the 2013-2014 school year the Parent frequently asked the case manager about the Student's progress and understood he was doing fine. She did not specifically ask about the supplementary services listed in the IEP until June 17, 2014.

96. The Parent observed the Student at track meets, and in social and community settings outside the school setting. She did not see him show improved social skills or improved conversational skills. The Student rarely met with friends in home or community environments.

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97. On June 16, 2014, the Student's physician issued a "to whom it may concern" letter which identified the Student as a current patient, listed current diagnoses, that he was on an IEP at school, and was being referred for a comprehensive cognitive evaluation and social, emotional and behavioral evaluation. It is not known to whom the physician was directing the letter. The physician wanted to determine Student's level of cognitive functioning, neuropsychological implications, and to identify any emotional concerns regarding any medical and educational implications. The physician specifically wanted an assessment for Autism Spectrum Disorders. Exhibit S6. The Parent received the letter at the physician's office, but could not recall if it was in her possession by June 18, 2014.

98. On June 17, 2014, the Parent emailed the District to ask for an email copy of the Student's most recent IEP and evaluation, and his present levels of performance in his writing goal. The Parent wrote that she was considering seeking behavioral services over the summer and the IEP progress would be helpful to identify the Student's needs. She asked for the progress notes with the behavioral specialist, including how many times they met, on what dates, what they worked on, and what progress was made. She made no reference to the physician's letter or that the physician suspected the Student had an Autism Spectrum Disorder, and she did not ask for a reevaluation. Exhibit S8, p. 1.

99. The next day, June 18th, was the last day of school. The District forwarded the email internally to the case manager, who telephoned the Parent after students were released. They spoke for about 18 minutes, during which the case manager sent the Parent an email with the September 2013 IEP and evaluation attached. She called the Parent a second time a few minutes later and they spoke for another 17 minutes. Exhibit S8, pp. 2, 4; Testimony of Ms. Pekarek; Testimony of Parent.

100. The case manager panicked when she realized the IEP stated that a special education teacher would be responsible to monitor the progress of the intervention services. She had not done any monitoring. She told the Parent that the Student had fallen under the radar and repeatedly apologized to the Parent. She told the Parent that no intervention services were provided directly to Student in the special education classroom. The Parent was very distressed to learn that the Student had not been meeting 15 minutes weekly in the special education setting with the behavior specialist. Testimony of Parent.

101. The case manager denied the Parent asked for a reevaluation on June 18th, but she did not address satisfactorily what subjects she and the Parent discussed for 35 minutes. The Parent insists she asked for a reevaluation, but she did not address satisfactorily discussion of recent visits to the physician or that the physician had or was going to make a referral. It is improbable that the Parent would have only generally asked for reevaluation without a reference to a recent visit to the physician, the physician's letter, or the suspicion about Autism. It is found that she did not mention the recent physician's referral or a suspicion about the need to evaluate for Autism, during the June 18th conversations with the case manager.

102. The next communication between the Parent and case manager began with an email from the Parent on August 5, 2014. Recalling the June 18th conversation, the Parent wrote she had

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been alarmed to learn the Student had not had any sessions with the behavior intervention specialist, but had been too stunned upon learning he had fallen under the radar to continue the conversation and ask intelligent questions in June 2014. She stated her concern for the Student's future success, and she wanted to know the school's next steps and what she could do to support the school. She asked for a reply by August 12th, to have time to schedule anything needed for the Student. The Parent's August 2014 email did not mention that the Student's medical doctor had made a referral for a comprehensive evaluation to include an Autism Spectrum Disorder assessment.

103. The Parent believed the case manager's June 18th apology, but she had turned her focus to the next step needed to support the Student. She was dismayed that she heard nothing from the case manager until August 27, 2014.

104. The case manager replied to Parent by email dated August 27, 2014. She apologized as she had not been online or available through the summer. She said she would be contacting the Parent to set up an IEP meeting. Exhibit S8, p. 5.

105. The Parent did not testify that she actually gave a copy of the physician's letter to the case manager or to anyone else at the District. No District employee acknowledged seeing the June 16th physician's letter in 2014. It is found the Parent did not provide a copy of the physician's letter to the District in 2014.

106. The Parent learned of Rudy Lorber, Ph.D., a neuropsychologist. He saw the physician's referral letter of June 16, 2014. He agreed to conduct an independent comprehensive neuropsychological evaluation and social, emotional and behavioral assessment. Dr. Lorber is a behavior therapist, as well as a board certified school neuropsychologist. He reported the Parent wanted help to develop an appropriate IEP before the Student turned 18 years old. He first assessed the Student on September 6, 2014.

Student's 12th Grade IEP dated September 8, 2014

107. On September 5, 2014, the case manager invited the Parent to an IEP team meeting on September 8, 2014, at 2:20 p.m., and provided a rough draft of an IEP proposed for 12th grade. Exhibit D6; Exhibit S5. She also invited the high school principal or his designee, the Student, his Father, his Father's wife, and three of his general education teachers. Exhibit D5, p. 1.

108. The Parent expected the IEP team's primary focus would be on the issue of behavior, and specifically the failure to provide and monitor the intervention specialist services she believed had fallen under the radar in the 2013 IEP. She expected the District to offer increased service minutes. Instead, the 2014 IEP omitted the Supplementary Aids and Services table for intervention specialist services. The Special Education and Related Services section proposed services in Written Language, but to be delivered and monitored by a special education teacher 10 minutes 5 times weekly in a general education setting. The Parent perceived the draft IEP as "exiting" the Student from special education because the District proposed -0- minutes in a special education setting and 100% of the time spent in a general education setting. Exhibit S5, p. 13. The section for placement options was blank. Exhibit S5, p. 14.

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109. The Student's Father attended the IEP meeting by phone. The Parent arrived late, after the meeting was under way. The District's special education director attended, as did the special education department chair. Two of Student's 11th grade general education teachers attended as they would continue to teach him in 12th grade: his History and Algebra teachers. Also attending were 12th grade teachers in Culinary Arts and English Language Arts. Exhibit D7, p. 1; Testimony of Pekarek, Clough, Bencze, William Edward Hatzenbeler, and Sarah Smith.

110. The District's copy of the signed 2014 IEP differs from the draft IEP by two handwritten additions. The first handwritten change is in the Special Education and Related Services section, to the calculation of total minutes per week student is served in a special education setting. A handwritten "5" was added before the zero to read "50" minutes per week in a special education setting. However, the percent of time spent in a general education setting remained unchanged at 100%. Exhibit D7, p. 11. On the next page, where the placement options section was blank on the draft (Exhibit S5, p. 14), a handwritten "x" is found in the column for "selected" 80% to 100% in Regular Class. Exhibit D7, p. 12. It is not clear when the handwritten changes were made to the District's official copy of the 2014 IEP.

111. The Student's class schedule and grade reports show he was not assigned to a special education Writing class in 12th grade. One general education teacher recalled how the case manager came to his classroom about weekly. Testimony of Polly; Pekarek; Lindgren. It is found, therefore, that the IEP team adopted the draft without the handwritten changes described above and that ~~-0-~~ minutes per week were in a special education setting (not 50 minutes). The Student was not exited from special education and continued to be eligible for special education in the area of Written Language. The Parent and other in-person attendees signed the 2014 IEP as it was drafted by the case manager.

112. *Team Considerations.* The IEP's team considerations section described the Student's strengths: using class time wisely, being respectful, completing and turning in assignments, following directions and class room routines. His Parent was concerned about his social skills, specifically interaction with his peers, job related skills, and dating. The Student's grades and performance on general state or district-wide assessments in 2013-2014 were considered. His spring 2014 High School Performance Exams (HSPE) basic score in written language was a passing score at level 2 with consideration of being in special education, and he was proficient in biology and algebra, and advanced in reading. He did not need assistive technology or services to access FAPE, but should have access to technology similar to his same age/grade general education peers. Regarding behavior which impeded the learning of the Student or his peers, the IEP stated:

> [Student] is a friendly easy going young man. When [Student] becomes bored or disinterested in class, he will start to pick at his skin. He usually picks on his arms, stomach areas, and around his hair. This tends to distract his class peers. He is easily redirected by the teacher. He sometimes needs additional prompts to stop. The best strategy to use with [the Student] for this is if the classroom teacher sets up a cue word or method of asking him to stop.

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113. *Present Level of Educational Performance: General Education.* The Student had good grades during 2013-2014 school year. His Transcript was distributed with the draft documentation. The IEP stated a general education teacher in 11th grade had consulted his case manager about picking and given some strategies to redirect and refocus his attention. The strategies could be as simple as walking by and lightly touching his desk or his shoulder, or using a cue word the Student and teacher predetermined. The best practice was to discuss with the Student what method he preferred. The Student's 12th grade teachers had only four days experience with the Student, but his Algebra teacher taught him in 11th grade and described him as awesome. She reported she had no concerns about him. Exhibit D7, p. 3; Exhibit S5, p. 17.

114. *Present Level of Educational Performance: Social/Emotional.* The 2013 IEP had not contained a present level section on Social/Emotional. The 2014 IEP added this section but stated only that the Student could receive the assistance he needed in the classroom setting and that teachers could contact the behavior specialist for consult if the need arose. The IEP did not describe the social or emotional needs in greater detail or the specific reasons or situations in which the Student was suspected to need assistance. Teachers were cautioned that due to his quiet and polite demeanor they needed to be observant and to check in with him frequently. The IEP did not describe the social or emotional behavior about which teachers needed to be observant. Exhibit D7, pp. 3-4.

115. *Present Level of Educational Performance: Behavior.* The Student followed class room norms and routines with little direction. The IEP stated he "did not qualify for behavior services" but educators should be aware of his distractibility when he "hyperfocuses" on things like picking. In the past the Student was easily distracted by loud environments. He used earphones to listen to music to drown out noise. The accommodations were reported to have worked in 11th grade. He was observed to sit and work without his earphones, and had been asked many times if the noise level was too high and usually replied it was fine. When he wanted to use earphones he asked the teacher. The IEP recommended he should continue to have access to earphones in the upcoming school year. During 11th grade, the Student started to watch movies on his electronic device when he should have been working on class work, but was easily redirected. He could receive the assistance he needed in the classroom setting, and general education teachers could contact the case manager, other special education teachers, or the school psychologist for consultation if the need arose. Similar to the 2013 IEP, teachers were reminded to be observant and to check in with the Student frequently because of his quiet and polite demeanor. Exhibit D7, p. 4.

116. *Present Level of Educational Performance: Writing.* The Student's passing score of 16 (basic) in spring 2014 on a statewide assessment was one point away from a level 3 (proficient). He demonstrated he could write multiple paragraph essays. His writing included an introduction paragraph, multiple body paragraphs, and a conclusion paragraph. He consistently used basic punctuation yet their placement was not always correct. He needed to improve his use of apostrophes, and exclamation points to convey emotion. He had not shown he could use a semi-colon and needed instruction on its use. He used details relevant to the topic but needed to further develop word choice to bring sophistication to his work. A thesaurus would benefit

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him to increase word choice and vocabulary. He also needed to carefully edit his work to eliminate errors with fragments.

117. *Present Level of Educational Performance: Vocational.* The 2014 IEP repeated the COPS data from September 2013. Exhibit D7, pp. 4-5.

118. Other than his letter grades, there is no information about whether his vocational interests were impacted by his 11th grade experiences in pre-carpentry, oceanography and zoology. There was no information about whether he had been offered or attended any career field trips in his 11th grade year.

119. *Present Level of Educational Performance: Age Appropriate Transition Assessment.* The 2014 IEP contained updated information, as follows:

> Needs. Observations show [Student] continues to need access to school wide technology to type his work. He also needs to be able to access school wide intervention periods to ensure he is completing class work and receiving extra help when needed. He needs to build his social skills especially when it comes to places with large numbers of people.
>
> Strengths. [Student] exhibits many strengths. He follows set routines and follows school rules. He is personable and respond (sic) well to redirection. He has been on the cross country team and is an excellent runner.
>
> Preferences. [Student] prefers to be in a quiet environment free of loud noise. He prefers to listen to music during independent seat time.
>
> Interests. [Student] is extremely interested in science. He is interested in being on the cross country team and possibly track. He has expressed interest in working with children, animals, construction, and engineering. His Cops (sic) testing reveals the same career pathways. See the vocational heading.

120. *Secondary Transition.* The 2014 IEP contained the same post-secondary goals/outcomes as the 2013 IEP, with the typo "employed" corrected to "enrolled" in a "secondary institution in an animal related field." In the 2013 IEP, the Student's interest was stated to be in "a field related to animals or people." The Education/Training section added that the Student would take college entrance exams offered at the school. Exhibit D7, p. 6.

121. The IEP listed the Student's courses of study for his senior year. The year-long courses were History/Contemporary World Problems, English 12, Algebra II, Spanish I, and Physics. In 1st semester he enrolled in Culinary Essentials, and for 2nd semester he had enrolled in Digital Photography. Exhibit D7, p. 6.

122. The case manager had not anticipated in September 2014 that any agency would likely be responsible for providing or paying for transition services to the Student and she did not invite an agency representative. The 2014 IEP repeated that an agency linkage was not appropriate

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at that time. The Parent was concerned in September 2014 about the Student's ability to live independently, and she likely spoke to some District staff about her concerns. However, she has not proven she raised the issue in the presence of the Student's Father and other IEP team members in the IEP meeting. Exhibit D7, p. 7.

123. Sometime after the IEP meeting, later in 2014 and in early 2015, the Parent became acquainted with others who had experience with special education and she was introduced to the educational advocate. It is likely through these others and the educational advocate that she became acquainted with DVR services potentially available to the Student. However, no evidence from DVR was offered at hearing regarding whether or not the Student would be eligible for services. The District believed DVR staff service the area had been reduced, and were aware of only two students who had qualified over the past ten years. Despite qualifying, no services were provided by DVR until after completion of all District services. Testimony of Parent, Clough, Pekarek.

124. The Secondary Transition section repeated the 2013 IEP recommendation that the Student should consider participating in career field trips if offered. It added that the Student had been recently questioned about his career interests and had stated an interest in working with children, animals, computer programing, construction and engineering. Exhibit D7, p. 7. The Parent claims the District's post-secondary goals/outcomes limited to an "animal related field" did not appropriately address the career interests it claims the Student identified.

