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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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December 23, 2019

Student

[REDACTED]

Kathryn Coleman, Director of Student
Services
Vashon Island School District
PO Box 547
Vashon Island, WA 98070

Father and Brother, Representatives

[REDACTED]

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1191 Second Avenue, Suite 2000
Seattle, WA 98101

In re: Vashon Island School District
Cause No. 2018-SE-0050X
Docket No. 04-2018-OSPI-00518

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.

Handwritten signature of Matthew D. Wacker in black ink.

MATTHEW D. WACKER
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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

IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0050X

VASHON ISLAND SCHOOL DISTRICT

OAH DOCKET NO. 04-2018-OSPI-00518

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker on Vashon Island, Washington, over eleven days: November 26-27, 2018, January 8-9, March 15, 19, 22, April 19, June 10-11, and July 2, 2019. The Adult Student whose education is at issue¹ appeared and was represented by the Father and the Brother.² The Vashon Island School District (the "District") was represented by Susan Winkelman, attorney at law. Also appearing for the District was Kathryn Coleman, director of student services.

STATEMENT OF THE CASE

*Brief Procedural History*³

The Student filed a Request for Due Process Hearing (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on April 27, 2018. OSPI assigned the Complaint Cause No. 2018-SE-0050X, the "X" suffix indicating that the Complaint raised issues under the Individuals with Disabilities Education Act (the IDEA) that were subject to the expedited timeline for a hearing and decision.⁴ The Complaint was forwarded to the Office of Administrative Hearings (OAH) and was assigned to ALJ Matthew D. Wacker. On April 27, 2018, a Scheduling Notice was mailed to the parties, setting a prehearing conference for May 4, 2018, and a due process hearing for May 22, 2018. On May 1, 2018, the District filed its Response to the Complaint. The parties participated in a resolution meeting on May 8, 2018.

Prehearing conferences were held on May 4, 8, and 11, 2018. After hearing from the parties, the undersigned determined the Complaint did not raise any issues under the IDEA that

¹ In the interest of preserving the family's privacy, this decision does not use the actual names of the parents, family members, or the student. Instead, they are identified as the "Mother," "Father," or "Parents," "Brother," and "Sibling(s)." For brevity, the Adult Student will identified as the "Student."

² The Father and the Brother, who are not attorneys, were appointed by the Office of Administrative Hearings (OAH) to act as the Student's suitable representatives based upon an accommodation pursuant to the federal Americans with Disabilities Act and Washington Administrative Code (WAC) 10-24-010.

³ This brief procedural history is not intended to and does not include every event or action in this matter. Rather, the intent is to provide the reader a brief summary of the legally significant determinations, actions, and events leading to the due process hearing.

⁴ See WAC 392-172A-05160 *et seq.*; 34 CFR §300.532.

were subject to the expedited timeline for a hearing and decision, and struck the expedited status of the Complaint. See June 25, 2018 First Prehearing and Stay-Put Order. The First Prehearing Order also addressed and determined the Student's stay-put placement during the pendency of the due process hearing. The Student moved to amend the Complaint on two occasions. After prehearing conferences on May 21, 24, 30, 2018, and July 3 and 19, 2018, the Student's motions to amend were granted, and the timeline for a resolution meeting and the resolution period was reset. See July 25, 2018 Second Prehearing Order. The District filed its Response to Amended Complaint on July 30, 2018.

Upon motion by the Student, his stay-put placement was reconsidered prior to the commencement of the 2018-2019 school year. After consideration of the parties' additional evidence, the undersigned re-determined the Student's stay-put placement pending the due process hearing. See October 1, 2018 Second Stay-Put Order.

Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See August 7, 2018 Fourth Prehearing Order. The record in this matter closed with the filing of the parties' post-hearing briefs on September 11, 2019. See August 30, 2019 Order Extending Due Date for Post-Hearing Briefs. Therefore, the due date for a written decision in the above matter is **October 11, 2019**.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Student Exhibits: S1-S2, S5p1, S7-S10, S11,⁵ S12, S14, S19, S21-S26, S28, S30-S35, S37-S46, S47,⁶ S48, S50-S51, S55, S58-S74, S76-S80, S82-S83, S85, S87-S88, S90pp1-2, S92-S101, S103.

District Exhibits:⁷ D1-D47.

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

Carter Castle, BA, MHP, Independent Living Specialist.
Michael Soltman, Former District Superintendent.

⁵ Proposed Exhibit S11 was offered by the Student at hearing. The District objected because at the time it was offered, whether Rebecca Falk, the author of the document, would appear for testimony was uncertain. Therefore, a ruling on the admission of the proposed exhibit was reserved. Ultimately, Ms. Falk did appear and give testimony subject to cross-examination. Accordingly, Exhibit S11 is admitted.

⁶ Proposed Exhibit S47 was offered by the Student at hearing. The District objected based on relevancy. A ruling on the admission of the proposed exhibit was reserved. After further consideration in light of the now evidence of record, Exhibit S47 is admitted.

⁷ For reasons unknown, the District's Exhibit List does not correspond to the exhibits as marked. All citations to the District's exhibits are citations to the exhibits as *marked*, not to the Exhibit List.

Brad Tyson, PsyD, Licensed Psychologist.
Paul Peretti, District Counselor, Vashon Island High School.
Karen Stendahl, M.Ed, District Special Education Case Manager, Vashon Island High School.
The Brother of the Student.
Lee Kopines, Executive Director, Seeds for Success (Independent contractor with Division of Vocational Rehabilitation).
Tara McBennett, M.Ed, District StudentLink Teacher.
Sarah Day, RN, District school nurse, Vashon Island High School.
Aaron Marsh, M.Ed, District Social Studies Teacher, Vashon Island High School.
The Student.
Rebecca Falk, M.S., Speech-Language Pathologist.
The Mother of the Student.
Daniel Rock, M.Ed, District Principal, Vashon Island High School.
Kimberly Allen, ND, Vashon Natural Medicine.
Kelly Wright, ND, Vashon Natural Medicine.
Kathryn Coleman, M.A, District Director of Student Services.

AMENDED ISSUES AND REMEDIES

The statement of the amended issues and requested remedies for the due process hearing is:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to implement the Adult Student's then-current IEP when he transferred into the District, leaving the Adult Student without an IEP for 3 years;
 - ii. Making educational recommendations and developing the Adult Student's February 13, 2018 IEP based upon currently available services in the District rather than the Adult Student's educational needs;
 - iii. Failing to provide the Adult Student with access to the general education curriculum beginning February 13, 2018;
 - iv. Failing to evaluate the Adult Student for an IEP in May 2016;
 - v. Failing to make a decision whether to evaluate the Adult Student within 25 school days of the request for an IEP in June 2017;
 - vi. Failing to provide accommodations the Adult Student required in order to receive FAPE;
 - vii. Implementing IEP services prior to completion of the February 13, 2018 IEP and before consent to provide IEP services was given;
 - viii. Failing its Childfind duty to identify and evaluate the Adult Student;
 - ix. Failing to provide the Adult Student with appropriate transition planning and transition services;

- x. Amending the Student's February 13, 2018 IEP without the Adult Student's consent;
 - xi. Attempting to inappropriately terminate the Adult's Student's special education and related services by graduating the Adult Student.
 - xii. Failing to consider whether the Adult Student was eligible for extended school year (ESY) services during 2017 and 2018;
 - xiii. Failing to educate the Adult Student in his least restrictive environment (LRE);
 - xiv. Holding an IEP meeting during fall 2017 without the Student in attendance;
 - xv. Failing to provide the Adult Student with prior written notice (PWN) of its intent to graduate the Adult Student;
 - xvi. Failing to provide the Adult Student with a procedural safeguards notice until June 2016;
 - xvii. Failing to obtain the Adult Student's special education records from his prior school district;
 - xviii. Failing to evaluate the Adult Student in all areas of suspected disability;
 - xix. Failing to implement and provide the Adult Student with IEP progress reports;
 - xx. Failing to provide behavior intervention strategies or have a manifestation determination meeting after implementing discipline lasting longer than 10 school days;
 - xxi. Failing to have IEP team member Cheryl Cochrane attend an IEP meeting on February 13, 2018.
- b. And, whether the Adult Student is entitled to his requested remedies:⁸
- i. The District shall incorporate the findings of the Adult Student's neuropsychological evaluation and other diagnoses into a new IEP;
 - ii. The District shall continue to provide special education and related services until the Adult Student fulfills requirements for graduation and the Adult Student has recovered from his traumatic brain injury (TBI);
 - iii. Compensatory education and reimbursement of costs and fees;

⁸ One of the Student's requested remedies was a stay-put order. That remedy has already been granted. See June 25, 2018 First Prehearing Order and Stay-Put Order.

- iv. The District shall facilitate the Adult Student attending the next available session of Running Start;
- v. Or other equitable remedies, as appropriate.

See July 25, 2018 Second Prehearing Order.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence and the credibility of witnesses was considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted is determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue. See, e.g., Finding of Fact 22.

General Background

1. The Student began receiving speech and occupational therapy (OT) services through the Head Start program when he was about 3 years old. S95p5,⁹ Father T1858.¹⁰
2. The Student was first determined eligible for special education and related services under the IDEA in May 2003, when he resided in Illinois. He was determined eligible under the Developmental Delay eligibility category. D29p4, S95p5.
3. The Student moved to the Antioch School District in Illinois to start the 2003-04 school year, where he was placed in an Early Childhood program. S95p5.
4. In September 2003, the Parents requested a due process hearing under the IDEA because they disagreed with the Student's placement in the Early Childhood program. The Student's placement was subsequently changed to an "at risk" program. S95p5.
5. In June 2004, the Student was reevaluated in kindergarten and found to have a full-scale IQ (FSIQ) of 104. S95p6, D29p4.
6. The Student was placed in a general education kindergarten class for the 2004-05 school year. S95p5.
7. The Student was reevaluated in May 2006. He continued to demonstrate a "severe articulation disorder." He was determined eligible for special education and related services under

⁹ Citation to the exhibits of record are by the party ("S" for the Student and "D" for the District) and page number. For example, citation to "S95p5" is a citation to Student's Exhibit 95 at page 5.

¹⁰ Citation to the testimony of record is by last name of the witness, except in the case of family members, whose given names are not used, and the transcript page number (Txxxx) where the testimony appears. For example, citation to "Father T1858" is a citation to the Father's testimony at page 1858 of the transcript.

the "Speech and/or Language Impairment category." D29p4. His evaluation recommended providing specially designed instruction (SDI) in the areas of speech, fine motor, and social/emotional functioning. D29p4.

8. The Student moved to first grade for the 2005-06 school year, and received SDI in a special education resource room for reading, written language, speech, and OT services. He continued receiving the same SDI and OT services in a resource room setting for second grade during the 2006-07 school year. S95p5.

9. The Student was reevaluated in May 2007. The reevaluation determined the Student remained eligible for special education and related services under the speech and or language impairment category, demonstrating a "severe articulation disorder." S95pp11, 13.

10. The reevaluation determined that, "[the Student's] overall reading ability is within the average range for a child at his grade level," and his overall math ability was within the "high average range." S95p8. The Student received 80 minutes per week of direct speech services. S95p10.

11. The Individualized Education Program (IEP) developed from the Student's reevaluation determined he was not eligible for extended school year services (ESY). S95p14.

12. The Student was reevaluated in April 2011, when he was in sixth grade. The reevaluation noted, "[the Student] continues to demonstrate a moderate articulation disorder which affects his ability to clearly express his thoughts and ideas in the classroom." S96p4. He was determined eligible for special education and related services under the speech and or language impairment category. S96p1. The reevaluation team also noted that the Student, "is frequently absent or late to school," and that this significantly affected his organization in class. S96p3. The reevaluation include an OT evaluation and a developmental vision evaluation. S96p7. The vision evaluation concluded that the Student's Visual Memory and Visual Form Constancy were at the first and second percentile, respectively. S96p9. The evaluation included vision-related recommendations. S96p10.

13. The Student had an IEP meeting in May 2013. D2p1. At the meeting, the "Parents also expressed concerns about [the Student's] organization and motivation to complete work." D2p3. The IEP concluded that, "[the Student's] articulation impairment impacts his ability to communicate with teachers and peers within the academic setting." D2p3. However, notes from the IEP meeting state that, "Academically, [the Student] (is) understood by peers and staff and able to participate fully." D2p17. The IEP provided the Student with 20 minutes per week of speech/language services. D2p9.

14. The Student was a freshman in high school in the Antioch School District during the 2013-14 school year. For the first semester, the Student earned a cumulative GPA of 3.714. D5. The Student did not complete his freshman year of high school.