125. The Student did not attend the 2014 IEP meeting to give input to the team about his transition plan. The case manager could not describe any specific assessment of Student undertaken for the 2014 IEP's secondary transition planning. She considered the conversations with the Student throughout the school year, and the Student's responses to The Career Book described in findings above. Exhibit D8.

126. *Annual Goals.* The 2014 IEP described measurable annual goals for Writing-Development and Writing-Variety of Forms/Genres using the same wording found in the 2013 IEP described in the findings above. The Student had met both annual goals set in 2013. The 2014 IEP updated the annual goals to move from level 2 on the writing rubric to level 3 on the writing rubric, as measured by student work samples. Exhibit D7, p. 8. Like the 2013 IEP, the 2014 IEP did not describe measurable annual goals for the TP.

127. *Accommodations.* The 2014 IEP contained the same accommodations listed in the 2013 IEP, except that for 12th grade there was just one testing accommodation for an alternate setting. Exhibit D7, p. 9. The curriculum was not modified. Testimony of Pekarek.

128. The 2014 IEP had no Supplementary Aids and Services, but included support for school personnel as follows:

> [Student] can receive the assistance he needs in the classroom setting from his teachers, paraeducators. The teachers can contact the resource teachers for consult if the need arises.

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The frequency of service was described as when teachers felt they needed assistance, and location was school wide. Exhibit D7, p. 9. The District contends the 2014 IEP did not represent a change in service. Rather, the 2013 IEP consultative services were placed in the proper section of the IEP. Testimony of Pekarek, Harris Clement. However, the 2013 IEP provided the consultation was specific to the behavior intervention specialist for behavior services. The 2014 IEP changed to contact with resource teachers for whatever need arose, without reference to the specific needs foreseen as potentially needing assistance.

129. *Parent Request for Reevaluation.* The Parent claims she asked about reevaluation of the Student during the 2014 IEP team meeting. Her concern was behavior and social skills areas. She did not make any reference to Autism at the meeting. She did not inform the IEP team members during the meeting that an independent assessment with Dr. Lorber had already begun. No District witness who attended the September 2014 IEP meeting recalled the Parent or any other attendee asking during the meeting that the District reevaluate the Student. Testimony of Pekarek, Clough, Harris Clement, Bencze, Hatzenbeler, Smith.

130. The 11th grade U.S. History teacher was to be the Student's 12th grade teacher for Contemporary World Problems. He left the 2014 IEP team meeting after answering questions about his class and the Student. He did not recall that the Parent asked at the meeting about behavioral services or other special education services. He did not recall that anyone at the IEP meeting suggested the Student needed to be reevaluated for behavior services. He did recall a front office conversation with the Parent about behavioral services for the Student but could not recall the date, only that it was an "out of the norm" meeting and not a scheduled IEP meeting. Testimony of Polly.

131. The special education teacher who headed the department recalled the Parent talked at the IEP meeting about the Student's social and behavior skills and that he was not dating. She recalled prior to the meeting a telephone conversation with Parent which also included discussion of job interview skills, but does not recall that Parent spoke about job interview skills at the IEP meeting. The department head and the case manager and the school psychologist exchanged an email before the IEP meeting on September 8, 2014, in which the department head suggested "maybe" having the Student reevaluated for behavioral services. She recalled discussion about the Parent's concern about the Student eating lunch alone, and about having boy groups to practice social skills. The special education teacher admits she did not bring these subjects up of her own initiative at the IEP meeting. She could not recall if the Parent brought up the specific concerns at the meeting.

132. The case manager could not recall the email with the special education department head and the school psychologist, even after an attempt to refresh her recollection with a copy. She recalled the Parent was concerned about the Student eating alone. The case manager thought the District provided support for the Student, who did not linger after eating lunch but went to the library or to the resource classroom where lots of students gathered. She did not think the Student's action of leaving the lunch area alone and going to the library or resource room was unusual or problematic behavior. She could not recall a discussion with Parent about concerns about job interview skills. At the IEP meeting, she did not initiate a discussion with the IEP team about Parent's concerns about having boy groups or social groups. She believed the

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opportunity to work in small groups in the classroom addressed the Parent's concern. She did not consider it appropriate at a high school to require another student to eat lunch with the Student. It was difficult to require teenagers to do anything they did not want to do, and the better approach was a work partner when appropriate in the classroom.

133. The case manager recalled that at the end of the IEP meeting, or shortly thereafter, the Parent gave her a teacher report form to fill out for Dr. Lorber. The case manager filled out the form as requested. There is no evidence they discussed the report form in the presence of the IEP team.

134. An English general education teacher attended the entire 2014 IEP meeting and recalled the Parent asked during the meeting for behavioral type skills "in a broad sense". She recalled the Parent wanted the Student to be in a boys group or to have someone to sit with at lunch. She could not explain the factors used to determine why the Parent's requests were determined not appropriate or not included in the IEP. After the meeting ended, as she walked back to her class the Parent approached and said she was looking at an independent evaluation. The Parent gave the teacher a survey or report form and asked her to complete it. After 19 school days in that teacher's class, the Student transferred to another English class. The teacher had no further opportunity in a classroom setting to observe him. She did not feel comfortable completing the form based on her limited opportunity to observe. She did not complete the teacher report form. Testimony of Smith.

135. After carefully considering the above findings, it is found that the Parent did not ask the District to reevaluate the Student during the September 2014 IEP meeting.

136. *Prior Written Notice.* The Parent received from the case manager a PWN dated September 8, 2014, which stated that the District was proposing to continue an IEP effective September 15, 2014. Exhibit D7, p. 16. The Parent faults the District for not clearly stating its proposal to "change" the IEP. To "continue" implied the 2014 IEP did not constitute a change from the 2013 IEP, she claims. The PWN stated the team considered but rejected placement in a resource class or exiting the Student from special education services. The PWN stated that Student's success over the past year should be allowed to continue with growth in a full day general education setting. If the Student struggled, the team would reconvene and discuss options. The PWN ended with this statement:

> [Father] participated via phone conference. [Parent] was running late but did participate. [Parent] was given a copy of the IEP for her review. She may call the team back together to further address any concerns she may have for [Student's] success being fully included. [Student] will continue to have access to school wide intervention periods to assist him with general education class work.

Independent Educational Evaluation (IEE).

137. Five days after the IEP meeting, Dr. Lorber conducted a second assessment session with the Student on September 13, 2014. The Parent reported that all teachers had submitted teacher report forms to Dr. Lorber, except for the Student's English teacher. Dr. Lorber gave

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the Parent an oral report of his conclusions but had not yet issued a written report pending receipt of the English teacher's report form.

138. On January 8, 2015, the Parent emailed the case manager, as follows:

> As we discussed at the beginning of the school year, I had an independent evaluation conducted for [Student]. [Student] has a new diagnosis of Autism Spectrum Disorder. The IEE is very comprehensive with multiple recommendations to support [Student's] appropriate progress. I request an IEE review meeting with the IEP team that includes someone who is qualified to interpret the results and education implications therein so the team can determine what portions of the IEE the school will accept and use within his IEP. I also request an IEP meeting as soon as possible after the IEE meeting so the IEP team can consider appropriately amending the IEP to include recommendations associated with his disability. I believe there is about 4 hours' worth of discussion, so I request the team consider two 2-hour meetings instead of one long meeting.
>
> I will send you a copy of the IEE as soon as it is available. That said, the IEE has been delayed significantly while awaiting the return of an assessment from one of the teachers. . . .

Exhibit S11. The Parent's email continued with a request that the case manager determine what happened to the paperwork the Parent gave to the Student's initial 12th grade English teacher. The Student had transferred to another English class, and the Parent asked whether the former teacher had forwarded the paperwork to the new teacher. The Parent asked that the report form be completed and submitted to Dr. Lorber quickly so he could complete the IEE.

139. A teacher report form was completed by the English teacher who taught the Student for most of 1st semester 12th grade. Testimony of Lindgren. However, Dr. Lorber did not consider it because some individually rated items were lacking and the test protocol could not be scored.

140. Dr. Lorber's report is undated, but the Parent shared it with the District shortly after she received it on February 2, 2015. Exhibit J2. The Parent faults the District for the delay in completion of the IEE.

141. The District agreed in March 2015 to reimburse the Parent for the costs of the IEE. However, it disagreed with some of Dr. Lorber's conclusions.

142. Dr. Lorber diagnosed the Student with ADHD, Combined Presentation (DSM-V 314.01), and Autistic Spectrum Disorder, Level 1 (DSM-V 299.00). His diagnoses were based on clinical interviews with Student alone and accompanied by his Parent, clinical interviews with the Parent, and analysis and interpretation of test data. He administered the following tests:

> Woodcock-Johnson Fourth Edition Tests of Cognitive Abilities (WJ-IV COG)
> Halstead Reitan Neuropsychological Test Battery for Adults –
> Trail Making Part A and Trail Making Part B subtests, Finger Tapping Test

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Gordon Diagnostic Systems Vigilance and Distractibility Tasks
Children's Auditory Verbal Learning Test – 2 (CAVL-2)
Test of Problem Solving – 2, Adolescent
Woodcock-Johnson Fourth Edition Tests of Achievement – (WJ-IV-ACH)
Gray Oral Reading Tests – Fifth Edition (GORT-5)
Test of Written Language – Fourth Edition (TOWL-4), Contextual Conventions and Story Composition subtests
Behavior Rating Inventory of Executive Function (BRIEF), Parent and Self-Report
Child Behavior Checklist-Youth Self-Report Form (YSR)
Child Behavior Checklist-Parent Report Form
Child Behavior Checklist-Teacher Report Form
Piers-Harris Children's Self-Concept Scale, Second Edition (Piers-Harris 2)
The Childhood Autism Rating Scale, Second Edition – High Functioning Version Clinical Interview

Exhibit J2, pp. 1-2.

143. Dr. Lorber observed the Student during testing. He was cooperative and appeared to put forth his best effort. He quickly tired when undertaking writing tasks. When the Student perceived tasks as being difficult, he picked at the skin on his hand. His eye contact was fleeting at best and he rarely initiated any social interactions, but he did respond to social small talk. Dr. Lorber felt overall the test results represented an accurate appraisal of the Student's present level of functioning. Exhibit J2, p. 2.

144. Dr. Lorber did not observe the Student in a classroom setting. He asked the Student about school. The Student told Dr. Lorber he liked Math, especially Algebra. He found Science class hard at first, and hoped he could remember all he needed to in his Foreign Language class. Asked about any difficulties in school, the Student reported "Spacing out, sometimes I think of things or space off and think of nothing." When asked what might happen at those times he replied, "I can pull myself back." When asked if there was anything he might want to change about school, the Student stated, "It's ok for now." The Student told Dr. Lorber he spent leisure time playing games, watching movies, or reading a good book. He did not have too many close friends but "we talk, hang out after school." A girlfriend was "something for the future." He described himself as, "Kind, understanding, willing to do whatever I can to help, I don't shy away from work, I'm willing to take on any puzzle thrown at me." As to anything he might like to change about himself, the Student stated, "Nothing comes to mind, but I'm sure there is something I could change." Asked what he might wish for if given three wishes, the Student told Dr. Lorber, "A good house to stay in once I leave; a good job that won't fall from under my feet when I need it most; a good relationship with people I care about in life." As for career interests, he spoke about being a construction worker and building things at Boeing. Exhibit J2, pp. 9-10.

145. The Student demonstrated significant variability in his skills that ranged from superior to mildly impaired. He evidenced exceptional strength in his nonverbal problem-solving and reasoning skills. In contrast, his working memory abilities and resistance to interference when acquiring new information, as well as his cognitive flexibility were significantly challenged. He

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also evidenced difficulty in his right hand motor functioning as well as a mild degree of Dysgraphia. He did not demonstrate significant neurologically-based symptomology as he was on his ADHD medication regimen throughout the testing. Exhibit J2, p. 10.

146. Academically, the Student did not demonstrate any deficits in Reading, Mathematics or Written Expression. His ideation for writing was superior. Dr. Lorber's impression was that any potential difficulties in academic performance were more likely attributable to the Student's attention and/or working memory deficits than to his understanding of the curricular content. Exhibit J2, p. 10.

147. The Student viewed himself as having appropriate ability to self-regulate and engage in executive functioning. Dr. Lorber believed the evaluation results did not reflect that the Student's perception was accurate. The Student's performance on the Fluid Reasoning cluster from the WJ-IV COG placed him within the high average to superior range. It was noteworthy to Dr. Lorber that the Student's overall performance on the Cognitive Efficiency Cluster of the WJ-IV-COG placed the Student within the low average range. He gave weight also to the results of the Trail Making Part B test, where the Student was slow and made errors when required to sequence between old-learned material in a new way (i.e., from a number to a letter). Dr. Lorber opined that the results revealed impaired cognitive flexibility.

148. The Parent's responses on the BRIEF showed concerns in Student's ability to adjust to changes in routine or task demands, initiate problem-solving routines or activities, sustain his working memory, and monitor his own behavior. The Parent's responses indicated to Dr. Lorber the Student had difficulty initiating a task or activity without prompting. Typically, students with initiative challenges want to succeed at and complete a task but have trouble getting started. Dr. Lorber opined that the Student may need extensive prompting or cueing in order to begin a task or activity. Of importance to Dr. Lorber is that students with initiation difficulties are at risk for being viewed as "unmotivated." The Student demonstrated deficit performance in working memory, which may compromise his ability to remain attentive and focused for extended lengths of time. He may lose track of what he is doing or forget what he is supposed to do when asked to engage in a task. He can miss complex instructions for an assignment because it exceeds his working memory capacity, and the deficit may result in his not "sticking to" an activity or failing to complete tasks. The Parent reported the Student had difficulty monitoring tasks (work-checking habits) and monitoring self (interpersonal awareness). As a result, Dr. Lorber opined he may be less cautious in his approach to tasks or assignments, may not notice or check for mistakes in his work, and may be unaware of his own behavior and the impact the behavior can have upon his social interactions with others. Exhibit J2, pp. 3-5, 10.

149. The assessment of Autism Spectrum symptomology was based on the history provided by Parent, Dr. Lorber's direct examination, and a structured parental report form completed by the Parent. The overall ratings placed him in the mild-to-moderate symptoms range of the disorder. The Parent's report primarily identified difficulty relating to people, fear or anxiety, atypical body use, and visual response (i.e., including eye contact).Exhibit J2, p. 6.

150. Dr. Lorber tested the Student's higher-level critical linguistic thinking skills in a variety of real-life situations, and found his overall performance was in the low average range. Individual

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subtest performances were highly variable but in the low average or average range, except his skills in Transferring Insights and Interpreting Perspectives of others. In those two subtests, the Student's scores placed him within the mildly impaired range and demonstrated deficit performance with more complex and ambiguous aspects of socially-based language. Exhibit J2, p. 7.

151. Dr. Lorber assessed social, emotional and behavior functioning from the responses to the Parent's Child Behavior Checklist, three Teacher Report Forms, and a Student self-report. For self-reports of boys his age, the Student's overall Total Competence score on the Youth Self-Report (YSR) placed him within the borderline clinical range. He had normal range scores on the Positive Qualities scale, the YSR problem scales, and all rated syndrome scales, DSM-oriented scales, and on the supplemental scales. The Student described himself as smart, quick with his mind and very kind. He did not have any concerns about school. Exhibit J2, p. 7. In contrast, the Parent's responses placed the Student in every scale in either the borderline clinical or clinical range. The Parent reported more problems than are typically reported by mothers of boys the Student's age, particularly related to anxiety, depression, socially withdrawn behaviors, somatic complaints, perseverance and atypical behaviors, and attentional and related concerns. The Parent told Dr. Lorber her concerns about the Student were his not being aware of himself and his surroundings, his inability to interact with his peers, and that he had never had a friend. She was concerned he will not make friends, have a girlfriend, get married, or make it through an interview for a job or career opportunity. Exhibit J2, p. 8.

152. The case manager's Teacher Report Form (TRF) rated the Student's performance in general education classes as "somewhat above grade" level. However, the Culinary Arts teacher rated his performance at grade level. The report asked the teachers to rate the Student compared to typical students in the areas of working hard, behaving appropriately, learning, and being happy. All rated him about average, except the case manager rated working hard and learning as "slightly more" than his peers. The cross country coach rated his behavior as "slightly less" appropriate than his peers. Their scores placed the Student within the normal range on all scales including rated syndrome scales, DSM-orientated scales and on the supplementary scales, except that the Culinary Arts teacher and the cross country coach rated the Student within the borderline clinical range on Thought Problems syndrome. The coach reported the Student could not get his mind off of certain thoughts. The coach and the Culinary Arts teacher both reported the Student twitched and picked at his skin. The coach noted the Student engaged in strange behavior (i.e., "sometimes not part of the group"), yet always showed up for practice and tried really hard. The Culinary Arts teacher also reported that the Student repeats certain actions over and over, but was polite, nice, with a good work ethic, disciplined, and eager to learn.

153. Asked about concerns, the case manager commented the Student used class time well, completed his assignments and turned them in, but could be shy. She noted he liked to watch movies on electronic devices and when he became bored in class, he would pick at his arms and stomach areas. She added that he was easily refocused. The coach reported his concern the Student did not understand his teammates really liked him. The Culinary Arts teacher stated her concern was his ability to not scratch or itch. Exhibit J2, pp. 8-9.

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154. *Recommendations.* Dr. Lorber recommended cognitive/behavioral therapy to help the Student become better aware of issues he is struggling with and view them in proper perspective. Exhibit J2, p. 10. He suggested the name of a therapist.

155. He recommended a Speech and Language Evaluation at school, to assess impaired aspects of higher level linguistic problem-solving skills and negative impact upon social interactions. He recognized the Student was not impaired in speech and language in September 2013, but his recommendation considered that pragmatic language was the weakest area of performance on the 2013 CASL, and the Parent reported the Student received past special education services in the area of communication. Exhibit J2, p. 11.

156. He opined that monitoring classroom performance was necessary due to the Student's areas of weak and impaired memory functioning, paired with his attentional and related challenges.

> The negative impact of interference indicates that [Student] will need to develop highly effective independent study skills for higher education. To address this skill, [Student] will benefit from direct instruction in study skills techniques and organizational strategies.

Exhibit J2, p.11.

157. Dr. Lorber recommended Metacognitive strategy development, a teaching approach of active rather than passive involvement in the social learning process, to address the Student's social problem-solving skills. The teaching approach would aid the Student to become conscious of errors or strategies that are not the most effective. Exhibit J2, p. 11.

158. Dr. Lorber recommended the Student would benefit from an empirically derived behavioral social skills intervention program implemented with fidelity, due to his challenged cognitively-based social skills, related processing challenges, and diagnosed Autism Spectrum Disorder. This type of program would also provide more direct and useful feedback regarding his social behavior. Exhibit J2, p. 11.

159. Despite the Student's excellent ideation for writing, given his age and longstanding presence of Dysgraphia, Dr. Lorber recommended the Student be allowed to use a computer word processor for all writing tasks. He recommended programs such as Inspiration 9 to provide immediate feedback regarding what he has written on the computer, and assist with the organization of his ideas. Exhibit J2, p. 11.

160. The final recommendation was a comprehensive functional Vocational Assessment to help determine vocational possibilities based upon his interests and aptitudes. The direct intervention described in Dr. Lorber's report could also address specific skills necessary to help ensure successful vocational experiences. A transition plan should include vocational counseling coordinated with his psychotherapy to help the Student explore and develop realistic vocational goals. Although working in construction or being a machinist are honorable and potentially high paying professions, Dr. Lorber opined the Student had the cognitive capacity to

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strive for professions that require higher education. The Student's lack of accurate self-appraisal should not hold him back from a wide variety of potential vocational options. Exhibit J2, p. 12.

The 2014-2015 school year, 12th grade

161. The special services director was surprised when he heard an IEE was being conducted by Dr. Lorber. The special services director knew Dr. Lorber's professional credentials and considered his specialty to be students with behavioral issues. If faced with a student with extreme behaviors and the District's team felt it had exhausted their resources, Dr. Lorber was the type of outside professional they would consult. The Student had completed 1st semester and part of 2nd semester of his senior year when his Parent and the District received Dr. Lorber's written evaluation report. District educators and service providers did not consider the Student as presenting with a behavior problem, such as loud outbursts, violence, or constant behaviors which did not respond to intervention. The District considered the Student performed well in high school, regularly demonstrated self-advocacy and self-management skills, and was ready to graduate. The findings below provide the context in which the District considered Dr. Lorber's recommendations. Testimony of Clough.

162. *School classes and activities.* The Student's 12th grade general education teachers included two who had taught him in 11th grade: the Algebra and History teachers. He continued to participate in high school sports on the track and cross country teams. Exhibits D7, p. 6, D14, p. 4; Testimony of Parent, Sister, Bencze, Lindgren.

163. *Progress reports: Writing.* The 2014 IEP continued the requirement that the District report progress toward two annual Writing goals by a quarterly written report card. Exhibit D7, p. 8. The case manager did not teach Writing in a special education class. She conferred with the English teacher, and he entered the English letter grade along with her comments about progress toward the IEP annual Writing goals. The Parent received by mail the written report card for 1st quarter of 12th grade, which commented that the Student was "meeting goals on IEP." It was the only IEP progress report for 12th grade Writing issued by the District through 3rd quarter. Exhibits D14, p. 4, S39, pp. 2-3.

164. The English teacher observed no regression in writing skills, and that Student's reading comprehension was above 12th grade level in reading and writing. He had no concerns about the Student's ability to read and write at a college level. Testimony of Lindgren.

165. *General Education Grades.* In first semester 12th grade, the Student earned a C grade in Physics but mostly A's and B's in his other courses except as noted below. The Physics teacher commented the Student made good contributions and was polite and courteous. The Spanish teacher noted the material was difficult initially for Student but extra help was available, that he showed special aptitude and was progressing satisfactorily. His attitude was an asset to the Spanish class, and his effort was commendable. Exhibit S39, pp.1-2; Exhibit D14, p. 5.

166. The Parent was unaware that the Culinary Arts teacher had commented at the second progress period that the Student was a pleasure to have in class. The Parent first read the

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comment when she reviewed the District's exhibits in preparation for hearing. Exhibit D14, p. 4. The Parent was dubious of the sincerity and timing of the comment given her understanding from her daughter of the problems the Student's picking behavior caused in Culinary Arts.

167. The Student and his sister enrolled in the same Culinary Arts class in 1st semester of the 2014-2015 school year. As described in findings below, the Parent doubted the Student had really earned the A- grade given by the Culinary Arts teacher. Testimony of Parent, Sister. The Culinary Arts teacher's concerns about hygiene and food safety are addressed below. However, the teacher was adamant that the Student earned the A- grade. He demonstrated in multiple labs that he understood the process of cooking, following a recipe, and met other skill requirements of the class. She had told the case manager about the Student picking and scratching his skin, expecting the behavior to be addressed by the special education department. When she saw no change in behavior, she decided to speak to the Student herself. She and the Student worked well together to address hygiene requirements of the class. She added the Skyward comment that he was a pleasure to have in class in the context of how she felt the Student had followed her instructions and been open to working with her to ensure he met food safety standards. Testimony of Parks. The testimony of the Culinary Arts teacher on this point was credible in its detail and it is found the Student earned the A- grade in the class. It is found he was able to modify his behavior as required by the Culinary Arts teacher to ensure he met food safety requirements.

168. *Progress reports: Transition Plan (TP).* The District continued to assert for the 2014-2015 school year that it was not required to provide periodic reports of student progress toward measureable goals in the area of secondary transition plan services. The case manager did not monitor or keep reports of the Student's participation in District field trips or other field trips prior to the filing of the due process complaint. The District did not assign a specific person to facilitate or help the Student access field trips during 12th grade. However, the case manager was aware that the Student had gone on a field trip to Boeing with his Father. Testimony of Pekarek, Clough.

169. The District offered high school seniors the opportunity to participate in Career Fair each fall, with information from area colleges. It is advertised by email to students, on the District website, open house night, and on the reader board. Washington State University staff came and made an additional presentation in the District. Testimony of Hatzenbeler. However, it is unknown if the Student participated or benefited in these opportunities.

170. The Student regularly participated in 12th grade "Core", an end-of-day intervention period in which he could work on projects or assignments, ask for extra help, or meet with special education teachers. Testimony of Pekarek, Hatzenbeler.

171. The Student's Sister worries he would miss the bus for school without her reminding him about the time. The Student's Sister was recently frightened for his safety after he failed to notice automobile traffic when walking with his head down while wearing his head phones. She worries frequently about his safety when not paying attention to his surroundings. She feels

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responsible to "mother him" if the Parent is not available and to invite him to be part of the group. Testimony of Sister.

172. *Agreement to Defer Graduation, Fifth Year of High School.* The Parent asserts the District agreed to defer the Student's required culminating project in 1st semester, as part of a plan to defer graduation so that he could obtain the two years of foreign language credits at the high school. The written report card received by Parent omitted any reference to culminating project during 1st semester of 12th grade. By 3rd quarter, the culminating project was included in the class list with a B- letter grade. The Parent suspects the District had added it in response to the IEE's vocational recommendations. Exhibit S39, p. 3. To the Parent, the omission in the 1st semester written report card of any reference to the Culminating Project was proof of an agreement she made with the case manager to defer graduation for a fifth year of high school. The Student had zero credits in foreign languages before he enrolled in Spanish I at the start of his senior year. The Parent faulted the case manager and school counselor for not helping the Student to plan to meet the foreign language requirements of four-year colleges. The Student had not earned any foreign language credits in his 9th and 10th grade years prior to transfer in to the District. In fall 2014, the Parent spoke to the case manager about finding a solution to the lack of foreign language credits. The case manager recalled a conversation with the Parent outside the school building as the case manager was on her way to a meeting. The case manager explained that she often "thinks out loud" and that she mentioned to the Parent that some developmentally disabled and "lower functioning" students, as well as some credit-deficient students, continue for a fifth year of high school. The possibility of a fifth year in high school intrigued the Parent as a solution to securing a 2nd year of foreign language credits. A fifth year of high school would also have addressed for the Parent her concern the Student needed more time to be ready for post-high school education, employment, and independent living.

173. The District did not explain why the written report card received by the Parent omitted the reference, but explained the grading of culminating projects differed from general education classes. It claims Skyward included the culminating project in the fall 2014 electronic records with a letter grade of F and two comments about missing assignments. Exhibit D14, pp. 4-5.

174. The District counters that a fifth high school year would not be needed. Community colleges do not have foreign language admission requirements. The Student could continue his foreign language studies at a community college, before transferring to a four-year college. Also, the District counters that except for a few highly competitive institutions like the University of Washington and Washington State University, many students who apply to state colleges ask that the foreign language requirement be waived. For example, Western, Eastern, and Central Washington Universities and Evergreen State College are four-year colleges where waivers may be granted. The District acknowledged that the Student would have to apply for a waiver, and that a waiver is not guaranteed as not all waiver applications are granted by admissions offices. Testimony of Matz, Clough.

175. The Parent offered no evidence that an IEP team discussed a new transition plan or fifth year, or that a specific plan was put into place. There was no agreement about location of classes, as the Parent was very clear in her testimony that she had not agreed that a second

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year of foreign language class necessarily had to take place at the District's high school. The evidence is silent about whether the Student's Father supported a 5th year plan or if he was involved in or knew about the Parent's attempts to secure a 5th high school year for the Student. Once the Student attained majority age, he gave his Power of Attorney for educational matters to the Parent only and instructed the District not to communicate about his educational program or records with his Father.

176. The case manager denied that she agreed on behalf of the District to any plan to allow the Student to make up a year of foreign language credits at the high school. Unless he was going straight to a four-year college, she reasoned the Student could complete the 2nd year of foreign language classes somewhere else. Also, she had worked with the teacher overseeing senior projects (a Ms. Bergen) and with the Student on some of the culminating project assignments during 1st semester.

177. After carefully considering the above findings, the Parent has not proven that the District deferred the Student's culminating project assignments in 1st semester 2014. The Parent has not proven the terms of an oral agreement for a 5th year of high school, or that the District later rescinded the agreement in response to the IEE or to her request for transition services at a February 2015 IEP meeting.