15. In May 2014, the Student's family home was lost due to a fire. This was a very traumatic experience for the Student. He was outside the home when the fire started. Knowing that one of his siblings was in the house, the Student ran into the burning home, in part, to try to find his sibling. He was unable to locate his sibling and had to leave the home not knowing if his sibling

was still inside. Fortunately, while the family home was destroyed, no one was harmed. Mother T1481, Father T1859, Student T789.

16. The Student and his family eventually relocated to Vashon Island, Washington, arriving on October 13, 2014. Mother T849.

The Student Enters the Vashon Island School District

17. The Mother enrolled the Student for school in the District on October 14, 2014. D3, S72, Mother T848. The Student began attending the Vashon Island High School (VIHS) the same day. Mother T1480.

18. The Mother completed a two-page District Student Enrollment Form to enroll the Student. D3, S72. The form included the question, "HAS YOUR CHILD EVER PARTICIPATED IN:" followed by a number of options with boxes to check: Title, Learning Assistance program, Gifted/Highly Capable, English as a Second Language, Special Education (IEP), 504 Plan, and Other. D3p2, S72p2. The Mother did not check the corresponding box on the form to confirm that the Student had participated in special education and had a prior IEP. Anyone from the District reviewing the Mother's completed form could not have known that the Student had been determined eligible for special education or had an IEP in any prior school district.

19. Via email on October 15, 2014, the District sent a request for the Student's records to the Antioch School District. D4pp1-2, S73p1. The records request included a request for "special education and or (sic) 504 Plan records." D4p2, S73p1.

20. Via fax on October 29, 2019, the District sent a second request for records to the Antioch School District, which again included a request for any special education records for the Student. D4p2, S73p1.

21. The Father asserted during his testimony that he spoke with the Student's counselor at VIHS, Lori Martin, during "fall 2014" and mentioned or requested the Student's IEP records from Antioch School District. Ms. Martin spoke with the District's registrar, who told Ms. Martin that there was an outstanding financial balance due for textbooks pending with the Antioch School District. The Father asserted that upon learning this from Ms. Martin, he contacted the Antioch School District and paid the outstanding balance. T1861. However, as late as February 19, 2015, the Antioch School District was still reporting an outstanding balance. S61. It is found as fact that the Father's recollection of speaking with Ms. Martin during the fall of 2014 regarding the Student's IEP records and then paying the outstanding balance due is more likely than not an unintentional but mistaken recollection.

22. The Student met Ms. Martin in early November 2014. Student T1700. The Student asserted during his testimony that he told Ms. Martin that he had a prior IEP. T1701. Over the course of his testimony, the Student confirmed his recollection of events is now "shoddy" due to a traumatic brain injury (TBI). Student T1722, T1820. At one point, the Student confirmed he does not "have a very good recollection" of the correct sequence of the months in a year. T1769. At times during the Student's testimony, the Father asked the Student, "Would you like to correct your previous testimony." See e.g. Father T1790. At times, the Student would correct his own prior testimony. See e.g. Student T1780. The Student testified that he had no recollection of having a speech evaluation as part of the District's eligibility evaluation in 2017. Student T786.

However, the District evaluation report has three pages detailing the Student's communication evaluation, including the results of standardized assessments of the Student by Debi Hagardt, a District speech-language pathologist. D29pp13-15. The Student conceded during his testimony that, "It's possible I'm mixing things up," with respect to whether events occurred at one meeting or another. Student T1846. The Student has used medical marijuana on a daily basis for many years, which further calls into question the accuracy and reliability of his recollections. See D34p3 (April 5, 2018 Neuropsychological Evaluation: "Medical records indicate a history of medical marijuana use that predated MVA); Mother T1516 (The Student stated using medical marijuana "probably shortly after" the family moved to Vashon Island); D45p4 (Father shared with VIHS counselor that Student was using medical marijuana); S69p17 (Father reports the Student uses medical marijuana to manage pain, improve sleep and his anxiety); S82p10 (Student "is reportedly smoking medical marijuana daily"); Student T1823 (Began smoking marijuana daily "when I was prescribed it."). Based upon this evidence, it is found as fact that the Student's recollection of events is generally unreliable. Accordingly, unless there is evidence that independently corroborates the Student's testimony, no finding of fact will be made based solely on the Student's recollection of events. It is found that the record does not support a finding that the Student told Ms. Martin he had a prior IEP in November 2014.

23. Via email to the Antioch School District on February 6, 2015, the District's registrar asked for any update on obtaining the Student's official transcript. She remarked that "Last we spoke, [the Student] had an outstanding balance due of \$320.46. Has his account been cleared? May we get an official transcript for 2013-2014?" S61.

24. Via email on February 19, 2015, the Antioch School District confirmed that the Student still had an outstanding balance and asked if the District had an address for the family. S61.

25. During the spring and winter of 2015, the Student took a state standardized assessment in English Language Arts/Literacy, and state End-of-Course (EOC) examinations in biology and algebra. D6. The Student's scores for all three subject areas met or exceeded state graduation standards. D6, Peretti T273.

26. Via fax to the Antioch School District on April 21, 2015, the District's registrar again inquired regarding obtaining the Student's official transcript and any state standardized test scores. She wrote, "I understand [the Student] has cleared his account. May we please get an official signed transcript?" S73p2. For reasons unknown, this records request did not include a request for special education records.

27. Via email to Ms. Martin on April 27, 2015, the District's registrar stated, "Transfer credits received from Antioch Community High School have been entered (in) transcript." S19, See also D5 (Antioch Community High School Official Transcript).

28. Via email on May 13, 2015, apparently to some of the Student's teachers, Ms. Martin stated, "[the Student] is experiencing a particularly challenging time right now--his anxiety is taking over and causing absenteeism...I am discussing the 504 plan route with him." S62. Ms. Martin eventually developed a 504 Plan for the Student. Peretti T200.

2015-16 School Year: Student is a Junior at VIHS

29. Paul Peretti replaced Ms. Martin as the Student's high school counselor for the 2015-16 school year. Peretti T152, Father T1864.

30. Mr. Peretti noticed the Student's speech impediment when he first met the Student. Peretti T154. However, he did not consider the Student's speech to be "really very limiting," and it did not raise any "red flags" for him. Peretti T160. Mr. Peretti knew that the Student struggled with anxiety, and the purpose of creating a 504 Plan for the Student was to address his anxiety. Peretti T166.

31. Over the course of the school year, Mr. Peretti was "very aware of [the Student's] struggle" vis-à-vis his grades. Peretti T170. By the spring of 2016, the Student's "performance was really dropping. His attendance was dropping." Peretti T201. He recalls discussions "from time to time" about the Student's attendance, which was a concern. Peretti T277.

32. The Father met and spoke with Mr. Peretti on multiple occasions. Father T864. He told Mr. Peretti that the Student was struggling, had anxiety issues and had been on an IEP, but the District still did not have records from the Antioch School District. Father T1864. Mr. Peretti told the Father it would be faster for the family to get the records from Antioch. Father T1864.

33. On September 17, 2015, Mr. Peretti reported to the VIHS nurse, Sarah Day, that the Student was asking to use medical marijuana at school. D45p4, S76p4, Father T1865. This was after the Student shared with Mr. Peretti that he was using medical marijuana. Father T1865. Nurse Day in turn shared that information with the VIHS principal, Danny Rock. Day T71. This resulted in the Student and his school locker being searched. Rock T1110-1111, Father T1865. Nurse Day, who was a new school nurse, later realized that she did not have the Parents' permission to share this medical information with the principal, and "profusely" apologized to the Student. Day T711-712. Nevertheless, from this point onward, things went downhill for the Student as far as any trust he had in District staff. Mother T860. The Student no longer felt safe at school. Mother T1620.

34. On November 19, 2015, the Student went to the nurse's office. He reported feeling panicked in geometry class. In her records, Nurse Day described the Student as tearful, agitated, and visibly shaking over his entire body. The Father reported to Nurse Day that this behavior was typical when the Student had panic attacks. The Student told Nurse Day that he had a mental health counselor. Nurse Day used the descriptor "Crisis Intervention" in her records to describe this incident. D45p3. This was Nurse Day's first notice the Student had anxiety issues. Day T705.

35. On November 20, 2015, Nurse Day, Mr. Peretti, the Student and "his family" met to develop a 504 Plan for the Student. S76p3. They determined the Student had a disability under Section 504 of the Rehabilitation Act that required an accommodation. The disability was "Anxiety Disorder." D7p1, S77. The District developed a 504 Plan for the Student. D7pp2-3. This was the first 504 Plan developed by Mr. Peretti for the Student. Peretti T200. His 504 Plan for the Student was based upon the earlier 504 Plan developed by Ms. Martin the prior school year. Peretti T278.

36. The Student offered a number of his medical records as exhibits at the due process hearing. The medical records included records for the Student from Vashon Natural Medicine (S69), and EvergreenHealth (S82, S83). However, the Father confirmed that these records were not provided to the District until at least November 11, 2018, just shortly before commencement of the due process hearing. Father T1893-1897. While the District did not raise any objection to the admission of these three exhibits, the District cannot be held responsible for having knowledge of any of the information in the exhibits prior to when they received the records. To the extent those records are cited in any Finding of Fact, it is found the District did not have knowledge of the contents in those exhibits until at least November 11, 2018. The District did obtain a few of the Student's medical records itself based upon releases or authorizations, some quite limited in scope, executed by the Student. See e.g. D28, D30, and D35. Those exhibits may be cited for a finding the District was aware of the contents contemporaneously with when the Student authorized the releases.

37. Dr. Kimberly Allen is a naturopathic doctor practicing at Vashon Natural Medicine. Dr. Allen began treating the Student at Vashon Natural Medicine in May 2015. S69p61, S2p1. She first diagnosed the Student with an Anxiety state, unspecified, and then later in August 2015 added a diagnosis of a Depressive Disorder. S69p1. By November 2015, she diagnosed the Student with a Major Depressive Disorder, single episode. S69p60. In January 2016, she diagnosed the Student with Attention Deficit Hyperactivity Disorder (ADHD). S69p59.

38. On November 30, 2015, Dr. Allen wrote a letter "to Whom It May Concern," stating that the Student has panic attacks with high stress situations. S1p1. She made recommendations for the Student at school, and provided her letter to the District on December 1, 2015. Allen T1143-1144. In Dr. Allen's opinion, the Student required regular tutoring at school. Allen T1154.

39. Dr. Allen wrote a second "to Whom It May Concern" letter regarding the Student and gave it to the District on December 7, 2015. S2, Allen T1143. In her letter, Dr. Allen identified the Student as having an Anxiety Disorder and a Panic Disorder. S2p1. She went on to explain how these diagnoses impacted the Student at school.

40. On January 6, 2016, the Student completed an application for the District's StudentLink program. D8. In part, the Student wrote that, "My doctor thought it would be my best option with my complex life." D8p5.

41. The District's StudentLink program is an Alternative Learning Experience (ALE) program. McBennett T632. Students design their classes in conjunction with their StudentLink teacher. Learning in StudentLink is "contract learning," where most of the student's coursework is completed independently and outside of StudentLink. Once a week, the student meets with their StudentLink teacher, goes over the work the student did that week, and then creates the work the student will do the following week. McBennett T1226. StudentLink is a general education program, and uses the same state graduation requirements used in regular high schools. McBennett T1265, T1227. Students can earn credit towards graduation by completing the curriculum; regardless of how much time it takes the student to complete the curriculum. McBennett T1227. All StudentLink classes are pass/fail. McBennett T1265. Courses for a student in StudentLink are first chosen by what is required for graduation, and then based on a particular student's interests. Rock T1589.

42. The Student's application for StudentLink for the 2016-07 school year would eventually be approved on June 29, 2016. D10.

43. On March 10, 2016, the Mother sent an email to Mr. Peretti. In her email, the Mother states, "we are concerned about [the Student's] academic performance. **Please start the IEP process.**" S21 (Emphasis added). While this was the first time the Mother requested an IEP in writing, she spoke about it with Mr. Peretti multiple times in the past. Mother T879-880, T1627.

44. The Mother did not receive a Procedural Safeguards notice when she requested to start the IEP process. Mother T880.

45. On March 30, 2016, Dr. Kelly Wright sent an email to Mr. Peretti. S22p1. Dr. Wright is a naturopathic doctor. She earned her medical degree from Bastyr¹¹ University in 1998. Wright T1168. She owns and practices at Vashon Natural Medicine. Wright T1168. She first saw the Student at Vashon Natural Medicine as early as March 30, 2016. S69p57.

46. In her March 30 email to Mr. Peretti, Dr. Wright remarked that she would be seeing the Student that day in her office and would forward diagnoses and recommendations about the Student within the next week. She stated that the Student should be excused from both his first and second period classes, "until a new plan can be put into place for his disabilities." S22p1. Dr. Wright's intent with this email was to support a new 504 Plan for the Student. Wright T1177. She was not aware at that time that the Student had an IEP in the past. Wright T1178.

47. On March 31, 2016, Dr. Wright sent another email to Mr. Peretti. S24pp2-3. In her email, Dr. Wright identified the Student's diagnoses: ADD, Generalized Anxiety, Depression and Adjustment Reaction with Depressed Mood. She also set out her recommendations for accommodations for the Student: Extended time for testing as needed; Private setting for testing as needed; Extended time on assignments if necessary, potentially breaking down assignments into pieces with separate deadlines; Ability to excuse himself from class to use the restroom if necessary; Access to notes provided by teachers whenever possible; Shorten assignments if the Student is able to show mastery of the task being learned; Changes to his schedule to permit a late start. S24p3.

48. Via email on April 5, 2016, Mr. Peretti informed the Student that the decision of the committee was to leave his 504 accommodations "as they were currently written with no additional adjustments." Peretti stated he wanted to move forward with "our meeting after break with our school psych, Dr. Rich, to discuss the possibility of an evaluation for an Individual Education Plan... Hopefully your mom was able to find some info on this from your prior school in Illinois." S23p1.

49. Via email to Dr. Wright on April 6, 2016, Mr. Peretti wrote, "Apparently [the Student] had an IEP in Illinois, so we need to investigate the possibility of continuing it." S24p1.

¹¹ There is an error in the transcript at T1168. The transcript reflects Dr. Wright earned her medical degree from "Vassar University." This is incorrect. Dr. Wright earned her medical degree from Bastyr University.

50. Via email to the Mother on April 21, 2016, Mr. Peretti stated it was his opinion that the Student, "Will be better going through the (Division of Vocational Rehabilitation) DVR eval" as opposed to having an IEP. S25p2.

51. Via email to Mr. Peretti on April 28, 2016, the Father asked, "have you received the IEP records from [the Student's] previous school district? **We want to pursue an IEP here.**" S25p1 (Emphasis added).

52. In a Clinic Note dated April 28, 2016, Dr. Wright wrote the Student is "going to work towards Student Link (sic) and IEP at the same time." The Student reported, "he has also been targeted by the administration and harassed because he used medical marijuana for anxiety." S69p47.

53. In a letter dated May 2, 2016, to "Whom It May Concern," Dr. Allen stated that the Student would be unable to attend his first two classes due to a "medical disability" beginning April 1st and for the remainder of the school year. S77p7. At the due process hearing, Dr. Allen could not recall which of the Student's disabilities prevented him from attending his first two school periods. Allen T1147.

54. Latrica Rich was a District school psychologist during the 2015-16 school year. She only worked for the District for one year. Rock T1582. Via email to the Mother on May 3, 2016, Ms. Rich stated, "I was forwarded an email that stated that you wanted to pursue an IEP for [the Student]. We were waiting to get more information from the previous school so that the process can be expedited. If not, we are looking at taking the process into next school year." S26.

55. By June 2016, the Student grades were: 3 – Fs, 2 – Ds, and 1 – C. D41p1

56. By June 2016, Mr. Peretti was "very much aware [the Student] was really slipping through the cracks and falling down. And that is why we worked so heavily through his 504 to try to come up with a way through accommodations in the classroom to help him...And it's hard to implement a 504 Plan when a student is not there." Peretti T181. Mr. Peretti began to consider StudentLink for the Student. Peretti T181-182.

57. In a Vashon Island Medicine Clinic note dated June 9, 2016, Caroline Brinkley, MD, wrote the Student, "has been taking adderall, but overdoing it – has been up to 40 mg a day and has exhibited many amphetamine related side effects...Anxious young man, with obvious scabs across most of his forehead from picking at skin...His brother noticed that [the Student] was overtaking the adderall...Insomnia...Most likely related to anxiety, depression and overuse of Adderall." S69p43. Dr. Brinkley worked at Vashon Island Medicine for some time, but is now retired. Allen T1144, Wright T1168.

58. In a Vashon Island Medicine Clinic note dated June 20, 2016, Dr. Brinkley wrote, "[The Student] was seen on 6/9 exhibiting many signs of amphetamine overuse: picking at his skin, not eating or sleeping well, and still depressed...Face is healing from previous excoriation." S69p41.

59. Via email to Paula Cummings¹² on June 22, 2016, Ms. Rich wrote, "Attached are the documents that I intend to send to the parents of [the Student]...You were right in that he was served speech only, and no other sped. documentation was noted. Grades and test scores look good. Please let me know if this is ok to send to the parents along with the parent procedural safeguards." S64.

60. At the time of Ms. Rich's email, the District was still telling the Parents it had no special education records for the Student from the Antioch School District. Mother T1426.

61. Via email to the Mother on June 22, 2016, Ms. Rich wrote in part, "the team decided that it is counter productive (sic) for an evaluation if [the Student] attends the alternative program. Also, looking at his previous grade and testing scores, there is not enough evidence to suggest that his disability is impacting his performance in class, particularly given this attendance record. This evaluation process can always be considered at a later date. Please see the attached documents for further explanation." D9p1, S28p1.

62. Attached to Ms. Rich's email were a Prior Written Notice (PWN) and a Procedural Safeguards notice. The PWN denied the Parents' request for an evaluation to determine if the Student was eligible for special education and stated in part, "the student support team has determined that there is not enough evidence to conduct a full evaluation at this time. Previous and current records indicate adequate ability and performance." D9pp3-4, S74pp1-2.

63. The PWN identified the following reasons for rejecting an evaluation: "To evaluated (sic) the student was rejected due to a lack of previous records, poor attendance and the enrollment into a conflicting program next year." D9p3, S74p1. The PWN went on to state, "this decision can be reconsidered if the student no longer decides to enroll in the alternative program and attendance improves, and the student demonstrates poor performance in class or state exams." D9p4, S74p2.

64. Multiple District staff witnesses at the due process hearing did not support the reasons cited by Ms. Rich for denying the Student an evaluation.

65. Karen Stendahl, a District special education case manager at VIHS, confirmed that enrollment in an alternative program like StudentLink is not a reason to deny a student an evaluation to determine eligibility for special education. Stendahl T311.

66. Tara McBennett, the Student's StudentLink teacher, confirmed that enrollment in an ALE would not cause the District to reject a student for an IEP. McBennett T634.

67. Mr. Peretti, Ms. McBennett, Ms. Stendahl, and Kathryn Coleman, the current District Student Services Director, whose responsibilities include oversight of special education, all confirmed that poor attendance can be a factor to support evaluating a student for special education eligibility. Peretti T172, McBennett T634, T612-613, Stendahl T311, Coleman T1215-1216. Poor attendance at school can be a symptom of anxiety. McBennett T612-613. Ms. McBennett does not believe that having attendance issues is a reason to deny an evaluation.

¹² Paula Cummings is a former District Director of Special Education. Mother T1423.

McBennett T634. A disability can contribute to poor attendance. Coleman T1216. There are many circumstances where special education services would be helpful for a student with an attendance problem. Coleman T1215. Poor attendance "could certainly be a part of the picture that the team uses to make the decision" whether a student is eligible for special education. Coleman T1215.

68. Knowing that a Student had an IEP in the past would be a factor in favor of deciding to evaluate a student. Coleman T1217-1218.

69. A decrease in academic performance "is one factor that might lead a team to make a decision to evaluate for special education." Coleman T1216. Difficulty with completing schoolwork can be a sign of trauma and/or anxiety. McBennett T612-613.

70. The Procedural Safeguards notice attached to Ms. Rich's email along with the PWN was the first Procedural Safeguards notice the Parents had ever received from the District. Mother T855-856, T883, T902, T1423, Father T1871.

71. Via email to the Student and the Father on June 29, 2016, Julie Hanger, the program manager for StudentLink at that time, informed the Student that his application for StudentLink was approved for the 2016-17 school year. D10.

72. The Father was unaware the Student had applied for StudentLink, but upon learning the Student was accepted, thinks that he "probably acquiesced to him going" to StudentLink. Father T1888.

73. In a Vashon Island Medicine Clinic note dated July 7, 2016, Dr. Allen wrote the Student "is not having the severe anxiety now. He still does not have much motivation." S69p37. "Forehead is well healed from previous picking." S69p39.

74. In a Vashon Island Medicine Clinic note dated August 4, 2016, Dr. Allen wrote the Student "is doing really really well...He no longer feels bullied at school." S69p33.

2016-17 School Year: Student is a Senior at StudentLink

75. On September 23, 2016, the Student turned 18 years old. See Student's April 27, 2018 Complaint at p1.

76. The Student was enrolled in StudentLink for the entire 2016-17 school year. D41p1. Tara McBennett was the Student's StudentLink teacher. McBennett T614. Ms. McBennett first met the Student when he entered StudentLink. McBennett T614.

77. As a StudentLink teacher, Ms. McBennett met with each of her StudentLink students once a week for an hour if the student was enrolled full-time in StudentLink. McBennett T633. Ms. McBennett understands that:

At StudentLink, IEPs are somewhat less important than they are in the general high school because we are an individualized education program. Every Student is receiving a unique education. And so we don't codify the modifications. They're just automatic... So because of that, we don't have the same necessity to...initiate IEPs as a standard high school would.

McBennett T622. Ms. McBennett also understands that, "StudentLink specifies that when a student has an IEP and enters StudentLink, specially designed instruction is different than it is at the high school...There's no Special Ed staff that teaches students at StudentLink." McBennett T631.

78. At some point during the school year, Ms. McBennett may have talked with the Student about his receipt of speech services in the past. McBennett T614. At the same time, she learned that the Student had an IEP at a prior school district. McBennett T615.

79. At some time during the school year, the Father asked for help with the Student's speech, and Ms. McBennett told her program manager, Julie Hanger, that the Father was interested in having an IEP evaluation for the Student. McBennett T1237.

80. Via email on January 11, 2017 to Elisabeth Baker,¹³ Ms. McBennett wrote that she had a senior student (the Student), "whose parents think would benefit from speech services." S45. Ms. McBennett asked if a meeting with the Student was possible, as Ms. Hanger told her that Ms. Baker was the person to contact about speech services. S45.

81. A meeting with Ms. Baker was scheduled but then cancelled. Student T1763. The meeting was cancelled apparently because Ms. Hanger told Ms. McBennett that the Student had not qualified for speech services. McBennett T1274.

82. Via email to the Student on March 14, 2017, Ms. McBennett stated, "I haven't seen you since Feb. 8...if I have no contact with you for 20 school days, you lose your place in StudentLink. Tomorrow is the 20th school day." S46.

83. Ms. McBennett observed that the Student "performed great until the semester break. Then that's when he stopped attending...that's when he missed a lot of school...he came back and said that he had been depressed and anxious and, therefore, avoiding school." McBennett T1268.

84. Ms. McBennett observed the Student to exhibit what she considered to be signs of depression and anxiety. McBennett T620. The Student's schoolwork "dropped off erratically, and his attendance dropped off very erratically." McBennett T620.

March 2017 Motor Vehicle Accident and the Student's Post-Concussion Syndrome

85. On March 18, 2017, the Student was riding in the family car when it was involved in a motor vehicle accident (MVA). Father T1872. The car was hit from behind at high speed. S101p2. The Student sustained what would later be diagnosed as Post-Concussion Syndrome.¹⁴ S101p1.

¹³ Ms. Baker was an SLP under contract with the District. Rock T1084-1085.

¹⁴ Over the course of the due process hearing, the Student's Post-Concussion Syndrome was routinely referred to as a traumatic brain injury, or TBI. There was no detailed evidence presented to determine if

86. After the MVA, "things got worse" for the Student. Brother T491. The Student was "a mess."¹⁵ Mother T894. The Student's memory, general functioning, headaches and skin-picking all got worse. Brother T491. His depression anxiety and impulsivity worsened. Brother T493, T575-576. The Student's skin excoriation on his face looked like "the worst teenage acne." Brother T492. This made it hard for the Student to go out in social settings and back to school. Brother T492. But it was the Student's suicidal ideation that most concerned his Brother. T556. The Student went to an emergency room at least once because he was suicidal. Brother T493. He was in and out of hospitals. Mother T894. After the MVA, reading became "a really big problem" for the Student, and caused him a lot of anxiety. Brother T563.

87. The Student's anxiety got worse after the MVA. Allen T1147. The Student's excoriation was "rather severe" and was "readily visible." Allen T1146. It was related to the Student's severe anxiety and possible concussion. Allen T1146.

88. In a Vashon Island Medicine Clinic note dated April 17, 2017, Dr. Allen observed a severe increase in the Student's anxiety and depression. "Self-scratches" were visible on his forehead and cheeks. While the Student denied suicidal thoughts or feelings, the "recent MVA had clearly exacerbated his struggles." S69p17.