178. *Behavior: Picking.* The Algebra II teacher did not observe the Student pick at his skin in 12th grade, just as he had not picked at his skin when she taught him in 1st quarter of 11th grade. Testimony of Bencze.

179. The English teacher did not observe the Student pick at his skin in 12th grade. Testimony of Lindgren.

180. Regarding picking, the Physics teacher replied "not noticeably" and that nothing "rings a bell" regarding the Student's classroom behavior. Testimony of James Scannell.

181. The Student's 11th grade US History taught his 12th grade Contemporary World Problems class. His testimony about the Student's picking behavior did not clearly distinguish between the two school years. For 12th grade, it is found that the teacher did not observe an increase in picking behavior, observed that frequency varied, and observed that the behavior did not impede the Student or his classmates' pursuit of education. The teacher and the Student managed the behavior with minimal cueing. Testimony of Polly.

182. The Student and his Sister were enrolled in the same period for a Culinary Arts class in 1st semester of 2014-2015 school year. Students were assigned small groups, as well as individual work. The Student's Sister felt anger when she observed that her brother's group routinely assigned him the cleaning duties. She thought the group was not rotating the cleaning duties fairly. When the class was preparing spaghetti, the Sister saw that the group barely allowed him to help boil the water. She thought the group bossed him around, particularly one female student. The Sister wished her brother would stand up for himself. She considered speaking up for him, but decided the better solution was to talk to the teacher. The teacher was already aware that some students in the class felt uncomfortable about the Student's picking in context

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of food safety hygiene. Some students were reluctant to eat anything the Student helped prepare because he continued to pick or itch himself after he had washed his hands or donned protective gloves. The Student's sister credibly recalled the teacher stated that a requirement of the class was the ability to comply with the Pierce County food handling safety guidelines. A student who was unwilling or unable to comply might be asked to leave the class. The Sister feared the Student would be removed. Testimony of Student's Sister, Parks.

183. In response to the Sister's concerns, the Culinary Arts teacher spoke to the Student's small group about how to be a team, to delegate work fairly, including cooking, planning and cleaning. It was not unusual in her experience to need to talk to groups of students about learning how to work as a group or team. She also spoke to the Student privately about the hygiene problems related to picking or itching after he had washed his hands or after he had donned protective gloves. They agreed the Student would leave the food preparation area if he had to itch or pick, then wash again when he returned. The Student followed her instructions for food safety. He continued to pick and itch sometimes, but he was also able to lead a couple of the group's labs. In addition to group work, each Student had to complete seven distinct tasks, such as making crepes, making French toast, using knife skills to julienne or dice, completing an egg lab (sheered eggs, soft boiled eggs, etc.), cutting specific pieces of chicken, and completing their own measurement conversion tests. The Student completed his assignments in a food-safe manner. Testimony of Parks.

184. The Student's Sister was part of her own group, striving to learn and grow her own culinary skills. She was sensitive to her brother's needs, but she did not constantly watch him every class day. Her observations were credible, but it is found that with support and instruction from the Culinary Arts teacher, the Student was able to successfully manage his picking behavior. The teacher did not have to remove the Student from the class for failure to meet the safe food handling requirements. The Sister's testimony regarding the reaction of peers was credible. More likely than not, the Student's Sister remained attuned to other teens who remained leery of eating food prepared by the Student, or were put off or discomforted about his picking and itching in a kitchen setting.

185. The Student's Sister also observed him when he engaged in school sports in practice, and at competitive meets. In addition to picking his skin, the Student's Sister reported he would "pick his nose and eat it." The District witnesses did not describe a similar observation (distinct from picking at his arm, hands, leg, or stomach).

186. *Behavior: Social.* The general education teachers reported the Student was doing well, had better work completion habits than some peers, and was achieving good grades. The History teacher described how the Student made class presentations, and partnered with another student in a project which focused on a supreme court case. It required visual aids, artistic expression, and a time limit. He was able to do multiple step projects with nothing out of order. Likely, the History teacher was recounting a recent 12th grade project. Testimony of Polly.

187. The Algebra teacher observed Student 1st semester of 11th grade when he had just transferred into the District, and all of 12th grade up to date of hearing. The Student worked well

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with others, sat at a table with a table-mate, asked questions, worked independently, and worked together when the class regrouped. He took initiative to help put the calculators back on a rack and cleaned up pencil shavings. He would bring work to her for help, but she was only to give a hint. The Student did not want her to do the work for him. She thought him to be a mature, extremely nice young man and she never observed any behavior problems. He required no accommodations or modifications in her class and advocated for himself. If he isn't ready for college math, she didn't know who was. The Student was organized, never missed or lost homework, worked sequentially, and had the right supplies. He was not overly meticulous in her estimation and she did not observe behavior in her classroom that would bring to mind issues related to OCD. She could easily see when he needed more time, and it was offered when needed. Testimony of Martina Bencze.

188. The 12th grade Physics teacher observed the Student to be quiet and usually did not want to partner up, yet he often voluntarily joined four male students at the back table. The class required lots of math and was a good college prep class, and a good class to show on a transcript for health science or any science career. He agreed that letter grades are not the only indicator of success. He believed academically the Student would be successful in college. He believed the Student was capable of getting a useful degree, not a "mickey mouse" degree.
189. The Student's Sister was on the track team, too, during the Student's 12th grade year. She also rode the bus to and from meets with the Student. She observed how he would "high five" with the group after a meet, but then immediately removed himself from the group to stand apart until the team boarded the bus to return. The Sister saw him seated alone in the stadium stands, usually a few seats away from other students who were seated in small groups. She tried to invite him into conversations with her and her friends, and sometimes he joined briefly. He did not converse about the same topics as his Sister and her friends and would not stay long in a conversation with her friends. She reported some other student athletes talked about the Student behind his back, or walked away to avoid him when he picked or itched or lifted up his pant leg or shirt to examine his skin.

190. The 12th grade English teacher reported no behavior problems observed during the period at issue. He observed that the Student often asked for help, more often than most other students. He brought work to the teacher of his own accord a couple of time and sought feedback. For example, students were required to write a sonnet, and the Student chose a video game theme. He would ask the teacher 2-3 questions per day, sometimes before class started at the teacher's desk. He had no difficulty understanding the special poem format required for the assignment. The Student worked on multiple-stage projects without difficulty, and worked in some small groups when required. The teacher had no concerns about the Student's ability to interact with peers or teachers. Testimony of Lindgren.

191. At a recent community volunteer event, the Student did not join his Sister or other family friends as they danced and had fun while completing a painting project. The Parent noticed how the Student stood in one spot and painted until an adult told him he could move on to paint another area. Testimony of Sister, Parent.

Dr. Lorber's Opinion of the District's 2013 Evaluation

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192. *Sufficiency of BASC-2 assessment.* The District used one objective assessment tool: the Student's BASC-2 self-report. All other assessments in areas of social/emotional, behavior, and observation consisted of subjective observations and impressions by persons with very limited knowledge of the Student. The Parent and Dr. Lorber fault the school psychologist's failure to obtain survey responses from Parent and others with knowledge of the Student, to compare and interpret the Student's scores.

193. Dr. Lorber faulted the District's use of the BASC-2 results based on the elevated L-index. The BASC-2 is not an assessment tool used by Dr. Lorber and he did not know its specific survey content, but he spoke scornfully of self-assessments like the BASC which in his view amount to asking students if they think they need special education. His own testing in September 2014, however, included two self-reports by the Student: a Child Behavior Checklist-Youth, and a Behavior Rating Inventory of Executive Function (BRIEF). Exhibit J2, p. 2. Dr. Lorber did not cite any literature or other research to support a finding that the BASC-2 student self-report is not a valid assessment tool, and his opinion in that regard is not adopted. Dr. Lorber's concern about the elevated L-index is addressed below.

194. In Dr. Lorber's opinion, it made no sense to seek a self-report from the Student because the Student lacked insight into or denied his problems. Dr. Lorber's opinion was primarily based on interviews with Parent, alone and in the presence of the Student, and interviews and assessments of the Student over about 13 hours in two sessions in a clinical setting in fall 2014. He did not know whether the Student demonstrated insight in the classroom or school environment. Described more fully in the findings above, in the high school setting in the first week of fall 2013, the Student spoke to District employees about his social challenges since Kindergarten, his concerns about adjusting to larger class sizes, greater distances between class rooms, and his preference for quiet and what worked for him to drown out distracting noises. The preponderance of evidence is that in the high school setting in fall 2013, the Student showed some self-knowledge and insight.

195. The school psychologist was familiar with the BASC-2 as an assessment tool, including comparing and interpreting T-scores from multiple survey responders. She felt pressure to complete the evaluation as soon as possible, in order to develop an appropriate IEP if the Student was eligible for special education and related services. The number of minutes reasonably necessary to complete a BASC-2 survey is not in the record. The Student's BASC-2 self-report was completed on August 29, 2013. It is found that more probably than not, a reasonable period of time was available to ask one or both parents to complete a survey to aid in interpreting the Student's elevated L-index.

196. It was the District's choice to select the BASC-2 as an assessment tool. Therefore, when the elevated L-index raised concern, it was incumbent on the District to attempt to understand the meaning of the results and any educational impact for the Student.

197. *Social/emotional, behavior, and observation assessment: Picking.* Dr. Lorber is a neuropsychologist, a behavior therapist, and a board certified in school neuropsychology, school psychologist and cognitive and behavioral psychology. He described the 2013 social/emotional evaluation as "woefully inappropriate". In his opinion, picking one's skin is not

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in the same category of behavior as doodling when bored or unfocused. He opined that picking of skin should have been a "huge red flag" that the Student needed social/emotional intervention. Dr. Lorber's professional opinion of the clinical significance of picking at one's own skin was not challenged by any District witness, and on this point his expert opinion is credible and accepted. The conclusion of the behavior intervention specialist that the Student did not need direct support related to behavior in the education setting is given less weight, since she had not read the Kent IEP or communicated with the private school.

198. Dr. Lorber did not address the reasons for his opinion not to continue with an OCD diagnosis for the Student. He did not describe the DSM criteria for OCD or his opinion of the earlier diagnosis. No findings are made regarding the accuracy of the earlier OCD diagnosis, and those medical records are not part of the record of evidence.

199. *Self-advocacy, self-management, ability to speak up for himself.* The differences are striking in how Dr. Lorber and the Parent described the Student's social/emotional, self-advocacy and self-management skills and how the District staff described the Student's skills in those areas. The Parent described the Student as having not improved his social skills during 11th and 12th grade. She was concerned he did not talk like "normal people", had never had a best friend, had never had a girlfriend or a first kiss, and that he was socially awkward. She seriously doubted his ability to live on his own, handle a job interview, navigate a college campus, get married and live independently. She described a Student who had regressed in his social, emotional and behavior skills. Dr. Lorber described the Student as having few self-advocacy, self-management, and self-awareness skills, and that the Student lacked awareness of the impact of his behavior on others. The District staff described a Student who did not stand out among his peers regarding social and emotional behavior, who had easily self-managed fixations and picking of his skin, or who had been easily redirected by a prompt from District staff. The District described a Student with good self-advocacy and self-management skills, and that the lack of such skills would have been reflected in his grades. His ability to organize, complete and submit school work on time and his good work ethic, were some of the factors the District staff believed contributed to his performance in high school. The Parent and Dr. Lorber described a Student in need of transition services to learn independent living skills in a setting designed primarily for majority-age students with developmental disabilities and severe cognitive delays. The District staff described a Student ready to graduate and pursue college and a good career.

200. Dr. Lorber's opinion was formed in a clinical setting, without class room observations, and without consideration of the day-to-day classroom activities in which the Student demonstrated the very social/emotional and behavior skills which Dr. Lorber found he lacked. Regarding self-advocacy and self-management skills, and the ability to speak up for himself when necessary, the observations of the District staff over 1.5 years were more factually detailed, involved day-to-day situations, and were therefore found to be the more credible. In spite of his disabilities, it is found that the Student self-advocated and self-managed during 11th and 12th grades and demonstrated the ability to speak up for himself when necessary.

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IEP Meeting, February 24, 2015

201. The District scheduled an IEP meeting from 2:25 to 4:00 p.m., a date and time convenient to the Parent and her educational advocate. The District published an Agenda with 10-12 items, and a note that the team would continue the meeting to the following week if all agenda items were not covered. The Agenda allotted 15 minutes for a report of progress on the IEP and overall school performance, followed by 10 minutes for the school psychologist to summarize the IEE report, followed by 20 minutes for discussion of behavioral services as an area of service. Exhibit S16.

202. The Parent doubted the District team members were sincerely interested in considering the IEE if only 10 minutes was allowed for its summary. Her doubts were not satisfied when District team members misconstrued the IEE, and refused to spend more time reviewing it thoroughly. For example, the meeting notes show the school psychologist stated that Dr. Lorber "suggested" the Student would likely fall on the Autism Spectrum Disorder, rather than stating it was the diagnosis made by Dr. Lorber. The meeting notes show the special services director believed there had never been social or behavioral concerns raised by any teacher and the IEE clearly stated there was no concern in those areas. Challenged by the educational advocate, the special services director pointed to that portion of the IEE which described the Student's self-report and told the IEP team Dr. Lorber "supports that he is not needing the services" of social behavior skills. The statement is opposite to Dr. Lorber's conclusion. Exhibit S9, pp.7, 10. Testimony of Parent, Lorber.

203. On March 11, 2015, the special services director responded in writing to requests made by the Parent at the IEP meeting. The District agreed to reimburse the Parent for the costs of the IEE. The District declined the request for compensatory services in the area of social/behavioral, which arose in context of the Supplementary Aids and Services section of the 2013 IEP. The District claimed the services were "included in the IEP in error", as the reevaluation completed prior to the IEP did not support eligibility for services in that area. To make a data-based decision on the requests for changes to the September 2014 IEP (private placement at New Horizon, transition services, school-provided technology), the District proposed a reevaluation to gather current data in the areas of social/emotional, behavioral, adaptive, communication (pragmatics/social communication), transition, writing, and assistive technology. The Parent was informed to expect to receive a PWN and consent form for this reevaluation. If there were any other areas the Parent would like included, the Parent was asked to add them on the consent form. The special services director promised to move forward with the reevaluation as quickly as possible once the signed consent form was received. Exhibit D10.