89. Dr. Allen also noted that the Father "repeatedly voiced that all of [the Student's] issue (sic) stem from his marijuana use." S69p17. The Father felt that the Student lacked motivation because of his marijuana use. Dr. Allen discussed with the Student that central nervous system (CNS) depressants like marijuana can exacerbate existing depression, and the Student agreed to curb his use. S69p17.

90. In a Vashon Island Medicine Clinic note dated May 19, 2017, Dr. Allen noted the Student's moods are "extremely labile," and his skin scratching has been "severe." She recommended the family take him to an emergency room, but the family would not commit. S69p10.

91. After the MVA, the Student did not return to StudentLink for the remainder of the 2016-17 school year. Student T1720, McBennett T620. The Student reported to her that he was having difficulty reading. McBennett T1301. Ms. McBennett understood the Student sustained a "brain injury." McBennett T1302.

92. In an EvergreenHealth Rehabilitation Psychology Note dated June 14, 2017, it was noted that the Student reported using medical marijuana on a daily basis. S82p10.

93. On June 16, 2017, the Mother and at least the Student met with Mr. Peretti to discuss the Student transferring from StudentLink back to VIHS for the 2017-18 school year. S43, Student

there is any significant medical distinction between Post-Concussion Syndrome and a TBI. For purposes of this Final Order, the two terms may be used interchangeably.

¹⁵ During her testimony, the Mother referenced "March 2018" with respect to this impression of the Student. Mother T894. This is more likely than not an inadvertent error on the Mother's part. Considered in whole, the evidence of record, supports finding the Mother was testifying about her impression of the Student after the MVA in March 2017.

T1717. Mr. Peretti said they would have to contact Principal Rock to approve the Student's transfer back to VIHS. S43. The Mother arranged to meet with Principal Rock on June 21, 2017, but due to his absence, met instead with Assistant Principal Alanah Baron. S43.

94. During their meeting with Assistant Principal Baron, the Mother requested an "evaluation." Mother T1434. In an email on June 23, 2017 to Mr. Peretti and in reference to the meeting with Assistant Principal Baron, the Mother wrote:

We discussed the need for a reevaluation of [the Student's] 504 plan, as well as the credits [the Student] will need to graduate. We would like to confirm that [the Student] is currently now enrolled as a student of (VIHS), and that his 504 plan will be reevaluated due to his traumatic brain injury.

S43p1.

95. On June 29, 2017, the District wrote a 504 Plan for the Student to be implemented effective September 6, 2017. S77p5.

96. On August 31, 2017, the Student was diagnosed with Post-Concussion Syndrome with associated headache, fatigue, poor attention and worsening anxiety by Dr. Ziad AISoufi at EvergreenHealth. D30pp9-10.

97. Dr. AISoufi recommended the Student see Dr. Osama Bankesly, a psychiatrist, because the Parents were looking for a mental health provider for the Student due to their concerns about his suicidal ideation. The Student would eventually see Dr. Bankesly, who diagnosed him with a Bipolar Disorder and prescribed medication for the Student. Father T1874.

98. On August 31, 2017, Rebecca Falk, an SLP at EvergreenHealth, conducted a "cognitive-communication assessment" of the Student. Falk T805. Ms. Falk's "impressions/interpretations" of the assessment were that the Student had a mild new learning impairment with moderate to severe delayed memory and retrieval, severe issues with attention, and apparent "MILD+" issues with visual-perception. S6, S83p2, S101p2. Ms. Falk went on to recommend an OT assessment of functional vision issues and a Behavioral Optometry assessment. S101p2. Ms. Falk also recommended 1:1 therapy with an SLP for the Student. S101p2. This was a recommendation for 1:1 therapy in a "medical setting," not a school setting. Falk T822. She recommended the Student have 1:1 SLP therapy in a medical setting once a week for 45 minutes. Falk T811, T813.

99. Ms. Falk provided services for the Student from August 31, 2017, to May 10, 2018. Falk T806-807. Ms. Falk provided her recommendations regarding the Student's Post-Concussion Syndrome to the Student in writing. Falk T808. Her recommendations included: No time limits for testing; quiet environment; breaking up assignments/projects into smaller parts; reducing visual and auditory distractions; checking for understanding; and extra practice opportunities. T808. Ms. Falk does not know if the Student passed her written recommendations along to the District. Falk T808.

100. Due to his absences from StudentLink during the 2016-17 school year, the Student did not earn sufficient high school credits to graduate, and did not graduate at the end of his senior year of high school in spring 2017. D29p3.

2017-18 School Year: Student is a "Fifth Year Senior" at VIHS and then StudentLink

101. The Student enrolled at VIHS to start the 2017-18 school year with a "full time (sic) schedule." D29p3. The Student stated he wanted to complete the credits he needed to graduate and to "have a full high school experience." D29p3, Father T1875.

102. Mr. Peretti observed that the Student seemed poorly engaged and had difficulty managing his academic workload. The Student reported headaches and difficulty reading. D29p3.

103. Although the exact date is unclear, but during fall 2017:

The VHS administrative team discussed with parents and [the Student] the option of reducing his instructional day and/or shifting back to an alternative education model (Student Link) as [the Student] worked through the recovery phase following his injury. [The Student] declined this option and stated that he wanted to continue full time at the high school.

D29p3.

104. On September 8, 2017, the Mother emailed Mr. Peretti asking, "Have you received [the Student's] IEP from Illinois?" S30.

105. Mr. Peretti replied via email the same day stating, "As yet, I haven't seen anything from Illinois. It may have gone to the district office. I'll research this...If you are requesting an IEP (which I think you are), than our school psychologist, Cheryl Cochrane, will be contacting you." S30.

106. On September 12, 2017, the Parents received an email from the Antioch School District. The email asked to have the Student sign an attached "Records Sign out (sic) form and circle Permanent file...Once I receive the documents, I will email you [the Student's] record." The email also requested a copy of the Student's school picture ID or driver's license. S31p3.

107. Later the same day, the Parents received another email from the Antioch School District that stated, "Thank you for the documents. Attached is [the Student's] IEP files. If you need anything else please let me know." S31p1.

108. Later on September 12, 2017, the Mother sent an email to Mr. Peretti, stating, "I finally acquired [the Student's] information we have been waiting for. Please let me know if you have any difficulty opening the attachments, if so I can try to send them a different way. I do also have the paper copies and will bring tomorrow." D31p1. The Mother attached the Student's Antioch records to her email, and then took hard copies of the records to the District the next day. Mother T921.

109. The records provided to the District by the Mother on September 12, 2017 were the first special education records for the Student from the Antioch School District the District had ever received. Rock T1551.

110. Via email to the Mother on September 13, 2017, Mr. Peretti provided a list of proposed 504 Plan accommodations for the Student. D13p1. This email was in response to meeting with

the family, and the Mother giving him a list of some accommodations she wanted as part of a revised 504 Plan for the Student. Peretti T278. Mr. Peretti believed the Student's 504 Plan was "sufficient," but over time it became more difficult to implement the plan because the Student was having difficulty attending school. Peretti T293.

111. After initially testing the Student, Ms. Falk began seeing the Student for treatment on September 14, 2017. S101pp15-16. During this first treatment session, Ms. Falk noted:

Of concern is the fact that he has had to return to HS and is trying to take 4 classes. One of which is a Literature Class and one is a Government Class. [The Student] reports significant eye discomfort and headache while reading textbooks. He has to re-read each section multiple times to even come close to comprehending, and he comes home from school with significant mental fatigue...Just the task of reading at this time is likely preventing recovery.

S101pp15-16. The Father provided Ms. Falk with authorization for her to speak with the District, "to discuss these concerns and to see if adequate (sic) accommodation can be provided or if an IEP can be established." S101pp16-17.

112. On a District Student Support Team (SST) form regarding the Student dated September 14, 2017, it states in part:

Back at HS to finish few credits. Wants to stay all year, possibly for social/security purposes. Mom and dad have requested that [the Student] be evaluated for an IEP due to a traumatic brain injury after car accident.

D15p1, S79p1.

113. In a letter to the District dated September 21, 2017, Ms. Falk confirmed that she completed standardized testing of the Student and found significant deficits in attention exacerbated from his baseline ADHD attention issues, working memory, visual perception, visual processing and executive functioning. D16p2, S5p1.

114. On September 26, 2017,¹⁶ the Student had a Functional Vision Evaluation by Dr. Alan Pearson, OD. S99. Dr. Pearson determined the Student had: Binocular Instability; Convergence Insufficiency Type: Severe; Oculomotor Dysfunction; and Post-Concussion Syndrome. S99p6. Dr. Pearson noted that, "If left untreated, these conditions will not resolve on their own and will likely continue to impact [the Student's] functional abilities and attainments in school/work." S99p7. Dr. Pearson recommended vision rehabilitation. S99p7.

115. The Mother provided a copy of Dr. Pearson's evaluation to the District in fall 2017. T873-874. She emailed the evaluation to Ms. Cochrane. T1421, T1031.

¹⁶ The evaluation report identifies the evaluation as conducted on "9/26/98." S99p1. This is clearly a mistake in dating. The Brother confirmed the correct date of this evaluation is September 26, 2017 (T672), and all the evidence of record supports that date as the correct date of the evaluation.

116. Ms. McBennett did not see Dr. Pearson's evaluation prior to the due process hearing. McBennett T648. However, she believes that the Student would have had difficulty reading based on Dr. Pearson's diagnoses. McBennett T653. However, after the Student's MVA, he did report to her that he was having difficulty reading. McBennett T653.

117. Nurse Day did not see Dr. Pearson's evaluation prior to the due process hearing. Day T723. However, she believes reading would have been likely to cause headaches for the Student given Dr. Pearson's diagnoses. Day T723. Nurse Day acknowledged seeing the Student for "lots of headaches." Day T724.

118. In an EvergreenHealth record dated September 28, 2017, Ms. Falk noted:

Reviewed results of testing with [the Student and Parents], as well as recommendations for support, both at school and at home. [Parents] report they have been trying to get him tested for speech at his school for a while due to his artic (sic) problems, but emphasized that his current cognitive issues seem more debilitating at this time...[The Student is] visually upset and expressing that school is too hard right now.

S101pp14-15.

119. On October 11, 2017, the District's SST held a meeting and determined to proceed with a "comprehensive special education evaluation" of the Student that would include a "cognitive evaluation." S33. The Mother believed the evaluation would include assessments of the Student's vision and hearing. T922, T996-997.

120. In an EvergreenHealth record dated October 12, 2017, Ms. Falk noted:

Also reminded [The Student] that he reportedly only needs 2 classes to graduate but he is taking 4. This may be placing more demands than necessary on [the Student]... He stated that he was unaware he only needed 2 classes to graduate...(H)e also wasn't sure what he does next semester, if he finishes all of his requirements this semester

S101pp13-14.

121. On October 16, 2017, the District's Guidance Team referred the Student "for an evaluation due to concerns with his communication skills." The team referred the Student to the "Evaluation Group." D17p3.

122. On October 16, 2017, the Student, now over the age of 18, signed a Consent for Initial Evaluation form, giving his consent for an initial evaluation to determine if he was eligible for special education. D18. The evaluation consent form identified the following areas for assessment: Medical-Physical, Adaptive, Communication, Behavior, Observation, General Education, Cognitive, Age Appropriate Transition Assessment, Social/Emotional, and Academic. D18p1.

123. In an email to Ms. McBennett on October 18, 2017, the Student stated, "Is a transfer to student link possible this semester Or (sic) next thank you [the Student]". D19p1, S35pp1-2.

124. The Student did not complete an application for StudentLink during the 2017-18 school year as he had the first time he applied for StudentLink in January 2016. Student T1743, T1806.

No application for StudentLink by the Student for the 2017-2018 school year was produced at the due process hearing.

125. Ms. McBennett replied to the Student's inquiry minutes later via email stating, "I vote yes for this semester. I am forwarding this to Thomas, our new director, who actually makes the enrollment decisions." D19p1. Ms. McBennett's reference to "Thomas" was to Thomas Elliott, the StudentLink director. See S35p2.

126. The Student replied to Ms. McBennett's email minutes later stating, "Sounds good to me thank you I appreciate your effort and enthusiasm." D19p1.

127. On October 19, 2017 in a District All Health Conditions Report, Nurse Day wrote the Student reported that he, "Plans on transferring to Student Link (sic) by the end of the week, feels he needs more rest and recovery time than he can get with FT high school." D45p2.

128. In an email on October 19, 2017 to Mr. Elliott, Principal Rock said the Student does not have an IEP but is currently being evaluated at the Parents' request, and that "This request to transfer back into SL doesn't halt the evaluation process but would certainly inform how we process the results." S35p1.

129. On November 1, 2017 in a District All Health Conditions Report, Nurse Day wrote that the Student wanted help to print out an application for StudentLink. Nurse Day encouraged the Student to print out an application during break time. D45p2.