204. The next IEP meeting would be postponed until after the completion of the reevaluation so that the team could discuss the current data when making decisions. The District was not willing to compensate Dr. Lorber for his attendance, but would welcome his participation if the Parent invited him. Exhibit D10, pp. 1-2.

205. On March 23, 2015, the District issued a PWN proposing to initiate a reevaluation to reassess the Student's social/emotional/behavioral skills and his transition plan. The District

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also wanted to determine whether the Student continued to be eligible for special education. The District also wanted an observation of the Student in his educational setting to determine whether additional behavioral supports are necessary. The consent form stated assessments would be in the following areas: review of existing data; communication; observation; medical-physical; social/emotional; behavior; vocational; age appropriate transition; observation of writing accommodations (e.g. Online/web apps/ writing soft.). Exhibit D12, pp. 1, 3.

206. The Parent did not consent to the reevaluation. On March 31, 2015, the Parent filed a due process hearing request as agent for the Student.

New Horizon School

207. On March 4 and 5, 2015, the Student and the Parent visited the New Horizon School (New Horizon) as part of an application process which included academic assessments. The Student met its Transition Extension Program teacher, and accompanied her on two field trips with three New Horizon students. He met some 12th grade seniors who would be potential classmates in the Transition Extension Program in fall 2015. Testimony of Phathana Kin, Marla Veliz, Parent.

208. New Horizon is a private non-public agency approved by OSPI to serve special education students in Washington. It educates about 45 students, of whom 15 have been placed by a school district with an IEP. Students range in age from 4 to 18 years and older. Over a 10 year period, about 70% of graduates go to community college, vocational technical school or technical institute; about 20-25% proceed to secondary transition services, and 5-10% go to work with state help from the Division of Vocational Rehabilitation (DVR). The number of students 18 years of age and older in the Transition Extension Program varies but the current student to teacher ratio is four to one. Testimony of Veliz.

209. Its Transition Extension Program supports students with Developmental Disabilities age 18 and beyond, to actively engage in the community, self-advocate, attain supported employment, and maximize independence skills. Exhibit S49; Testimony of Veliz. The Parent requests private placement of the Student in the New Horizon Transition Extension Program. New Horizon has accepted the Student, and believed he could start in their fall 2015 term. Testimony of Veliz.

210. The Transition Extension Program teacher is a recent hire, employed at New Horizon since March 2015. She has a bachelor's degree in sociology/social work. She does not hold a Washington state teaching certificate. Her prior employment includes about nine years as a job coach/advocate for blind and deaf/blind students with developmental disabilities. She was proud of her efforts to successfully move supported-employees from piece-rated pay to state minimum wage pay. She has a year's experience as a program supervisor in a long-term residential facility for youth with Autism. Students ranged in age from 9 to 20, before they transitioned into adult family home care. Testimony of Kin; Exhibit S53.

211. The Transition Extension Program teacher noticed the Student sat by himself at a movie outing, put on his earphones in the car and did not converse with the others, and did not

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acknowledge a group of students when they arrived for lunch. He socialized and took turns during a bowling outing, but left mid-way through and went to the video arcade alone. He sometimes was distracted and unfocused, and went off alone without telling her at a visit to a Microsoft vendor. She observed he did not ask when he was done or didn't understand. He focused on a table, or put on head phones, or walked around. She reminded him he had an assignment to do, and he replied that he was bored. The Student pick at scabs, which she considered a hygiene issue and barrier to independent living. She needed to redirect him to stop picking. Testimony of Kin. Regarding picking, the administrator had suggested he would likely benefit from having fidgets with him to help him focus and to reduce picking and wiping. She was unaware that the Student had tried but declined using fidgets at the District. The administrator also reported the Student had asked to step away from an activity during a visit to New Horizon. He sought and received permission to go to the library to finish an assignment for high school. Exhibit S48, p. 3.

212. On April 22, 2015, the New Horizon School's administrator wrote that she believed the Student could benefit from specially designed instruction in several areas as follows: decoding to increase his vocabulary, reading comprehension, and literary analysis skills; writing; transitioning to a larger setting, such as a college campus; social thinking, social problem solving, and social skills; executive functioning skills of shifting, transitioning, self-monitoring and attention focusing; self-advocacy and self-determination; social skills and group dynamics. Exhibit S48; Testimony of Veliz, Kin.

213. The New Horizon recommendations for specially designed instruction for the Student are based on observations of the director, observations and interviews by the Transition Extension Program teacher, and observations by one of the teachers who administered a Wide Range Achievement Test (WRAT), and a San Diego Quick Assessment of Reading Ability.

214. Dr. Lorber had heard of New Horizon because he had evaluated some public and private school students who have attended New Horizon. His understanding of its Transition Extension Program was based on the PowerPoint description prepared by the school. Exhibit S49. The PowerPoint included a description of program components intended to maximize independent living skills. Dr. Lorber agreed the independent living skills listed were some of the skills needed by the Student:

> Exploration of community living (independent, supported, and sheltered)
>
> Exploration of community transportation needs (options and safety training)
>
> Participate in community leisure and social activities (take place in typical settings such as Metro, stores, job sites, gyms, and restaurants)
>
> Practice personal management skills.

Exhibit S49, p. 7. In his opinion, New Horizon's Transition Extension Program was appropriate for the Student.

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215. The District contends that New Horizon is not appropriate because the Student should be allowed to graduate high school and pursue post-secondary interests. If additional high school transition services are ordered, the District asserts that New Horizon's Transition Extension Program is not the Student's least restrictive environment. It contends that with his cognitive abilities and strengths and interests, placement in a program for the developmentally disabled is not appropriate. The mission of the Transition Extension Program regarding supported employment and independent living are not appropriate for this Student.

216. During the pendency of the hearing process, the Student's case manager had the opportunity to observe the Student at an "exit interview" before three judges (staff and community volunteers). The event was part of his culminating project, and scored using a rubric. She described how the Student performed well before the three-judge panel and passed. She did not believe he was in need of the transition extension program services offered by New Horizon.

Remedies.

217. If in 11th grade the Student had received appropriate specially designed instruction in the areas of behavior, social/emotional, and social skills, given his cognitive level, Dr. Lorber would have expected to see him further along than he was during the September 2014 clinical interviews and assessments. Dr. Lorber opined the Student needed an appropriate IEP and Transition Plan with interventions and data collection in place for a long enough time to learn, practice, and then generalize the skills. He opined that to catch up, the Student should at least be given what he missed. If he progressed in one year time, fine, but if he needed three years then that should be fine, too. In his opinion, the length of time must be data driven, and consider periodic present levels of performance, with time to define interventions and measure progress.

218. The New Horizon's administrator has a master's degree in teaching, and holds Washington state lifetime continuing elementary and secondary teaching certificates. Asked how far the Student was behind, she could not compare him to typically developing peers because she worked only with special education students. Nevertheless, she opined he was 3-4 years behind New Horizon's special education students. Her opinion was based on reports by New Horizon teachers who observed and/or assessed the Student, including that the Student's math skills were at the level consistent with the beginning of 9th grade, that his reading skills fell in the 10th to 11th grade level, and that his writing skills were about 7th grade level. Exhibit S60; Testimony of Veliz.

219. Dr. Lorber recommended private cognitive behavior therapy. The Parent cannot afford the therapy and it is not covered by her insurance. She requests it be awarded as compensatory education.

220. The Student's maternal grandmother visited him for two weeks in April 2015, and found it hard to have a conversation with him. She felt sad and disappointed as he was interesting to talk with for a short time until she believed he could not concentrate further. She felt he hid in his own little world of video, games and music. She observed him spend many hours on the

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computer at the local library after school or whenever he had free time. She observed the Student's Sister was very self-sufficient, whereas the Student needed to be reminded to brush his teeth and wear deodorant. She observed him to have no real urgency about time. Exhibit S35.

221. The District claims the Student does not need compensatory education as he is ready to graduate high school, and does not need to catch up or make up lost educational benefits. The District asserts the Student demonstrated he benefited from his educational program. The Student's progress is evident to the District by his meeting the IEP Written Language annual goals, meeting state requirements for high school graduation, participating in high school sports, and maintaining a cumulative GPA through end of 1st semester 12th grade of 3.594. Exhibit D13, p. 1; Testimony of Pekarek, Clough, Polly, Bencze, Hatzenbeler, Scannell, Lundgren.

222. In the alternative, if compensatory education or a fifth year of high school is determined to be needed, the District asserts the least restrictive environment to provide compensatory services is the District high school environment. The District proposes that the appropriate alternative is an educational placement with seniors in general education advanced placement courses who would share the Student's interest in pursuing college. The District described these students as persons who are serious about their studies, and that the advanced placement classroom environment would have fewer extraneous distractions and greater focus on instruction. Many advanced placement students are extroverted, which would offer the Student opportunities to communicate socially. Other options to consider would include the Pierce County Learning Center, or work based school-to-work programs supported by a paraeducator, or community work options. Testimony of Hatzenbeler, Clough, Pekarek.

223. Parent seeks reimbursement for the expenses she incurred for the educational advocate. Through March 26, 2015, the Parent reports the cost of the educational advocate was $3,500.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. §1401 *et.seq.* (Individuals with Disabilities Education Improvement Act IDEA, sometimes referred to as IDEIA, formerly Education for All Handicapped Children Act EHA), 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 burden of proof in an administrative hearing under the IDEA is on the party seeking relief. The Adult Student has the burden here. *Schaffer v. Weast,* 546 U.S. 49, 126 S. Ct. 528 (2005).

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The IDEA

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

> First, 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 206-207 (footnotes omitted).

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

> According to the definitions contained in the (Education for All Handicapped Children Act) 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, supra, 458 U.S. at 188-189.

5. Reviewing courts must inquire:

> First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

Hendrick Hudson Dist. Bd. of Ed. v. Rowley, 458 U.S. 176 (1982). "If a violation of the IDEA is found in either regard, the court shall 'grant such relief as [it] deems appropriate.'" *Hacienda La Puente Sch. Dist. of L.A. v. Honig*, 976 F.2d 487, 492 (9th Cir. 1992).

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6. 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. "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 Unified School Dist.,* 626 F.3d 431, 432 – 433 (9th Cir. 2010); *see also J.L. v. Mercer Island School Dist.,* 575 F.3d 1025, 1038, n. 10 (9th Cir. 2009).

Procedural Compliance with the IDEA[8]

7. The procedural safeguards are essential under the IDEA:

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

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882 (9th Cir. 2001). The Parent's rights transferred to the Student at the age of majority. WAC 392-172A-05135.

8. 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, W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484, 18 IDELR 1019 (9th Cir. 1992); *accord R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 938, 48 IDELR 60 (9th Cir. 2007).

Failing to Provide Prior Written Notice

9. The Parent[9],claims the District failed to provide an appropriate IEP in both 2013 and 2014, and for both there is an identical claim: that the District failed to provide prior written notice (PWN) when Parent requested services for Student. They will be considered separately.

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[8] The Parent's evidence addressed the PWN proposing to initiate evaluation and procedural safeguards; however, the due process hearing complaint did not raise procedural violation issues regarding those and they will not be addressed here.

[9] As in the Findings above, the Conclusions continue to reference the action and claims of the Parent. All references to Parent are in her capacity as agent on behalf of the Adult Student, under the Power of Attorney.

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10. Written notice must be provided to the parents of a student eligible for special education before the school district proposes to initiate an educational placement of the student or the provision of FAPE to the student. WAC 392-172A-05010(1). The notice must include:

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

WAC 392-172A-05010(2). *See also* 34 CFR § 300.503(2).

11. *2013 PWN.* The PWN dated September 19, 2013, conforms in form to the regulation requirements. Exhibit D4, pp. 15-16. It proposed to initiate an educational placement and IEP. The case manager completed the form in a somewhat confusing manner, but none of those are the issue raised by the Parent. For example, the case manager included both options—the one rejected and the one adopted—under the section to describe options rejected. The team considered two placement options: (1) staying in all general education classes with the special education teacher providing the general education teacher with specially designed instruction (SDI) for written language; or, (2) placing the Student in one resource special education class for SDI for written language. They chose the second option.

12. The PWN did not expressly state the other areas in which the District determined the Student did not qualify for special education. The IDEA does not require that a PWN for an initial educational placement with an IEP describe more fully the results of the evaluation, or state the areas in which the evaluation determined the Student did not qualify for special education. *See Smith v. Squillacote*, 800 F. Supp. 993, 999 (D.D.C. 1992); *Marcus I. v. Hawaii Department of Education*, 63 IDELR 245, 114 LRP 32495 (9th Cir. 2014, unpublished) (harmless error for PWN not to go into more detail); *Worthington Schools*, 115 LRP 13948 (SEA OH/2015).

13. The "action" addressed in the PWN was the action required to select placement for delivery of the Student's special education Writing services in the IEP. The Parent's specific concern on this claim was not well developed in the evidence record. She seems to claim the PWN should have identified requests she made in the IEP meeting regarding boys groups, lunch buddies, opportunities to improve social skills and self-advocacy skills and other "amazing things" the District verbally promised. The IDEA does not require that a PWN describe team

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discussions or parent requests regarding how the specially designed instruction will be implemented. The regulation does not require a PWN to describe curriculum, accommodations, teaching methodologies, or the kinds of concerns described by the Parent. *Id.*, *Smith, Marcus I.*

14. The Parent has not proven a procedural violation regarding the District's September 19, 2013, PWN.

15. *2014 PWN.* The PWN dated September 8, 2014, conforms in form to the regulation requirements. Exhibit D7, pp. 16-17. It proposed to continue an IEP. The Parent claims the PWN should have proposed to change the IEP. She is correct on that issue, and the PWN describes the change which occurred. The team rejected exiting the Student from special education services, and rejected placement back in a special education class. The team placed the student in what was determined to be the least restrictive environment of general education classes. The checking of a box for "continue" rather than "change" is considered in context of the entire form, and there is no reasonable confusion that a continuation without any change was proposed. The Parent has not proven a procedural violation regarding the District's September 8, 2014, PWN.

16. To the extent the Parent's claims regarding the 2014 PWN mirror the claims described in the conclusions above regarding the 2013 PWN, the analysis is the same. The Parent continued to request more opportunities for the Student to socialize in small groups, boys groups, lunch buddies, and opportunities to improve social skills. By September 2014, she also talked about the content of the Student's programming and services to include job interview skills and other skills related to prepare for college, employment and independent living. The "action" proposed by the District was stated in the PWN and it regarded the provision of SDI for Written Language. The specific content of programs or services was not stated, and it is unclear if the regulation requires a PWN to include a description in the level of detail argued by the Parent. Absent legal authority for this position, this ALJ declines to rule that a PWN must list all of the program content and service discussions raised by the Parent. The Parent has not proven a procedural violation regarding the District's September 8, 2014, PWN. The Student's 12th grade educational experience included work in small groups, partnering with other students, and job interview skills. For argument's sake, even if the Parent proved a procedural violation related to the 2014 PWN, she has not proven a PWN violation significantly impeded the Student's right to FAPE, or significantly impeded her opportunity to participate in the decisionmaking process regarding the provision of FAPE to the Student, or caused the Student deprivation of educational benefits.

2013 Evaluation Issues

Failing to Conduct a Sufficiently Comprehensive Evaluation, Not addressing all the Student's Needs

17. The Parent claims the District did not conduct a sufficiently comprehensive evaluation in the areas of focus, organization, executive function, study skills, social skills and behavior issues. She claims the District knew the Student was awkward, had anxiety, fixed on things and picked at his skin, picked his nose. She alleges only "off-the-record" supports were offered.

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She also claims the evaluation failed to address all the Student's needs. These claims were considered jointly.

18. The purpose of an evaluation is to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.15, 300.301(c)(2); WAC 392-172A-01070. Federal and State regulations require a school district to evaluate a student, "in all areas of suspected disability." The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F.R. § 300.304(c)(4), (6); WAC 392-172A-03020(3)(e), (g). The evaluators must also use a variety of assessment tools and strategies to gather functional and developmental information about the child. 34 C.F.R. § 300.304(b)(1); WAC 392-172A-03020(2)(a).

19. The District evaluated the Student in the areas of medical-physical, general education, social/emotional, behavior, cognitive, academic, communication, vocational, observation, and age appropriate transition assessment. Within these areas, the District considered that the Student hyperfocused, lost and regained focus, fixated on things, did not initiate communication with peers, picked at his skin, was distracted by outside stimuli, was distracted by noise, preferred small to large groups, and that since Kindergarten he needed assistance with social skills. The SLP considered communication including pragmatic language and his challenges related to how well he comprehended complex language when meaning was not directly available from context (reading between the lines). The Student's communication skills had improved from 7th grade, when Kent had determined he qualified for special education in the area of speech and language in 2009.

20. *Function of picking behavior.* The District did not attempt during the 2013 Initial Evaluation to determine the function served by the picking behavior, but rather how to minimize its occurrence in the school environment. The initial evaluation regulations do not require a functional behavioral analysis (FBA), merely that the Student be evaluated in all suspected areas of his disability, which include behavior. Here, the District knew the picking behavior was a concern of the Parent, mentioned in the Kent IEP, and observed by District staff. For these reasons, it was a procedural violation for the District to fail to conduct an FBA as part of the initial evaluation of the picking behavior.

21. Knowledge about the function served by the picking behavior may have helped the District identify positive reinforcements or interventions to minimize the behavior. However, overall the evidence does not show that the lack of an FBA impeded the Student's educational progress or his receipt of educational benefits. He did not pick at his skin in one class in 11th grade (1st semester Algebra I), which behavior improved to not picking his skin in three classes in 12th grade (Algebra II, Physics and English). In classrooms where the Student picked his skin, the teachers concurred the Student was easily redirected with a slight cue. The class where picking behavior had the greatest potential to impede educational benefit was Culinary Arts. The Student was not removed from the class for lack of ability to comply with the safe food handling requirements. With the assistance of the general education teacher's instructions and cues, the Student was able to meet the course requirements and complete the Culinary course.

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22. The evidence of educational impediment of significance to other students related to the Student's picking behavior in the Culinary Arts class. The evidence is that the concerns of other students were addressed by the teacher and the evidence of record fails to prove that the education of other students was significantly impeded by the Student's picking behavior.

23. For the above reasons, therefore, it is concluded that this procedural violation did not significantly impede the Student's right to FAPE, or significantly impede the Parent's opportunity to participate in the decisionmaking process regarding the provision of FAPE to the Student, or cause a deprivation of educational benefits. The Student has not proven the District's procedural violation resulted in a denial of FAPE.

24. *Records from Therapist and Physician.* Information about the educational impacts of the Student's ADHD and OCD, and his therapy, would have been the type of relevant information the District would consider during an initial evaluation. WAC 392-172A-03020(2)(a), -03025(a). The school psychologist's desire to complete the Student's enrollment process quickly was well-intentioned. However, she erred when she judged that the Student did not present any serious behavioral problems and scheduled an evaluation meeting to complete the evaluation report very early in the process. The regulations allowed the district 25 school days after receipt of the request for an initial evaluation, to make a determination whether or not to evaluate the student. WAC 392-172A-03005(2)(c). The regulations allowed another 35 school days after the date the District received the Parent's written consent for an evaluation to fully evaluate the Student and arrive at a decision regarding eligibility. WAC 392-172A-03005(3)(a). The school-day time lines identified in the regulation provide a basis for determining the reasonable amount of time to wait to receive information sought during the evaluation process. The school year had barely begun. It was not unreasonable within the regulation timelines to wait for the records from the Student's therapist and physician. This constituted a procedural violation of IDEA by the District.

25. The Parent did not offer evidence of the medical information or medical provider opinions that would have been considered in fall 2013. In failing to prove the substance of the information which the District should have considered (if only it had waited a reasonable period of time for the therapist and physician to respond), the Parent has failed to meet the burden of proof. She has not proven that the Student's right to FAPE was impeded or that the lack of consideration of his medical records caused a deprivation in his educational benefits. She has not proven the procedural violation significantly impeded her ability to participate in the decision making process. The Parent has failed to prove this procedural violation resulted in a denial of FAPE to the Student.

26. *Organization, Study Skills.* It is not known whether the therapist and physician records would have contained information about Student's organization and study skills. The Parent has not proven that in September 2013, the District should have suspected an area of disability related to the Student's organization skills and study skills as issues separate and distinct from class size, noise, attention-deficits and focus. The evidence of record from Kent or Parent is insufficient to prove the District should have suspected the Student had a disability related to organization skills and study skills. The Student did not demonstrate difficulties with organization and study skills in September 2013. The evidence does not show the Student struggled with organization and study skills during his 11th and 12th grades in the District. The

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Parent has not proven a procedural violation regarding failure to evaluate in the areas of organization and study skills.

Failing to Identify Appropriate Categories for Evaluation

27. The District evaluated the Student in the areas of medical-physical, general education, social/emotional, behavior, cognitive, academic, communication, vocational, observation, and age appropriate transition assessment. The issue of evaluating the function of the picking behavior was analyzed above. This is not a case of a student entering a district without a diagnosis. This Student not only entered with two diagnosed mental health disorders (ADHD and OCD), he was receiving current and ongoing medically-managed treatment for the disorders through therapy and prescription medications. The District's school psychologist, school counselor, and special education teachers are not diagnosticians. The evidence of record does not show that in September 2013, the District should have questioned the diagnoses of the Student's medical providers. The Parent did not include in her evidence the 2013 medical records from the Student's therapist and physician who addressed treatment related to ADHD and OCD. The Parent's own evidence is that it was not until June 16, 2014, that the Student's physician suspected his diagnoses may be incomplete. For these reasons, the Parent has not met her burden of proof and shown the information that would have been available to the District to identify other appropriate categories for evaluation. The Parent has not proven a procedural violation regarding this issue.

Not Using a Group of Qualified People

28. An evaluation is to be conducted by a group of qualified professionals. WAC 392-172I-03020. *See also* 34 CFR § 300.304. The Parent has not met the burden of proving that any professional involved with the September 2013 evaluation was not qualified.

Not Considering Information From a Variety of Sources

29. An evaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student, including information provided by the parent. WAC 392-172A-03020. *See also* 34 CFR § 300.304.

30. The Parent claims the 2013 Evaluation inappropriately limited the behavioral evaluation to the Student's self-report on the BASC-2. The District did not consider parent or teacher reports. The Parent did not offer evidence of the BASC-2 report protocols regarding the duration or length of the opportunity to observe, or whether the BASC-2 requires "current" information, and if so, its definition of "current." It is unknown whether it would have been appropriate under the BASC-2 protocols for the District to seek a report from a teacher who taught the Student in the most recently completed school term (2nd semester of 10th grade). It is unknown if it would have been appropriate to seek a report from a District teacher with a week to ten days of observation. It is known, however, that it would have been appropriate to obtain a BASC-2 report from either or both of the Student's parents.

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31. If the District had considered BASC-2 reports from the parents, the school psychologist may have received enough data to more fully understand and interpret the Student's BASC-2 self-survey results and particularly the elevated "L-index" concern. The decision to limit the BASC-2 surveys to the Student's self-survey did not afford the parents a full opportunity to provide vital information about the Student for the evaluation. This was a procedural violation of the IDEA.

32. While it likely would have been helpful and useful for teachers to consider the parents' scores on a BASC-2, and identify a reason for the Student's elevated L-index, the lack of such knowledge has not been shown to have impeded the Student's right to FAPE or caused a deprivation of educational benefits. The day-to-day observations of the classroom teachers in general education settings were found to be credible regarding the Student's ability to self-advocate, self-manage, and speak up for himself when necessary. The Student's performance on a single survey, and whether the elevated "L-index" indicated he was "faking good" on the self-report survey, is overshadowed by his actual performance in the general education setting. The Parent has not proven the procedural violation resulted in a significant impediment to her opportunity to participate regarding the provision of FAPE to the Student.

IEP Issues

33. An IEP is appropriate if it complies with the procedural requirements of the IDEA and provides the special education and related services necessary for an individual student to obtain an educational benefit. When reviewing an IEP to determine if it was or is appropriate for a student, the review is primarily based upon what was known to the IEP team at the time the IEP was developed. *Adams v. State of Oregon,* 195 F.3d 1141, 1149 (9th Cir. 1999).

Failing to Provide Adequate and Appropriate Transition Services and Goals

34. For both the 2013 and 2014 IEPs, the Parent makes identical claims regarding transition and they will be analyzed jointly.

35. Transition services are designed in a results-oriented process to facilitate a student's movement from school to post-school activities, including postsecondary education, based on the student's needs, taking into account the student's strengths, preferences, and interests. WAC 392-172A-01190. IEPs must include, beginning not later than the first IEP to be in effect when a student turns 16, "appropriate measurable postsecondary goals based upon age appropriate transition assessment related to training, education, employment, and, where appropriate, independent living skills." They must also include the transition services, including courses of study, needed to assist the student in reaching those goals. WAC 392-172A-03090(1)(j). *See also* 34 CFR § 300.320.

36. The Parent claims the District failed to provide adequate and appropriate transition services and goals tailored to the Student's specific needs to prepare him for post-secondary education, employment and independent living in three ways.

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37. *Measureable.* The first way involves claims of failure to identify appropriate measureable postsecondary goals based upon age appropriate transition assessments related to training, employment and independent living skills. The 2013 IEP contained a typographical error and failed to specify the Student would "enroll" in post-secondary institution. However, the evidence is that otherwise the District considered the COPS results and the interests expressed by the Student, his interests expressed during his 11th grade year in the Your Career's workbook, and expressions of interests directly to the case manager at the start of the 12th grade year. The content of the post-secondary transition services and goals in both the 2013 and 2014 IEPs are very brief, but the lack of detailed and comprehensive services and goals does not result in a conclusion they were not appropriate.

38. The transition services and goals are not to be measured against a fixed goal in the same manner as annual goals to measure progress in the Student's writing class. The elective courses, for example, are measureable in the sense that the case manager identified which courses were electives and whether they would expose the Student to an area in which he may like to pursue further education or employment. Similarly, whether the Student was offered field trips and whether he accepted the offer is measureable. It is not the responsibility of the Student, however, to be responsible for the implementation of the plan. Here, the District did not measure or monitor whether any field trip opportunities were offered to the Student, or whether he went on any field trips offered by the District. It did not delegate a specific person to implement this part of the IEP, to facilitate the opportunity to consider field trips to post-secondary institutions. The District failed to implement these portions of both the 2013 and 2014 IEPs.

39. The IDEA does not require that a school district perfectly implement an IEP in order to provide the student with FAPE. A material failure to implement the IEP amounts to a denial of FAPE. 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 (9th Cir. 2007).

> "[S]pecial education and related services" need only be provided "*in conformity with*" the IEP. [20 USC §1401(9)] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.
>
> . . .
>
> We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provided to a disabled child and the services required by the child's IEP.

Van Duyn, supra, 502 F.3d at 821 and 822 (italics in original).

40. The failure to implement and monitor whether the Student was offered field trips to post-secondary institutions, and whether the Student accepted or declined such offers, has not been proven to be a material failure of the IEP. On this point, there was scant evidence about the impact on the Student other than the lack of foreign language credits, and the failure of the District has not been shown to be a material nature.

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41. *Participating Agency.* The second way the Parent claims the District failed to provide adequate and appropriate transition services and goals tailored to the Student's specific needs involves claims of failure to invite DVR to the 2013 and 2014 IEP meetings. The Parent offered no evidence from DVR. The Student was not developmentally disabled or low-functioning cognitively and the evidence does not show that the District should have considered that a public agency like DVR would be responsible to pay for his transition services. WAC 388-891-1000 stated eligibility requirements to receive vocational rehabilitation (VR) services, as follows:

a. You have a physical, mental, or sensory impairment that results in a substantial impediment to employment;
b. You require VR services to prepare for, get or keep a job that matches your strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and
c. You are capable of working as a result of receiving VR services.

DVR defines substantial impediment to employment as the limitations experienced as a result of physical, mental or sensory impairments that hinder the ability to prepare for, find, or keep a job that matches abilities and capabilities. WAC 388-891-0010.