130. In an email to the Student on November 2, 2017, Ms. Cochrane reminded him that they were "scheduled to test tomorrow." S39p1. This was in regards to an appointment with the Student to begin Ms. Cochrane's assessments for the Student's initial evaluation for special education. Ms. Cochrane went on to tell the Student that she would ask Mr. Peretti to verify exactly what classes he needed to take to complete his graduation requirements. S39p1.

131. In an email to the Student on November 3, 2017, Ms. Cochrane remarked that she was "hoping to see you this morning at 9:00 am." S39p1. Apparently, the Student failed to appear for the testing.

132. Ms. Cochrane went on to inform the Student that Mr. Elliott had accepted his application for StudentLink, and the Student would be shifting over to the StudentLink program. S39p1. She reported that Mr. Peretti indicated the Student needed to complete the following graduation requirements:

Science - 1 credit needed. If Student turns in form for passing Biology End of Course (EOC) exam, he will get 0.5 science credits.

US Government - .5 credits needed.

English - .25 credits needed.

S39p1.

133. In an email to Ms. McBennett and Mr. Thomas on November 3, 2017, Mr. Peretti asked if they could "get together soon to talk about [the Student]?" S42p3. Mr. Peretti told them that Ms. Cochrane would also like to attend. This email was in the context of a discourse between Mr. Peretti and others about the Student's credits towards graduation.

134. In an email to the Student on November 3, 2017, Ms. McBennett told the Student that as far as she could tell, if he passed all his classes at VIHS and finished the whole semester of Government, all he would have left to finish to graduate was .25 elective credits. S37p1. Ms. McBennett attached a copy of the Student's High School and Beyond plan to her email, and told the Student to, "Feel free to double check it." S37p1. Ms. McBennett would later clarify during her testimony that the Student needed to earn one full credit of Government, not one full semester of Government. McBennett T643.

135. In an email dated November 3, 2017, to Mr. Elliott and Ms. McBennett, Mr. Peretti stated that the Integrated Math class the Student took while he was still in the Antioch School District would count towards the Student's math requirement at the District. That, along with the Student's Business Math class at VIHS meant that the Student's math graduation requirement was finished. S42p3.

136. On November 6, 2017, in a District All Health Conditions Report, Nurse Day wrote that the Student was, "transferring to Student Link (sic) tomorrow but not very enthusiastic. Believes head injury has set him back, not looking forward to graduating because he doesn't think he will be successful in college." S45p2.

137. The Student enrolled in the StudentLink program on November 9, 2017. D42p1, D41p1.

The November 2017 Bus Incident

138. On November 7, 2017, Principal Rock received a report from a teacher at VIHS regarding an incident on a school bus involving the Student, a younger female student, and some alleged inappropriate comments by the Student towards the younger student. S67pp1-2. Based on this report, Principal Rock said he would speak with Student. S67p1.

139. On November 13, 2017, Principal Rock sent the Student an email, telling the Student that he needed to see the Student that day to discuss a report of concern he received from a student about an interaction on one of the school buses. S41p1.

140. The Student, accompanied by his Brother, met with Principal Rock. Brother T497. Principal Rock explained he had received a report that middle school girls riding the same bus as the Student were disturbed and alarmed with the attention they were receiving from an older, presumably high school-aged boy on their bus, which was the Student. It was reported as "inappropriate behavior." Rock T1112-1113. Principal Rock "cautioned" the Student for the future. This conversation was the "sum total of the discipline" for the Student. Rock T1118.

141. An entry dated November 16, 2017, in a Student Support Team Confidential Information form for the Student stated that Principal Rock, "Met last Monday with [the Student], he is struggling on a lot of levels. He said that he is being 'forced' to go to SL." D15p2, S79p2.

142. In an email to the Student on November 28, 2017, District SLP Deborah Hargardt stated, "Are you available tomorrow morning at 8 am to meet and chat? I would like to gather some more information and start some therapy... Let me know if tomorrow will work, otherwise, I will plan of (sic) seeing you Monday." S40p2.

143. Later the same day, Ms. Hargardt sent another email to the Student, stating that "Since I haven't heard from you today, let's just plan on meeting up on Monday." S40p2.

144. Apart from the Student's testimony (See T1755-1756) which is generally unreliable, and some unclear and ambiguous testimony from the Brother (See T494-495), there is no evidence of record to find that Ms. Hargardt started providing SLP services to the Student in November 2017. Ms. Hargardt's second email on November 28, 2017 strongly supports finding she did not meet with the Student on November 29, 2017. It is found that Ms. Hargardt did not start providing SLP services to the Student in November 2017.

145. Ms. Cochrane was responsible for several of the areas to be assessed for the Student's initial evaluation for special education. Ms. Cochrane attempted to schedule multiple meetings with the Student to conduct her assessments, but despite all her attempts the Student often appeared late or failed to appear. See *generally* D23, D24.

146. Due in significant part to the Student's unavailability, Ms. Cochrane came to be concerned that she would be unable to finish her assessments and the evaluation report within the 35-school day requirement. On December 6, 2017, Ms. Cochrane sent the Student an email, in which she asked to meet with the Student to get his input on what he felt was a reasonable amount of time to extend the evaluation period. D24pp1-2.

147. On December 7, 2017, the Student signed consent to extend the timeline to complete his initial evaluation to January 11, 2018. D25p1, S93p1, D26p1.

148. Ms. Hargardt maintained an "Attendance/Intervention Record," documenting her contact with and provision of therapy services for the Student. D43pp1-2. Ms. Hargardt's entry for December 11, 2017 reflects the following:

Does not have IEP in place, but offered to see [the Student] today to gather additional evaluation information and do a trial of therapy. [The Student] declined to come today, wants a different day. Reminded him that I am only available at the High School on Mondays.

D43p2. While Ms. Hargardt apparently *offered* a trial of therapy to the Student earlier, there is no documentation by Ms. Hargardt showing she actually *provided* any speech therapy to the Student until February 28, 2018. D43p2 (See 2/28/18 entry). The Student's recollection of *receiving therapy services* from Ms. Hargardt prior to development of his IEP in February 2018 is not sufficiently reliable on its own to overcome the documentary evidence. Indeed, the Student did not recall ever having a speech assessment as part of his initial evaluation. Student T786. This is not credible given the extensive reporting of his communication assessment in the Evaluation Report. See D29pp13-15. However, there is one additional piece of evidence to consider.

149. In an email to the Father on January 5, 2018, Ms. Cochrane stated, "Debi Hargardt, Speech Language Therapist, has shared the results of her testing with [the Student]. They

scheduled subsequent therapy sessions. *[The Student] has attended one of the three scheduled sessions.* D26p1 (Emphasis added). This evidence, offered by the District for the due process hearing, offers sufficient corroboration for the Student's recollection of events on this point. It is found as fact that Ms. Hargardt provided one session of speech services to the Student prior to the development of his IEP in February 2018.

150. On January 10, 2018, the Student signed a second consent to extend the due date for completion of his initial evaluation to January 23, 2018. The reason for extending the due date was identified as, "[The Student] and his parents have requested that the evaluation period be extended to allow updated information from [the Student's] neurologist. [The Student] has an appointment scheduled on 1/17/18." D27.

151. In an EvergreenHealth, Neurology Office/Clinic Note dated 1/17/18, Dr. AlSoufi assessed the Student with "Post concussion syndrome" and determined this qualified as a TBI given the Student had a closed head injury leading to impairment in cognition, processing and psychosocial behavior. D28p4.

The Student's Initial Evaluation Report and Team Meeting – January 23, 2018

152. An evaluation team meeting was held on January 23, 2018, to consider the results of the Student's initial evaluation. D29pp1, 3; See S85.

153. The Student, the Parents, the Brother, Ms. Cochrane, Ms. Stendahl, Ms. McBennett, Nurse Day, Principal Rock, and Ms. Coleman all attended this meeting. Student T1767, Father T1879, Mother T989, T1437, T1492, Brother T673, Stendahl T404, McBennett T645, Day T717, Rock T1097, Coleman T1638.

154. The initial evaluation report determined the Student was eligible for special education and related services under the Traumatic Brain Injury disability category, and recommended specially designed instruction (SDI) in the areas of Learning Strategies/Organizational Skills and Communication. D29pp4-5.

155. Ms. Cochrane had attempted to conduct the cognitive assessment portion of the evaluation. However due to the Student's "extreme difficulty sustaining his attention and engagement," Ms. Cochrane finally determined that the **"results of his evaluation are therefore not considered to be a valid representation of [the Student's] cognitive functioning levels and should not be used in educational decision making."** D29p11 (emphasis added). Ms. Cochrane went on to note that, "Previous cognitive measures indicated that [the Student's] cognition is developed within the average range. Following his accident in March 2017, [the Student] has complained of severe headaches and feels that his Short Term Memory functioning is impacted." D29p11.

156. The Student's evaluation included an assessment of his academic performance. D29p12. The Student's reading skills were assessed using the Woodcock Johnson Tests of Achievement (WJ IV ACH) battery. His Broad Reading score was within the average range. D29p12.

157. The Student's evaluation included an assessment of his communication skills. D29pp13-15. It concluded that:

His speech articulation at the time of this report, although intelligible to this trained listener, is atypical... He tends to be quite verbose in his conversation, and yet has difficulty coming to the point, and getting his point across. His conversation discourse can be tangential at times... Speech therapy services are recommended to help [the Student] gain the skills he need (sic) to effectively communicate and understand and retain information in the classroom setting.

D29p13.

158. The Student's evaluation was to include an observation of the Student. D18. However, "Due to missed appointments, a formal observation of [the Student] in his current educational setting was not able to be conducted." D29p16.

159. The Student's evaluation included an "Age Appropriate Transition Assessment" for the Student. D29p17. Ms. Cochran noted that:

Due to time constraints (missed appointments) [the Student] did not complete the planned Career Exploration activities during the evaluation period... [The Student's] IEP team will incorporate career exploration activities and post secondary (sic) educational planning as part of his organization SDI and his weekly teacher sessions through Student Link (sic).

D29p17.

160. The individuals who attended the evaluation meeting and who also appeared as witnesses at the due process hearing had somewhat different recollections of what occurred at the meeting. After having carefully considered all the testimony of record, the following facts are found.

161. Ms. Cochran reviewed the results and recommendations of the evaluation with the team. Father T1879, Coleman T1638, Stendahl T404. Team members asked questions during the meeting. Stendahl T404, Coleman T1639.

162. The Father asked many questions and shared his input during the meeting. Father T1890. The Father went through the evaluation and, "argued with Cheryl Cochran, and I think I spent, like, half the meeting or more trying to get more services... and she was trying to argue with me... So my characterization of the meeting was a lot different than what I've heard here (at the due process hearing) earlier." Father T1879. "I monopolized most of that meeting. And I would characterize it as arguing very vehemently with Ms. Cochran about the evaluation." Father T1889.

163. The Brother also monopolized the meeting. Father T1899. The Brother had extended discussions with Ms. Cochran about areas identified in the evaluation consent that were not evaluated, or not thoroughly evaluated. Father T1899. The Father recalls the Brother discussing the "social behavioral aspect" of the evaluation because the family believed it was going to be a "major part of the evaluation, and it wasn't." Father T1880.

164. In a PWN dated January 23, 2018, Ms. Cochran stated that, "The severity of [the Student's] current educational needs are believed to be related to his TBI diagnosis which resulted from an auto accident in March 2017." D29p18.

165. On January 25, 2018, the Student's request for 0.5 Biology credits to be applied towards his graduation requirements based upon his passing the Biology End of Course (EOC) Assessment was approved. D39p5.

166. In preparation for an IEP team meeting to develop an IEP for the Student based upon the results of his initial evaluation, Ms. Stendahl, the Student's special education case manager, prepared a draft IEP. S87. Ms. Stendahl wrote "Draft" on the IEP to identify it as only a draft of an IEP. S87p1, Stendahl T458.

The Student's IEP and IEP Team Meeting – February 13, 2018

167. An IEP team meeting was held on February 13, 2018 to develop the Student's IEP. D31p3. The Student, the Mother, Ms. Stendahl, Ms. Hargardt, Principal Rock, Ms. McBennett, and Ms. Coleman all attended the meeting. D31p3. The Father and the Brother also attended. Father T1897-1898, Stendahl T470, Brother T538. Ms. Stendahl distributed copies of the draft IEP to the team members. S87, Father T1880, Mother T1442.

168. Ms. Coleman is qualified by her education, training experience to interpret the instructional implications of evaluation results. Coleman T1645, T1205-1207, T1632.

169. The draft IEP provided the Student with the following accommodations/modifications: Allow for breaks during testing; Extra time on tests and quizzes; Modify/repeat directions; Provide study outlines/guides/graphic organizers; and Small group instruction. All of these were to be provided to the Student on an "as needed" basis. S87p14. These accommodations/modifications were discussed during the IEP meeting, and team members provided their input for the accommodations/modifications. Coleman T1649, Stendahl T407. The accommodations and modifications were appropriate for the Student. Stendahl, T407. The Father spent a lot of time advocating that the Student needed audio textbooks. Father T1898. Ms. Coleman recalled discussion about whether the Student required audio books rather than textbooks, but the team did not agree that the Student needed audio books. Coleman, T1649.

170. The draft IEP provided the Student with 30 minutes per week of Speech and Language Therapy from an SLP to be provided in a general education location or setting. It also provided the Student with 15 minutes per week of Learning Strategies/Organization Skills to be provided by a general education teacher in a special education location or setting. S87p16. The draft IEP stated that the Student would receive, "Speech therapy services once a week for 30 minutes to improve communication skills, articulation, and intelligibility. These services will occur at Student Link (sic). Additionally, [the Student] will receive support and instruction in the area of life organization skills." S87p16.

171. The draft IEP noted that, "[the Student] is enrolled in Student Link (sic) program and is expected to attend 1x weekly and meet with teacher to receive instruction and track progress." S87p17.

172. The draft IEP did not provide the Student with extended school year (ESY) services. S87p18. Ms. Stendahl is unaware of any information about the Student experiencing regression or recoupment of learning to support providing him with ESY services. Stendahl T412-413. ESY services were discussed at the meeting, but no concerns were raised about ESY by anyone at the meeting. Coleman T1663, Stendahl T413. The Brother also recalls discussion of "regression

at the end of the school year” at the IEP meeting. Brother T539. The team determined the Student did not qualify for ESY services. Coleman T1663.

173. In the Secondary Transition section, the draft IEP states that, “[the Student] is on track to graduate in 2018, finishing the last two required assignments to meet this requirement. He will receive instruction and support to meet this deadline.” S87p8. And with respect to details for the Student’s transition from high school, the IEP states, “further exploration as to post secondary (sic) pursuits as [the Student] is a capable student.” S87p8.

174. The information in the Secondary Transition section of the draft IEP came from either the evaluation or from the discussions during the IEP meeting. Stendahl, T406.

175. At the meeting, the Father, Mother, and Brother, “spent a lot of time objecting to the services being proposed and the fact that the [Student’s] behavior wasn’t being dealt with.” Father T1880, Brother T541-542. The Father did not agree with what the draft IEP offered, and shared this with the team. Father T1898. The Father brought up the idea of the Student registering for Running Start, and Principal Rock finally agreed to the Student registering for Running Start. Father T1881.

176. The Brother asked “a lot of questions” at the meeting. Brother T736. He asked about the services the IEP would provide the Student. Brother T735.

177. The location or setting in which the Student’s SDI and SLP services would be provided was discussed at the meeting. The team discussed delivering the Student’s IEP services at the VIHS Learning Resource Center (LRC), versus delivering his IEP services at StudentLink. Coleman T1363. The LRC is more commonly identified as a special education resource room. Coleman T1362. The District staff IEP team members did not believe providing the Student’s IEP services in a special education resource room, like the LRC at VIHS, was appropriate for the Student. Mother T1444, Stendahl T412. However, given the Student had enrolled in StudentLink, “[the Student] and his family were electing to receive any services related to his IEP primarily at StudentLink.” Rock T1079. The team agreed that the Student would receive his SDI from Ms. McBennett and his SLP services from an SLP, all at StudentLink. Coleman T1374.

178. During the IEP meeting, the team agreed to make some changes to the draft IEP and there were also some “clerical” errors noted on the draft IEP. Stendahl, T429-432. After the meeting, Ms. Stendahl made the changes and corrected the draft to produce the final IEP. D31, S90. The Student and the Family did not receive a copy of the final IEP at the meeting because Ms. Stendahl first needed to complete her revision of the draft IEP based upon the discussions and Team decisions at the meeting. Father T1882.

179. In a PWN dated February 13, 2018, Ms. Stendahl noted that the Student was choosing to attend StudentLink, and he would receive his IEP services once a week at StudentLink. D31p20, S90p18.

180. On February 13, 2018, the Student signed a Consent for Initial Special Education Services, giving his consent to receive special education services. D31p19.

181. On February 15, 2018, Ms. Stendahl attempted to send a copy of the Student’s final draft IEP to the Mother. D32. In her email to which the final draft IEP was attached, Ms. Stendahl

wrote, "The final draft of [the Student's] IEP is attached to this email. It contains all the updated information we discussed at the IEP meeting." D32. However, Ms. Stendahl inadvertently misspelled the Mother's last name in the Mother's email address, and the Mother did not receive the Student's final draft IEP.

182. Both the initial and final drafts of the Student's February 2018 IEP require written progress reports of the Student's progress towards meeting his speech and language IEP goals on a "trimester" basis. D87p12, D31p12. This appears to be an error. VIHS operated on a semester, not a trimester, schedule for the 2017-18 school year. D47p2. The first semester of the 2017-18 school year ended on February 1, 2018, before the Student had an IEP in place. D47p2. The second semester of the 2017-18 school year did not end until June 22, 2018. D47p2.

183. Both the Student's initial and final drafts of his February 2018 IEP require written progress reports of the Student's progress towards meeting his IEP goals on a "monthly" basis for his Learning Strategies/Organizational Skills goals. D87pp12-13, D31pp12-13.

184. Ms. McBennett did not create IEP progress reports for the Student's Learning Strategies/Organizational Skills goals. McBennett T662, T1253. She created StudentLink "weekly to-do lists" and "monthly evaluations." See e.g. S70pp1-2. McBennett. T662. These were intended to be the Student's IEP progress reports. McBennett. T1253, T1329. There are no IEP progress reports for the period from February 2018, when the Student's initial IEP was developed, to April 2018, when Ms. Stendahl believes he was graduated. Stendahl. T379. The Mother was never provided any information about the Student's progress on his IEP goals. Mother T1447.

The Student's Emergency Expulsion/Short-Term Suspension

185. At the end of March 2018, the Father received a phone call from Principal Rock. The Father had the Student on the phone with him for at least some of the call. Principal Rock told the Father that the Student "was being emergency expelled because of an allegation of sexual harassment." Father T1882. Principal Rock would not give any further details. Father T1882.

186. The Student was emergency expelled on March 29, 2018. D33.

187. The Student would eventually come to understand that his emergency expulsion was based on a report or accusation that he followed a girl around and "commented on her butt." Student T1747.

188. On April 2, 2018, the Student appealed his emergency expulsion. D33pp1-2. On April 3, 2018, the Student sent an email to District Superintendent Michael Soltman, requesting that a hearing on his expulsion set for April 4, 2018 be delayed. S48p2. This was followed by another email from the Student to Ms. Coleman, in which the Student requested that a manifestation determination meeting be scheduled as soon as possible. S68p3.

189. The District did not schedule a manifestation determination meeting for the Student because he "was not suspended long-term." Coleman T1221.

190. There is no evidence of record to find the District removed the Student from school during the 2017-18 school year for more than the six school days related to his emergency expulsion beginning March 29, 2018.

191. Via email on April 3, 2018 to Ms. Coleman, Principal Rock wrote, "I don't want [the Student] on campus, he doesn't need 10 days to complete his remaining [graduation] requirements, but I don't know if that requires discipline to accomplish. Help?" S68p2.

192. Principal Rock was concerned:

That younger students, especially younger female students were increasingly reporting harassment and were increasingly reporting pretty significant discomfort in their interactions with [the Student], and that it was not safe for them any longer to be at StudentLink with him at the same time. So my concerns at this point were preserving his educational environment, making sure that his discipline...was not going to interfere or prevent him from being able to complete the work he needed to complete...while at the same time keeping students on campus safe from the behavior that was related to his school discipline.

Rock T1543.

Dr. Brad Tyson's Neuropsychological Evaluation of the Student

193. On April 5, 2018, Brad Tyson, PsyD, conducted a neuropsychological evaluation of the Student. D34pp2-10, S7pp2-10. The Student was referred to Dr. Tyson for an evaluation in the context of reported neuropsychological changes following the March 2017 motor vehicle accident. D34p2.

194. The purpose of Dr. Tyson's evaluation "was not to evaluate [The Student's] placement in school...the referral question was, 'Does Student have cognitive problems, emotional problems that are the direct result of a motor vehicle accident?'" Tyson T140-141.

195. The Student reported suicidal thoughts for six months after accident and was seen "at the hospital" twice within the past year for suicidal statements. D34p2.

196. Dr. Tyson's evaluation determined the Student had a FSIQ of 105, and assessed the Student's reading skills in the 55th percentile, which is average. D34pp4, 5. Dr. Tyson concluded that, "In the context of average range intellectual abilities, [The Student] demonstrated reasonably intact cognitive performance (low average to high average range relative to his peers) across most tasks administered. D34p7.

197. Dr. Tyson's diagnostic impressions, in part, where that:

Overall, the current findings suggest a baseline neurodevelopmental disorder implicating frontal-subcortical systems with clinical features such as anxiety, motor tics, ADHD and bipolar disorder. There were also features of Asperger's syndrome...These baseline features were likely exacerbated by a major depressive episode just before his motor vehicle accident in March 2017 with posttraumatic stress and somatization related to the accident itself. Actual brain damage with persisting cognitive impairment following an isolated concussion is unlikely.

D34p7.

198. Dr. Tyson concluded that the Student would benefit from SLP services, and that SLP services and psychotherapy would be “very helpful” to address the Student’s poor school attendance. Tyson T123, T128. Dr. Tyson did not recommend SLP services in his report because he believed the Student was already receiving SLP services. Tyson T135.

199. Dr. Tyson was aware of a reported history of the Student using medical marijuana. D34p3. While none of the Student’s diagnoses are caused by the use of medical marijuana, marijuana may increase depression, paranoia, or anxiety. Tyson, T145.

200. On April 12, 2018, Dr. Tyson wrote a letter “To Whom It May Concern.” D34p1. The letter summarizes his evaluation of the Student.

201. Once they received Dr. Tyson’s report, the Parents provided a copy to Ms. Coleman. Mother T931. They also asked for an IEP meeting so the team could consider Dr. Tyson’s report. Father T1883. However, it is unclear exactly when the District received Dr. Tyson’s report. It appears that as late as April 17, 2018, Dr. Tyson was still preparing his report. See D34p8 (TIME BILLED FOR NEUROPSYCHOLOGICAL EVALUATION: Report Preparation 4/17/2018 2:50pm – 4:59 pm). Ms. Coleman recalls receiving Dr. Tyson’s evaluation report shortly before a May 1, 2018 IEP meeting for the Student. Coleman T1654. And the Mother later testified she gave Dr. Tyson’s report to the District at the May 1, 2018, IEP meeting. Mother T1514.

202. On April 13, 2018, Principal Rock wrote a letter to the Student regarding conversion of his emergency expulsion to a short-term suspension.¹⁷ D33. Principal Rock informed the Student that his emergency expulsion was converted to a short-term suspension for six school days, which the Student had already served. The Student’s misconduct was described as “sexual harassment and a pattern of inappropriate behavior towards younger students.” D33p1. The letter went on to inform the Student that he was “not permitted on any District campus or transportation and is not allowed to participate in or attend any school activities on or off campus, except for with prior written permission from school officials.” D33p1.

203. Principal Rock’s letter went on to set out the conditions under which the Student could return to StudentLink:

(Y)ou will return to StudentLink under the following conditions:

- You may not come onto any school district campus.
- You may not continue driver’s education this spring with the district...
- You may continue your learning with Tara [McBennett] and correspond via email, phone, or video conferencing to complete your final assignments. You have until 4/27/18 to complete these assignments.

¹⁷ Principal Rock’s April 13, 2018 letter referenced an earlier letter dated March 29, 2018. That letter is not part of the record.

- You may continue to receive IEP services for speech and organization. You will meet at the district office on the 3rd floor of Chautauqua (Elementary School). After 4/27/18 if you are enrolled in Running Start we will maintain your eligibility. If you are not enrolled in Running Start then your high school education will be complete and you will be a graduate.

D33p2.

204. The prohibition on the Student entering the school district campus did not interfere with his access to StudentLink. The Student was required to meet with Ms. McBennett for one hour a week. However, the StudentLink regulations do not require a face-to-face meeting. The Student could continue to meet with Ms. McBennett once a week via email, phone, or videoconferencing to fulfill his StudentLink requirements. So while the Student was constrained from coming on the District's campus, it did not limit his access to his educational program: StudentLink.

205. Prior to his suspension, the Student's Learning Strategies SDI was delivered by Ms. McBennett at StudentLink, and the SLP services were provided by an SLP at StudentLink. Coleman T1374. After the Student was suspended, the location for providing the Student's SDI and SLP services changed from the StudentLink building to the District Office at Chautauqua Elementary School. Coleman T1375-1376.