42. On its face, the regulation could be interpreted to fit the Student. However, the only evidence about how DVR applies its rules is from the District, and that was that DVR services are extremely limited and begin only after all District services terminate. No evidence was offered from the Parent to support a conclusion that the District, in September 2013 or September 2014, should have invited DVR to plan for supported employment or independent living skills. The Parent has not proven the District should have reasonably expected that the Student would be seeking DVR services. The Parent did not prove that failure to invite DVR to the meeting constituted a procedural violation or resulted in denial of FAPE under the 2013 or 2014 IEPs.

43. *Foreign Language Requirement.* The third way the Parent claims the District failed to provide adequate and appropriate transition services and goals tailored to the Student's specific needs involves a college entrance requirement. For the 2013 IEP, the claim is the District failed to advise the Student about the two-year language requirement for college entrance. In 2014, the claim is that the District failed to provide a plan for how to regain the lack of foreign language credits in order to enter a four-year college.

44. Substantive standards for high school graduation are set by state law, including school district policies, not the IDEA. *Letter to Anonymous,* 22 IDELR 456 (OSEP 1994). WAC 180-51-066 sets forth the minimum high school graduation requirements for students entering the ninth grade on or after July 1, 2009, through June 30, 2012. The minimum requirements do not include foreign language credits, although foreign language credits may satisfy any or all of the required five and one-half elective study requirements. WAC 180-51-066(1)(h). As the Student was age 16 in September 2013, his IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to education. The IEP transition services must include courses of study needed to assist the student in reaching his postsecondary education goal. WAC 392-172A-03090(1)(j). Accordingly, whether the transition

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services were inappropriate due to lack of a course of study designed to facilitate the Student's movement from high school to college is subject to the IDEA.

45. At registration, the Student and his Parent expressed an interest in his attending college after graduating high school. The Student entered the District with a cumulative GPA at the end of 10th grade of 3.627. Exhibit D13. His cognitive ability tested within the high average range of intellectual functioning. Exhibit D4, p. 5. The COPS-2 indicated the top area of career interests was in professional technology (various engineering careers). Exhibit D1, p. 17. It is concluded that the Student's postsecondary education goal of attending college after graduation from high school was a stated goal consistent with his strengths, preferences, and interests. This is not a case where a District might claim that it did not plan for a stated goal because the goal was unreasonable or unattainable due to the severity of a student's disabilities. Therefore, upon determining that the Student qualified for special education, the IDEA required the District to include in the transition services planning a discussion of the admission requirements of Washington colleges in order that the Student could make meaningful selections of elective courses of study.

46. It is undisputed that two years of foreign language credits is an admission requirement of every four-year public college in Washington. It is not relevant to the IDEA analysis of the appropriateness of the 2013 IEP that two-year community colleges do not have a foreign language requirement, or that some less competitive public colleges may waive the foreign language entrance requirement.

47. The IDEA does not require the District to select the Student's elective courses of study or force him to enroll in foreign language class as part of the transition services. The District would have met its obligation under the IDEA had it informed the Student and his Parent in September 2013 about the foreign language entrance requirement and facilitated a discussion about the Student's options for elective courses of study. The Student had a right under IDEA to be able to make an informed choice.

48. The District knew the choice to add foreign language as one of the Student's elective courses of study was time sensitive. The District expected the Student to graduate in two years, yet only two years of high school remained. Thus, the District violated the IDEA transition services requirements when it failed to inform the Student and his Parent about the foreign language requirement, and failed to facilitate a discussion during development of the 2013 IEP about course electives for college-bound students. These actions would have been reasonably appropriate considering the Student's strengths, preferences and interests. The District violated the IDEA when its results-oriented process was not designed to help the Student make meaningful selections of his elective courses of study. This is a procedural violation of the IDEA. The Parent has proved the District's violation impeded the Student's right to a FAPE and caused him a deprivation of educational benefit, as he was unable to complete two years of foreign language credits which thus limited significantly his post-secondary college options.

49. Regarding the 2014 IEP, the Parent claims the District failed to plan for how the Student could regain the foreign language credits not taken in 11th grade. The above analysis for the 2013 failure to inform is applicable and will not be repeated. This is a procedural violation of the

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IDEA. The Parent has proved the District's violation impeded the Student's right to a FAPE and caused him a deprivation of educational benefit, as he was unable to complete two years of foreign language credits which thus limited significantly his post-secondary college options.

Failing to Consider Parent's Input

50. The Parent claims the District failed to give appropriate consideration to the Parent's input in the development, review and revision of the 2013 and 2014 IEPs, and for "transition plans" in the 2014 IEPs. The parents of students eligible for special education and related services are important members of school-based teams which develop IEPs for their students. WAC 392-172A-03095(1)(a). This Parent was not excluded from any IEP meeting, and when she arrived late to the 2014 IEP meeting, the PWN specifically noted she could ask to have the IEP team reconvened. At issue is whether the Parent was denied *meaningful* participation at these meetings. The Parent's concerns about not being heard and considered primarily relate to disagreement about how the District addressed the need for small group interaction and social skills development. The decision to use class-based work groups and peer partners was the type of professional judgment about teaching techniques and methodologies which educators are expected to make in the classroom environment to meet the Student's needs. The fact the District team members did not arrange for boys groups similar to the 7th and 8th grade SLP therapy experience at Kent, or arrange a lunch buddy, does not equate to having failed to consider the Parent's concerns. The evidence does not prove the Parent provided the June 16, 2014, physician letter to the District and no IDEA violation for failing to review and revise an IEP is proven on the basis of that letter. The law is clear that parents do not hold any veto power over the team's decisions. The evidence shows that the District members of the IEP team "considered" the Parent's views on these matters, but did not adopt all of the Parent's conclusions. Here, the preponderance of evidence is that the Parent attended and actively participated, and that the team considered the information and observations brought by the Parent. The Parent has not proven a procedural violation of IDEA on this issue for 2013 or 2014 IEPs. Regarding the 2014 IEP transition, the Parent's concerns about foreign language requirements and DVR are addressed above.

Failing to Record Agreed Goals, Placement, Related Services and Transition Plans in 2013 IEP

51. The Parent claims the District failed to appropriately record in the 2013 IEP the goals, placement, related services and transition plans services discussed and verbally agreed upon by the IEP team, but which were not documented in the IEP. The evidence does not support these claims. The Parent's evidence did not dispute the annual goals for writing or that the Student's specially designed instruction be delivered in a special education setting in 11th grade. To the extent this claim relates to the Parent's assertion the District agreed to provide the Student with a personal laptop to complete work at home, the Parent did not meet her burden of proof. The Parent very likely did mention such a request to District personnel, but she has not proven she made the request in the 2013 IEP team meeting, or that the team agreed to the request. The evidence does not show the Student lacked access to a laptop at the school. Although the Parent claimed the District promised "amazing things" for the Student, the evidence of record is insufficient to meet the burden of proof regarding a promised laptop for home use, promised boys groups, or promised lunch buddies. The District considered that the

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high school setting was different from the 7th and 8th grade small group experience in the SLP therapy setting when the Student attended Kent. It considered it more appropriate in high school for the Student to work in small groups and table-partner opportunities. The District simply did not agree with the Parent about the appropriateness of finding another high school student and asking/encouraging/requiring the student to eat lunch with the Student. The Parent has not proven a procedural violation regarding this claim.

Failing to Record Agreed Goals, Placement, Related Services and Transition Plans in 2014 IEP

52. The Parent claims the District failed to appropriately record in the 2014 IEP the goals, placement, related services and transition plans by failing to issue a PWN regarding services requested by Parent. To the extent this claim relates to Parent's assertion the District agreed to provide the Student with a personal laptop to complete work at home, the Parent did not meet her burden of proof. The Parent very likely did mention such a request to District personnel, but she has not proven she made the request in the 2014 IEP team meeting, or that the team agreed to the request. To the extent this claim relates to Parent's requests for boys groups and lunch buddies or job interview skills training, the classroom techniques or methods by which small group communication and social skills development were delivered, and content of the employment transition services are not required to be stated in an IEP. To the extent these claims relate to failure to record an agreed transition plan for a 5th high school year, the evidence did not prove the team reached such an agreement. The Parent has not proven a procedural violation regarding this claim.

Failure to provide appropriate PWNs in the IEP process

53. The Parent claims the 2013 and 2014 IEPs were inappropriately developed for failure to provide PWNs. The claims for both 2013 and 2014 involve the failure to provide a PWN when Parent requested services for the Student. A second claim regarding the 2014 IEP is inadequacy of the PWN that was issued. Parent claims her requests for service made in the 2014 IEP meeting were ignored or she received no response, which is understood to mean she received no PWN which denied the request. For example, the Parent proved she wanted more minutes per week with the behavior intervention specialist in 2013, and did not want the supplementary aids and services to be removed in 2014. She wanted the IEP and PWN to state in greater detail the manner in which the District would arrange small social groups and teach job interview skills, for example. The IDEA requires a PWN identify the District's "action" and no authority was found to support that a PWN must detail the discussions about program content and methodology and teaching techniques. Even if the regulation was interpreted to require the level of detail sought by the Parent, she has not proven the District denied the requested services. The evidence is that the Student's 11th and 12th grade educational experience included working in small groups, partnering, and later job interview skills. The Parent has not proven that other "services" like laptops or sound-canceling headphones were discussed in the context of an IEP team meeting. For the reasons already stated above, the PWNs related for both IEPs at issue identified proposed District action for general placement decisions in an IEP. The Parent has not proven a violation of IDEA or denial of FAPE to the Student related to lack of content of PWNs for the 2013 and 2014 IEPs. *See Marcus I, Smith, and Worthington Schools, supra.*

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Failure to Provide Appropriate Social/Emotional/Behavioral Related Services in 2013 IEP

54. The Parent claims the District's 2013 IEP failed to provide appropriate special education and related services reasonably calculated to lead to meaningful educational benefit for the Student by failing to include in the 2013 IEP social/emotional/behavioral as a related service(s). The failure is claimed in three ways, of which two relate to the evaluation. The reliance on the BASC-2 self-assessment, and whether the evaluation was appropriately comprehensive, was addressed in the conclusions above regarding the appropriateness of the 2013 Evaluation. The evidence does not establish a denial of FAPE to the Student on those two issues. The third way involves the failure to provide the Supplementary Aids and Services as described in the IEP. That is an implementation issue and is addressed below.

55. *2013 Supplementary Aids and Services.* The 2013 IEP did not provide special education and related services in the areas of social/emotional or behavior, because the initial evaluation determined he was not qualified in those areas. However, the IEP nevertheless identified a need for the Student to receive Supplementary Aids and Services. These mean aids, services, and other supports that are provided in the general education or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements of IDEA. WAC 392-172A-01185.

56. The District did not implement the 15 minutes per week of intervention behavior services outlined in the Supplementary Aids and Services section. This analysis is viewed from the perspective of the reasonable understanding of the Parent. It is wholly irrelevant to this analysis whether the information was placed mistakenly in the wrong matrix or table in the IEP. The Parent reasonably understood the intervention services were direct, one-on-one, because of the IEP description under the heading of supplementary aids and services. Her understanding was consistent with her request at the IEP meeting that she wanted more minutes of behavior intervention services). This interpretation is not inconsistent with other IEP statements which refer to the ability of teachers and the Student to consult when needed. The statements may be readily interpreted as mutually supportive, not mutually exclusive. It is concluded for the above reasons that the District violated IDEA when it failed to provide the Supplementary Aids and Services described in the 2013 IEP. The next step in the analysis is to determine whether this was a material failure. *Van Duyn, supra,* 502 F.3d at 821 and 822.

57. The Student's educational progress in 11th grade may be probative of whether there has been a material shortfall in services provided. If the Student performed at or above the anticipated level, it would tend to show the shortfall was not material. Here, in the 2013-2014 school year, the Student met his annual IEP writing goals, participated in a high school sport, and maintained a GPA over 3.7. The evidence that the Student was reluctant to partner with peers or experienced some challenges when working in small groups is insufficient to meet the burden of proof. Teachers and service providers reported that despite his reluctance he did in fact partner with peers, and worked in small groups when required and when not required but of his own initiative. The evidence was consistent regarding the Student's frequent demonstration

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of his ability to self-advocate and self-manage in the high school setting. The Parent was uniquely situated to observe the Student in settings outside the school environment, including in volunteer and other community activities. However, in this analysis involving provision of FAPE during the Student's 11th grade school year, the evidence does not show that the failure to provide 15 minutes of weekly of intervention services was a material failure. The Parent did not prove a denial of FAPE related to the Student "falling under the radar" of the case manager for the Supplementary Aids and Services described in the IEP.

Failing to Provide Appropriate Accommodations and Modifications.in 2013 IEP

58. The Parent claims the District's 2013 IEP failed to provide appropriate special education and related services reasonably calculated to lead to meaningful educational benefit for the Student by failing to provide appropriate accommodations and modifications. There is no evidence of curriculum modifications in the IEP, or in practice in the classroom, or that the Student needed curriculum modifications to receive FAPE. Regarding accommodations, the evidence is that the Student was allowed access and use of a word process or computer to type work as needed, was provided reinforcement if he lost focus, was offered a fidget, and allowed to complete assignments in the resource room and to have work checked frequently to ensure understanding. There was scant evidence offered about a lack of testing accommodations or that failure to provide a testing accommodation deprived the Student of educational benefit or his right to FAPE.

59. The IEP omitted some accommodations recommended in the Initial Evaluation. An IEP team is not required to adopt every recommendation in the evaluation report. The IEP team members were different persons from the Initial Evaluation team members. The Initial Evaluation supported inclusion of an accommodation to provide in advance class notes to address barriers related to handwriting. The Student needed preferential seating and copies of notes in advance in order to ease his own note-taking due to his poor handwriting skills. It was a substantive violation of IDEA to fail to include needed accommodations in the IEP. The next step in the analysis is to determine whether this was a material failure. *Van Duyn, supra,* 502 F.3d at 821 and 822.

60. The evidence establishes the Student either received the needed accommodations which were omitted (like preferential seating), or did not need them (like asking for help of his own volition without the need for the teacher to initiate the conversation). As for class notes, the Student was either provided them or did not need them because he received the information from the teacher in some other manner depending on the class and the teacher. The Parent did not prove a denial of FAPE related to the omission of needed accommodations in the 2013 IEP.