206. After being notified of his suspension, the Student did not feel safe returning to StudentLink or VIHS. Student T1770. He also did not feel safe going to the District office because, "I was surrounded by people who probably were out to get me." Student T1770.

207. The Parents and Student never received a PWN, informing them that the Student would be graduating. Mother T1039-1040.

208. It was only after receiving Principal Rock's letter that the Parents realized they never received a copy of the Student's February 2018 IEP after the IEP meeting. Mother T1040.

209. On April 19, 2018, Dr. AISoufi wrote a letter "To Whom It May Concern." D35, S10. In his letter, Dr. AISoufi stated that the Student was a patient at his clinic, had been recently evaluated by their neuropsychology team, and "was found to have signs concerning for Asperger syndrome, which would cause impairment in his social skills, please accommodate as needed." D35.

210. On April 25, 2018, an Initial Individualized Education Program (IEP) Invitation (Amendment) was written, setting an IEP meeting at the Student's request for May 1, 2018. S88p2.

211. On April 26, 2018, Ms. Falk wrote a letter "To Whom It May Concern." S11. In her letter, Ms. Falk stated that the Student had been diagnosed with a Cognitive-Communication Impairment." S11. She went on to remark that "this diagnosis comes in part due to his recent Diagnosis of Post-concussive Syndrome," diagnosed by Dr. AISoufi, but was also likely in part due to the Student's history of ADD. S11.

212. The Student had an "oral grievance" before Superintendent Soltman regarding his expulsion/suspension on April 26, 2018. D36, S59, S58. Later the same day, Principal Rock sent an email to Ms. Coleman. S58. Principal Rock told Ms. Coleman that he just finished an "appeals meeting" with Superintendent Soltman and the Parents, and shared with the Parents that the

Student may have completed his diploma requirements. He went to say the Parents told him that they were working on a “due process complaint,” and had contacted an ombudsman at OSPI. S58.

213. Principal Rock also sent an email to Ms. McBennett the same day, in which he asked for a meeting to discuss the Student’s “earned credits and graduation status.” D37p2, S50p3, S55p2. Mr. Rock expressed that he believed the Student had met graduation requirements, but that he had learned the Student plans to “dispute that as much as possible – possibly claiming improper practices on our part.”

214. Ms. McBennett replied to Mr. Rock the same day via email, including Mr. Peretti. D37p1, S50p2. She reported the Student just had to finish Consumer Math and Government at StudentLink that semester, and that he finished Consumer Math on February 14, 2018. Ms. McBennett D37p1.

215. Ms. McBennett would later author a summary statement, explaining how the Student came to complete the requirements to earn both his math and government credits towards graduation. D42. Ms. McBennett confirmed during her testimony that the Student completed his graduation requirements in February 2018. McBennett T1331.

216. Although the exact date is unclear, Principal Rock met with Ms. McBennett and Mr. Peretti, and conduct a “very close examination” of the Student’s transcript and his progress towards earning credits at StudentLink. Rock T1594-1595.

217. In an email to the Student on April 27, 2018 regarding his grievance, Superintendent Soltman wrote:

However, given that this incident and resultant discipline has occurred at the end of your tenure at Vashon Island High School, and that you have no previous significant disciplinary violations, and that you have met graduation requirements and will graduate soon, I will rescind the short term (sic) suspension and remove it from your disciplinary record.

D36.

218. On April 27, 2018, the Student filed his Complaint in the above matter. See Administrative File, Cause No. 2018-SE-0050X.

219. Via email on April 27, 2018 to the Student and Ms. Coleman, Principal Rock wrote, “After a careful records review, transcript analysis, and meetings with Tara [McBennett] and Mr. Peretti it is clear that you have more than fulfilled your high school requirements for graduation. However, given your due process request, we will delay marking your graduation official for now.” D39p1.

220. In his same email, Principal Rock references the Student completing more than enough credits “to earn your StudentLink diploma.” D39p1. Principal Rock’s email also included a copy of the Student’s “STUDENTLINK CLASS OF 2017 HIGH SCHOOL AND BEYOND PLAN.” D39pp3-4.

The Student's Amended IEP and IEP Team Meeting – May 1, 2018

221. The Student's IEP team met on May 1, 2018, to consider amending his February 2018 IEP. D40, S88.

222. The meeting was held at the Parents' request. D40p20. The purpose of the meeting was to "discuss placement concerns that [the Student] had voiced as a result of a recent suspension from school." See PWN, D40p20. Ms. Coleman believes the meeting was held because the team noticed errors in the Student's February 2018 IEP on the service matrix page, and because the District had received Dr. Tyson's evaluation and wanted to begin a conversation about considering the evaluation. Coleman T1371, T1654.

223. The Student, the Parents, the Brother, Ms. Coleman, Ms. McBennett, Ms. Cochrane, Ms. Stendahl, Ms. Hargardt, Principal Rock, and Linda Pomeroy, a vocational rehabilitation counselor from the Division of Vocational Rehabilitation, all attended the meeting. D40pp 3, 20, Stendahl T416. Ms. Cochrane attended the meeting because the team intended to discuss Dr. Tyson's evaluation. Coleman T1347.

224. Ms. Stendahl wrote the Amended IEP. D40, S88. There were only two changes from the Student's February 2018 IEP:

It was noted that in his IEP two errors were made. First, on the service matrix page it indicate (sic) location of services for that 15 minutes a week of SDI in Learning Strategies/Organizational skills would happen in a Special Education Setting. In fact, those services have been provided by a General Education Teacher in 1:1 tutoring sessions in a General Education Setting. Those services will continue to be provided 1:1 by a General Education Teacher (1:1 Tutoring) in a General Education Setting.

Second, in the (Least Restrictive Environment) LRE placement options the IEP indicated that the student was in [the] "80%-100%" category. It should indicate that the student is in the '40%-79%' category. This is an accurate reflection of the services [the Student] has been receiving.

D40p20, Compare D31pp16-17 with D40pp16-17.

225. Dr. Tyson's evaluation was discussed at the IEP meeting. However, the team did not take the evaluation into consideration when amending the Student's IEP because District members of the team did not have sufficient time to "digest" the evaluation prior to the IEP meeting. Father T1900, Brother T744, Mother T1456, T1514, Coleman T1376. However, the District planned on reviewing Dr. Tyson's evaluation. Brother T545.

226. At the meeting, the Parents expressed concern about the Student's "social language skills." Coleman, T1655. The team proposed to reevaluate that area. Coleman T1655, Brother T745. The team also proposed adding fine motor as an area to reevaluate based upon the Parents relating that that the Student received OT services in the past. Coleman T1656-1657.

227. The Mother was given a Reevaluation Notification/Consent form at the IEP meeting. S90pp12, Mother T1514. It identified two areas for reevaluation: Fine Motor and Social Communication. S90p1. The Student did not provide his consent for the reevaluation. Mother T1514-1515.

228. A Washington State High School Transcript for the Student authorized by the District's registrar on May 10, 2018, reflects that the Student had not met the state requirement for his High School and Beyond Plan. D41p2. Principal Rock was unsure why the Student's transcript reflects that he did not finish his High School and Beyond Plan. Principal Rock believes it may be because as of May 20, 2018, the District was in "stay-put" regarding the Student. Rock T1601. To date, the Student has not been graduated from the District. Rock T1601.

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

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

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

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

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

Rowley, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201.

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

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

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

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

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

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

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

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

6. Procedural violations of the IDEA amount to a denial of FAPE, and therefore warrant a remedy, only if they:

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

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

Transfer of Rights at Age of Majority

7. When a student eligible for special education reaches the age of eighteen, a school district shall provide any notices required under Chapter 392-172A WAC to both the student and the parents, and all other rights accorded to parents under the IDEA and Chapter 392-172A WAC *transfer to the student*. WAC 392-172A-05135(1)(a), (b); See also 34 CFR §300.520(a)(2). This law applies to all students eligible for special education except for those students who are determined to be incapacitated under Washington State law, or who are certified as unable to provide informed consent or to make educational decisions. WAC 392-172A-05135(4), (5). See also 34 CFR §300.520(a), (b).

8. The Student turned 18 years old on September 23, 2016. There is no evidence to find the Student has been determined incapacitated under Washington State law, or been certified as unable to provide informed consent to make educational decisions. Accordingly, as of September 23, 2016, all rights accorded to the Parents transferred to the Student by operation of law. This means, in part, that the Parents' right to participate in the decision-making process regarding the provision of FAPE to the Student transferred from them to the Student on September 23, 2016. See WAC 392-172A-05105(2)(b); 34 CFR §300.513(2)(ii).

IDEA Statute of Limitations

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

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

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

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

WAC 392-172A-05080(2). See 20 United States Code (USC) §1415(b)(6)(B) and §1415(f)(3); 34 Code of Federal Regulations (CFR) §300.507.

10. The Court of Appeals for the Ninth Circuit addressed the IDEA statute of limitations¹⁸ in *Avila v. Spokane School District 81*, 852 F.3d 936, 117 LRP 11513 (9th Cir. 2017). In *Avila*, the parents asked the school district to evaluate their child for special education services based on some behavioral issues. The school district conducted an evaluation in December 2006 and concluded the child was not eligible for special education. A later reevaluation in 2008 determined the child was, in fact, eligible for special education. The child was reevaluated again by the school district in early 2010. The parents disagreed with the results of that reevaluation, and on April 26, 2010, requested a due process hearing. One of the Avilas' claims was that the school district denied the child a free appropriate public education (FAPE) by failing to identify the child as eligible for special education as far back as the child's initial evaluation in 2006. The ALJ ruled, in part, that their claims preceding the 2008 reevaluation were time-barred by the statute of limitations. On appeal, the district court agreed with the ALJ, and barred their claims arising before April 26, 2008, two years before they requested a hearing. The Ninth Circuit, however, put forth a different analysis.

11. The Ninth Circuit held that the IDEA's statute of limitations requires courts to bar only claims brought more than two years after the parents knew or should have known about the actions forming the basis of their complaint. *Id.* at 937. The "knew or should have known" (KOSHK) date is one element of the so-called "discovery rule." The court acknowledged that the Avilas' awareness of evaluations of their child did not necessarily mean they knew or should have known of the basis of their claim, at least where the claim or issue is one that requires specialized

¹⁸ Although the *Avila* Court considered the statute of limitations under the federal IDEA, WAC 392-172A-05080 is substantially similar to the federal statute of limitations and is subject to the same legal interpretation as its federal counterpart with respect to when a claim accrues.

expertise that a parent cannot be expected to have.¹⁹ *Id.*

12. Under the discovery rule, a claim under the IDEA accrues, and the two-year statute of limitations begins to run, once a parent comes to believe (or reasonably should have come to believe, i.e. the KOSHK date) that their child has been hurt *and that the school is responsible for the injury*, regardless of whether the parent yet knows that the injury is legally actionable. Several federal circuit courts of appeal have made clear that an IDEA claim accrues when parents come to believe not just that their child is having difficulties in school, but that the school district is to blame and has injured their child. See *Draper v. Atlanta Independent Sch. System*, 518 F.3d 1275, 1288 (11th Cir. 2008)(“The district court [correctly] found that Draper’s family did not have the facts necessary to know that Draper had been injured by his misdiagnosis and misplacement until they received the results of his evaluation in 2003. . . [U]ntil 2003, Draper’s family did not know enough to realize that Draper had been injured . . . We decline the invitation of the School System to conclude, as a matter of law, that Draper’s family should be blamed for not being experts about learning disabilities”); *M.D. v. Southington Bd. of Educ.*, 334 F.3d 217, 221 (2nd Cir. 2003) (IDEA claims accrue when parents know of the “injury” to their child, i.e., the “inadequate education”; parents’ claims were time-barred where they “‘knew or had reason to know’ of their injury when they withdrew M.D. from the [school system] . . . because they believed that the system was not providing her with an appropriate and adequate education”); *James v. Upper Arlington City Sch. Dist.*, 228 F.3d 764, 769 (6th Cir. 2000), *cert. denied*, 532 U.S. 995, 121 S. Ct. 1655 (2001)(IDEA claim is time-barred where “[the parents] initial cause of action arose in November 1989 when they decided that the school district was failing their son... when they knew of the injury to their child, [i.e., the inadequate education];”(brackets in original); *Alexopoulos v. Riles*, 784 F.2d 1408, 1411 (9th Cir. 1986)(In case under the predecessor statute to the IDEA, the court held claims were time-barred: “[U]nder federal law, a cause of action generally accrues when a plaintiff learns of the injury which is the basis of his action. . . [The mother’s] repeated attempts prior to 1973 to have [the student] placed in the district’s educational program indicate that the [parents] were aware that other handicapped children were receiving free educational services, which [the student] was being denied”(brackets in original).