Failure to Provide Appropriate Social/Emotional/Behavioral Related Services in 2014 IEP

61. The Parent claims the District's 2014 IEP failed to provide appropriate special education and related services reasonably calculated to lead to meaningful educational benefit for the Student by exiting Student from social/emotional/behavioral service(s). The failure is claimed in several ways, some of which will be considered jointly.

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62. *Unilateral change/ Removal of Supplementary Aids and Services.* The Parent claims the District made a unilateral change to the Student's program for the 2014-2015 school year without issuing a PWN or obtaining the Student's consent or providing any meaningful data to support exiting services. This will be considered jointly with the predetermination claim involving removal of the service prior to the IEP meeting.

63. Parental or Adult Student consent is required for the initial provision of special education and related services. WAC 392-172A-03000(2)(a); 34 CFR § 300.300(b)(1). The District was not required under IDEA to obtain the consent of the Parent or the then-minor Student to provide services under the September 2014 IEP, since this was not an *initial* provision of services.

64. These claims can be interpreted to cover two time periods for the 2014-2015 school year. The first period consists of the school days from the start of 12th grade covered under the 2013 IEP, prior to the September 15, 2014, implementation of the (new) 2014 IEP. For the same reasons previously stated for the 2013-2014 school year, the Parent has proven the District violated IDEA when it failed to provide the Student with 15 minutes per week of intervention services with a behavior intervention specialist as required by the Supplementary Aids and Services section of the 2013 IEP still in effect and without issuing a PWN in advance. The District did not believe a PWN was required at the start of the 12th grade school year because it interpreted the 2013 IEP as requiring consult-only services. However, it is concluded a PWN was required once the District was on notice that the Parent's reasonable interpretation of the 2013 IEP differed from its own interpretation. The District violated both procedural and substantive requirements of the IDEA.

65. As previously stated, different legal standards apply to determine if (1) a procedural violation of IDEA and (2) a substantive violation for of IDEA, result in a denial of FAPE. It follows from the prior reasons, analyses and conclusions which addressed the entire 2013-2014 school year, that the District's failure to provide the Supplementary Aids and Services from the start of the 12th grade school year through September 15, 2014, did not amount to a denial of FAPE under the standards for either procedural or substantive violations of the IDEA.

66. From the effective date of the 2014 IEP through date of filing of the complaint, the Parent has not proven the District made a unilateral change without issuing a PWN, or without providing any meaningful data in violation of IDEA. The Parent has not proven the District was required by IDEA to obtain her consent when the Student had not qualified for special education in the areas of social/emotional or behavior. The Parent has not proven an IDEA violation or denial of FAPE to the Student for this claim.

67. *Predetermination.* The Parent claims the District predetermined services in several ways. Some ways in this second claim duplicate matters analyzed and resolved elsewhere in these conclusions, and will not be further addressed: declining to include (consider) Parent input into the IEP; and claiming the Student did not qualify for social/emotional/behavior services.

68. The Parent claims the District predetermined the 2014 IEP when the Parent understood staff to say that the topic of behavior was off the table and would not be considered at the IEP.

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The 2013 Initial Evaluation did not qualify the Student for special education services in the areas of social/emotional or behavior. Therefore, the District was unwilling in the 2014 IEP meeting to discuss maintaining or increasing the intervention behavior minutes found in the 2013 IEP's Supplementary Aids and Services. Despite the poor choice of words by staff, the District did not violate IDEA when it declined to discuss maintaining or increasing the intervention behavior minutes in the 2014 IEP. The District did not need the Student's consent (or consent from either of his parents) on that point, and did not need to provide data to support its position beyond the contents of the Initial Evaluation.

69. The Parent claims predetermination of the 2014 IEP is also shown by the District's removal of the minutes with the behavior specialist in its draft of the 2014 IEP, on the basis it had erred when it included the minutes in the 2013 IEP. The District's belief that a mistake had been made in the drafting of the 2013 IEP is not evidence of predetermination of the 2014 IEP. The fact the District's perspective differed significantly from that of the Parent regarding the Student's needs is not evidence of predetermination of the 2014 IEP. As noted above, the Initial Evaluation had determined the Student did not qualify for special education services in the areas of social/emotional or behavior. It is in context of that determination that the District's draft 2014 IEP must be analyzed and considered. The Parent has not proven predetermination in violation of the IDEA regarding its interpretation of the "error" in the 2013 IEP.

70. The Parent claims predetermination of the 2014 IEP is also shown by statements that at a next meeting to discuss transition services the District would be exiting the Student from his IEP services. The evidence is that the District considered exiting the Student from special education but rejected the idea.

71. Lastly, the Parent claims predetermination of the 2014 IEP is shown by District's not appropriately identifying the need for further assessments as requested by the Parent at the meeting. The Parent proved she spoke to District staff about services (job interview skills, boys groups, lunch buddies, for example) but she did not prove she requested these or further social/emotional or behavior assessments in the presence of the Student's Father and District team members in the 2014 IEP meeting. As to the Parent's request to maintain or increase the Supplementary Aids and Services minutes, the Father's position is unknown. Clearly the District's members simply disagreed with the Parent's perspective of the Student's needs in these areas and did not believe further assessments were needed. The District's perspective was supported by teacher observations and evidence of success in the classroom. While the Parent strongly disagrees with the perspective of the District's team members, the holding of a view contrary to the Parent's view is not evidence of predetermination.

72. Having carefully and thoroughly considered the several predetermination claims, the Parent has not met her burden of proof that the District engaged in predetermination and thereby violated IDEA.

Failure to Provide Appropriate Technology Services in 2014 IEP

73. The accommodations related to access and use of word processors and computers at school in 11th and 12th grades is addressed elsewhere in these conclusions.

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74. The evidence of record did not establish that the 2014 IEP team agreed the Student needed a laptop, software or applications, or noise-cancelling headphones to be provided for his personal use at public expense. The evidence does not show the Student needed technology services to access or benefit from general or special education classes or for classwork required to be completed in either a home or school setting. WAC 392-172A-02015. The Parent has not proven a violation of IDEA or denial of FAPE related to this claim.

Failing to Provide IEP Progress Reports

75. The Parent claims the District failed to provide adequate systematic progress reports required in the 2013 and 2014 IEPs, using empirical methods involving rigorous analysis to measure Student progress. The District's obligation under IDEA was to measure annual progress toward each IEP's two goals related to Written Language. WAC 392-172A-03090(1)(c)(ii); 34 CFR § 300.320(a)(3). The regulation does not use the term "report card" although the 1997 IDEA reauthorization included congressional committee reports where the term "IEP report card" was used S. Rep. No. 105-17, 105th Cong., 1st Sess. 22 (1997); H.R. Rep. No. 105-95, 105th Cong., 1st Sess. 102 (1997). The regulations do not specify the exact content of the reports, or the remedy for failure to issue periodic reports of progress toward IEP goals. The Parent did not prove that the method of measurement described in the 2013 or 2014 IEP (6-trait state rubric) was inappropriate. The Parent proved that none of quarterly report cards the District issued in 11th or 12th grade measured progress by the rubric identified in both IEPs. This is a procedural violation of IDEA. However, this is not a case where the Parent proved that progress was not actually measured. Here, the evidence is that the rubric was applied periodically as required by the IEPs. The Parent has not proven that failure to describe the progress in terms of the rubric against which progress was actually measured significantly impeded her opportunity to participate in the decisionmaking process regarding the provision of FAPE to the Student.

76. The Parent proved she did not receive the 4th quarter written report card under the 2013 IEP, or the 2nd quarter/1st semester written report card under the 2014 IEP. The evidence does not clearly show the date the 3rd quarter written report was due in relation to the date the due process complaint was filed. The Parent has not proved that she failed to receive written report cards on account of the fact they were not issued by the District. It is possible lack of receipt by the Parent is due to an error in the mail forwarding process of the ACP program, the mail delivery process of the postal service, or for some other reason. Even if the Parent proved a procedural violation of IDEA because the District failed to issue the missing written report cards, a procedural violation of IDEA, it is difficult to see how the lack of the final written report card for 11th grade or for end of 1st semester of 12th grade would have significantly impeded the Parent's opportunity to participate in the decisionmaking process regarding the provision of FAPE to the Student.

77. The evidence of record is that the Student attained both of his annual IEP Written Language goals in 2013-2014, and was progressing toward attaining the annual Written Language goals in the 2014-2015 IEP. Another indication of progress in this area was that Dr. Lorber determined the Student no longer qualified for special education in the area of

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Writing/Written Language. Clearly, the lack of descriptive words measuring progress by reference to the rubric, and the Parent's lack of receipt of some of the quarterly written report cards, did not impede the Student's right to FAPE or deprive him of educational benefits. The Parent has not proven a procedural violation related to 2013 or 2014 IEP progress reports, or alternatively that any procedural violation resulted in a denial of FAPE to the Student.

Failing to Use Appropriate/Qualified persons to interpret evaluation recommendations for 2014 IEP Meeting

78. School districts must ensure that the IEP team includes an individual who can interpret the instructional implications of evaluation results. WAC 392-172A-03095(1)(d)(e). The Parent claims the District failed to use appropriate/qualified persons to interpret evaluation recommendations and provide meaningful educational implications to the 2014 IEP team. The Parent has not proven the District personnel who attended the 2014 IEP team meeting were not qualified as required by WAC 392-172A-02090. The Parent has not proven a procedural violation of IDEA related to this claim.

Failing to Consider IEE

79. If a parent obtains an IEE at public or private expense, the results of the evaluation must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student. WAC 392-172A-05005(5). The Parent claims the District failed to consider the IEE report of Dr. Lorber by failing to provide persons in the February 24, 2015, IEP meeting qualified to interpret the results and resulting educational implications. She alleges acts of unprofessional conduct and unauthorized professional practice by the school psychologist and special services director. The Parent has not proven that the school psychologist, special services director, special education department chair, special education case manager, or any other District employee who interpreted Dr. Lorber's IEE and educational implications of the IEE results were not appropriate or qualified. WAC 392-172A-03095(1)(d)(e), WAC 392-172A-02090. The Parent claims a remedy based on professional misconduct or unauthorized professional practice, but has not proven either claim. The evidence of disagreement is not evidence of professional misconduct or unauthorized professional practice in violation of IDEA. The Parent has not proven an IDEA violation or denial of FAPE regarding statements or actions of the school psychologist, special services director, special educational department chair, special education case manager, or other District employee's conduct.

Remedies

80. 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.3rd 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 (9th Cir. 1994). Flexibility rather than

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rigidity is called for. *Reid v. District of Columbia, supra,* 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid v. District of Columbia, supra,* 401 F.3d at 524.

81. The Student is now majority age and an adult. The right to a remedy is his for the following violations: the September 2013 procedural violation by the District when it failed to inform and facilitate a discussion about the foreign language college entrance requirements; and, the September 2014 procedural violation by the District when it failed to address how to regain the "lost" year of foreign language credits.

82. The Student has not proven that New Horizon's Transition Extension program is an appropriate private placement at which to undertake a second year of foreign language studies. Dr. Lorber had evaluated students who attend New Horizon but was not familiar with the program other than through the same PowerPoint presented to the ALJ. It is a more restrictive than public school with little access to typically-developing peers with college and career goals similar to those of the Student. In rejecting New Horizon's Transition Extension program, the ALJ has given significant weight to the program's mission to service developmentally and cognitively disabled students. Placement at New Horizon at public expense in order to provide one year of foreign language credits is not appropriate. WAC 3920172A-02050; 34 CFR § 300.552; *Sacramento Unified Sch. Dist. v. Rachel H.,* 14 F. 3d 1398 (9th Cir.), *cert denied,* 114 S. Ct. 2679 (1994); *Clyde K. ex rel. Ryan K. v. Puyallup School District,* 35 F.3d 1396 (9th Cir. 1994).

83. The Adult Student is entitled to obtain a second year of foreign language studies at District expense.

84. The IEP meeting begun in February 2015 was not completed at time of hearing. Issues and circumstances which have taken place during the pendency of this hearing are beyond the scope of this order. If an IEP team determines to graduate the Adult Student from high school, which would be a change of placement under IDEA, then the District is obligated for the costs associated with the Student's obtaining a second year of foreign language credits at a post-secondary public institution in Washington State. Such costs shall include course tuition, fees, and materials reasonably associated with obtaining a second year of foreign language credits.

85. The Adult Student is also entitled to reimbursement at District expense for reasonable costs associated with commuting from home to school related to obtaining the foreign language class. If commuting is done in a private vehicle, reimbursement shall be based on the Internal Revenue Service mileage reimbursement rate in effect at the time.

86. The District shall reimburse the Adult Student within thirty (30) days of receipt of invoice or other documentation proving payment of course-related costs and reasonable commute costs.

87. The Adult Student or his Parent are not entitled to reimbursement for costs ($3,500 or more) of the educational advocate as they are costs either related to preparation for hearing or not allowed under IDEA.

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88. All arguments made by the parties have been considered. Arguments that are not specifically addressed herein have been duly considered, but are found not be persuasive or not to substantially affect a party's rights.

ORDER

1. The Parent's claims made as agent for the Adult Student are denied except as set forth below.

2. The District committed a procedural violation of the IDEA which impeded the Student's right to FAPE and caused him a deprivation of educational benefit, and which significantly impeded the Parent's right to participate in the decisionmakingn process in the provision of FAPE to the then-minor Student, when it failed to inform and facilitation a discussion about foreign language college entrance requirements in September 2013.

3. The District committed a procedural violation of the IDEA which impeded the Student's right to FAPE and caused him a deprivation of educational benefit, and which significantly impeded the Parent's right to participate in the decisionmakingn process in the provision of FAPE to the then-minor Student, when it failed to plan to regain the "lost" year of foreign language credits in September 2014.

4. The Adult Student is entitled to obtain a second year of foreign language studies at District expense, in accord with the above Conclusions of Law.

Signed at Yakima, Washington on July 21, 2015.

Johnette Sullivan
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.

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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.

Adult Student
[redacted]
Olympia, WA 98507

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cc: Administrative Resource Services, OSPI
Michelle C. Mentzer, Acting Senior ALJ, OAH/OSPI Caseload Coordinator

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