13. These cases demonstrate that once parents believe, or reasonably should have come to believe, not just that their child is doing poorly in school, *but that the school is responsible for that fact and has wronged their child*, then the parents have two years to take action by filing a due process complaint. However, inherent in any legal standard that incorporates a known-or-reasonably-should-have-known element is the legal construct of the “reasonable person,” or in this case, “reasonable parents.” Parents cannot prevail simply by asserting they were unaware that a school district was responsible for harming their child – it is not a completely subjective standard, personal to a particular set of parents. The reasonable-parents construct requires an examination of all the objective facts to determine whether a belief is reasonable to the average parent.

¹⁹ The Ninth Circuit remanded the matter to the district court for a determination of when the Avilas knew or should have known about the alleged action(s) that formed the basis of their complaint. On January 29, 2018, the district court entered its decision, *Avila v. Spokane School District 81*, 2018 U.S. Dist. LEXIS 14152, 118 LRP 3933 (E.D. WA 2018). The district court held that the three separate evaluations of the Avilas’ child that occurred between October of 2007 and April of 2008, including a special education evaluation conducted at the parents’ request, placed them on notice of the alleged actions that formed the basis of their complaint by no later than April of 2008.

14. As the district court articulated in *Avila v. Spokane School District 81*, 2018 U.S. Dist. LEXIS 14152, 118 LRP 3933 (E.D. WA 2018), on remand from the Ninth Circuit, it is often difficult for a court, from its retrospective position, to determine the date on which a parent KOSHK about the alleged action that forms the basis of the complaint.

On the one hand, parents should not be “blamed for not being experts about learning disabilities.” *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1288 (11th Cir. 2008). On the other hand, statutes of limitations “serve the policies of repose, elimination of stale claims, and certainty about a plaintiff’s opportunity for recovery and defendant’s potential liabilities.” *Young v. United States*, 535 U.S. 43, 49, 122 S. Ct. 1036, 152 L.Ed. 2d. 79 (2002).

Avila at IV. ¶11.

Failing to implement the Adult Student’s then-current IEP when he transferred into the District, leaving the Adult Student without an IEP for 3 years

15. The Student was determined eligible for special education by the Antioch School District in 2003, and for many years afterward had an IEP, all of which the Parents were clearly aware. The evidence is equally clear that the Parents were aware the District did not implement the Student’s last IEP from the Antioch School District when he entered the District in 2014, and remained aware of this throughout the Student’s enrollment in the District until the Student was determined eligible with the January 2018 initial evaluation. It is also clear that the Parents were aware as early as the spring of 2015 that the Student was missing school, his grades were declining, and he was experiencing increasing anxiety. Finally, on March 10, 2016, the Mother asked Mr. Peretti to “Please start the IEP process.” However, no request for a due process hearing was made until April 27, 2018, when the Student filed the Complaint. It is concluded that the Parents had actual knowledge generally concurrent with the Student’s enrollment in the District in October 2014 that the District did not implement the Student’s IEP from the Antioch School District. And the Parents were clearly aware of all the Student’s problems and struggles at the District during 2014 and into 2015. However, there was no request for a due process hearing made until April 27, 2018, far more than two years later. It is concluded that the issue of whether the District violated the IDEA and denied the Student FAPE by failing to implement his Antioch IEP is barred by the statute of limitations.

Making educational recommendations and developing the Adult Student’s February 13, 2018 IEP based upon currently available services in the District rather than the Adult Student’s educational needs

16. The District’s Post-Hearing Brief (District’s Brief) asserts the Student did not clearly articulate the basis for this allegation. District’s Brief, p7. The Student’s Post-Hearing Closing Statement (Student’s Brief) makes several general assertions with respect to this issue, but does not cite to any evidence of record to support the assertions. Student’s Brief, p4. The Student’s Brief, in part, identifies evidence going back to April 2016, almost two years prior to development of the Student’s February 2018 IEP, to support this claim. However, there is no compelling evidence of record connecting events occurring two years prior to the development of the Student’s IEP to the process by which the IEP team made its educational recommendations in the Student’s IEP. The testimony of Ms. McBennett and Ms. Stendahl cited in the Student’s Brief

in support of this claim is equally unconvincing. General education teachers may deliver SDI to a student eligible for special education under the supervision of a special education teacher. WAC 392-172A-02090(1)(i). That the Student would be provided SDI by Ms. McBennett under the supervision of Ms. Stendahl is not a violation of the IDEA. It is concluded that the District has not violated the IDEA by making educational recommends and developing the Student's IEP based upon only currently available services in the District.

Failing to provide the Adult Student with access to the general education curriculum beginning February 13, 2018

17. The Student raises essentially one argument in support of this claim; that the District placed him in StudentLink, or that he was compelled or forced to enroll in StudentLink during fall 2017. Student's Brief pp4-5. This assertion is not supported by a careful review of the evidence. The circumstances leading to the Student's enrollment in StudentLink in fall 2017 started with his email to Ms. McBennett in October 2017. Ms. McBennett responded, telling the Student that she would forward his inquiry to the director of StudentLink. The Student replied to Ms. McBennett, thanking her for her effort and support. Later, the Student requested that Nurse Day help him print out a StudentLink application. Ms. Cochrane would eventually inform the Student that he was accepted to StudentLink. The Student began attending StudentLink on or about November 9, 2017. In support of his claim that he was placed, compelled, or forced to enroll in StudentLink by the District, the Student cites two pieces of evidence apart from his own testimony. First, he reported to Nurse Day that he was transferring to StudentLink but was not very enthusiastic. Second, he reported to Principal Rock that he was being forced to go to StudentLink.

18. StudentLink is an Alternative Learning Experience (ALE) general education program. See *generally* WAC 392-121-182. It is not in any manner a *mandatory* educational program, and neither party has offered a scintilla of evidence to support a finding or conclusion that any school district can place a student in StudentLink without a student's or parent's permission. With respect to the Student's assertion he was compelled or forced by the District to enroll in StudentLink, the evidence cited by the Student and found in the record does not support any such finding or conclusion. The Student may well have been less than enthusiastic about returning to StudentLink in fall 2017, as it is clear he was struggling at VIHS. The District recognized this as well, working to revise the Student's 504 Plan, and then determining it would evaluate the Student for special education. That the Student was unenthusiastic about returning to StudentLink in no manner supports a finding he was compelled or forced to return to StudentLink. The only other piece of evidence apart from the Student's testimony, which has already been found to be generally unreliable, is the statement in the District's records that he reported to Principal Rock that he was being forced to return to StudentLink. Absent much more comprehensive and compelling evidence, this does not constitute more than a preponderance of the evidence, and does not in any meaningful manner support a finding or conclusion the District somehow compelled, forced, or coerced the Student to enroll in or maintain enrollment in StudentLink. It is concluded that the Student has failed to prove by a preponderance of the evidence that the District denied him access to the general education curriculum beginning February 13, 2018.

Failing to evaluate the Adult Student for an IEP in May 2016

19. On this issue, the evidence is manifest: the District's decision to deny the Parents' request for an initial evaluation to determine if he was eligible for special education clearly violated the IDEA, and denied the Student FAPE.

20. The Mother requested in March 2016 to “please start the IEP process.” In April 2016, the Father stated to Mr. Peretti, “we want to pursue an IEP here.” Ms. Rich, the District’s school psychologist, finally responded on June 22, 2016, informing the Parents that the District would not evaluate the Student. Ms. Rich cited three reasons for the denial: a lack of previous records; poor attendance at school; and enrollment in a “conflicting program” the following school year. This reference to a conflicting program was a reference to StudentLink, which the Student applied for and was accepted into for the 2016-17 school year. Ms. Rich did not appear as a witness at the due process hearing, presumably because she is no longer employed with the District.

21. Tellingly, all the District witnesses who provided testimony going to the reasons why the District denied the Student an evaluation in the spring of 2016 either clearly disagreed with the reasons cited by Ms. Rich, or believed the reasons she cited cut as much in favor of evaluating the Student as not. Ms. Stendahl and Ms. Bennett both confirmed that enrollment in StudentLink is not a reason to deny an evaluation. Mr. Peretti, Ms. McBennett, Ms. Stendahl, and Ms. Coleman all confirmed that poor attendance at school can be a factor supporting a decision to evaluate a student. Ms. McBennett confirmed that poor attendance can be a symptom of anxiety. Ms. Coleman confirmed that having a disability can contribute to poor attendance. There are many circumstances where special education services would be helpful for a student with an attendance problem, per Ms. Coleman. She also confirmed that knowing a student had an IEP in the past is a factor can be a factor supporting a decision to evaluate a student. Ms. Coleman also confirmed that a decrease in academic performance is a factor that might lead to evaluating a student. Difficulty completing schoolwork can also be a sign of trauma or anxiety, per Ms. McBennett.

22. Case law supports the legal standard for evaluating a student for special education as a relatively low bar to meet. School districts must evaluate all students *suspected* of having a disability. WAC 392-172A-03020(3)(e). In the Student’s case, by June 2017, the evidence is overwhelming. The District was aware by that time the Student had an IEP in the past, that his attendance was very poor, that his grades were falling precipitously, that he was already on a District 504 Plan, that Mr. Peretti was very much aware the Student was struggling and had anxiety issues, that Nurse Day considered the Student to require “Crisis Intervention,” that the Father reported to Ms. Day that the Student had panic attacks, that the Student was using medical marijuana, that the District received letters from Dr. Allen describing her care and treatment of the Student, and that the District received a letter from Dr. Wright with her diagnoses of ADD, anxiety, and depression for the Student. The District’s decision to deny the Student an evaluation to determine if he was eligible for special education in June 2016 despite all that was clearly known to the District at that time cannot be justified by any reasonable interpretation of the evidence. Resolution of this issue is clear and without any reasonable doubt whatsoever: the District violated the IDEA and denied the Student FAPE when it failed to evaluate him in May or June 2016.

Failing to make a decision whether to evaluate the Adult Student within 25 school days of the request for an IEP in June 2017

23. A school district must make a determination whether or not to conduct an initial evaluation within twenty-five school days after receipt of a request. WAC 392-172A-03005(2)(c).

24. A careful review of the record does not support finding the Parents requested an evaluation for an IEP in June 2017. The only evidence of a request for an evaluation of the

Student in June 2017 was a request for an "evaluation" by the Mother made to Assistant Principal Baron during a meeting on June 21, 2017. However, the evidence supports a conclusion this was a request for a reevaluation of the Student *for the purpose of his 504 Plan*, not an evaluation for special education. This is reflected in the Mother's June 23, 2017 email to Vice-Principal Baron after their meeting, wherein the Mother twice makes reference to a reevaluation in relation to the Student's 504 Plan. It is concluded the Student has not proven by a preponderance of the evidence that the District failed to make a decision to evaluate him for special education within twenty-five school days of any request in June 2017.

Failing to provide accommodations the Adult Student required in order to receive FAPE

25. This issue is subject to two different interpretations. First, that the Student's IEP did not include or provide for all the accommodations the Student required in order to receive FAPE. Second, that although the Student's IEP included or provided for certain accommodations, those accommodations were not implemented with the Student. The Student's brief seems to argue each of the two interpretations.

26. With respect to the first interpretation, the Student's brief asserts he was not provided audio books in lieu of textbooks. That accommodation is not included in the Student's IEP. The evidence cited by the Student in support of concluding audio books were an accommodation which he *required* in order to obtain FAPE is testimony by Ms. McBennett about the February 2018 IEP meeting. Student's Brief pp9-10. Ms. McBennett was asked if audio books would be a reasonable accommodation for a student with difficulty reading, and she replied that is seemed like it would be reasonable. Ms. Coleman recalls the IEP team did not agree that the Student required audio books as an accommodation. The Student had a Functional Vision Evaluation by Dr. Pearson in September 2017. However, despite what appears to be a quite comprehensive evaluation and a clear conclusion the Student has difficulty with his vision, nowhere in Dr. Pearson's evaluation does he identify any need for the Student to have audio books in place of text books at school. This is a circumstance where reasonable minds might differ in reaching a conclusion the Student *required* audio books in order to receive FAPE. But it is concluded by a preponderance of the evidence that the Student has not proved that without being provided an accommodation for audio books, he could not obtain FAPE. The objective evidence, primarily Dr. Pearson's evaluation and both the District's evaluation of the Student's reading skills and Dr. Tyson's assessment of the Student's reading skills, does not support a conclusion that without audio books the Student could not receive FAPE.

27. The Student's other argument on this issue goes to whether or not the District failed to implement accommodations that *were* included in the Student's IEP: provision of study outlines, guides, and graphic organizers, and small-group instruction. With respect to small-group instruction, the Student had access to the smallest of small-group instruction: his 1:1 instruction with Ms. McBennett. However, one of the Student's Speech and Language goals involved taking turns in a conversation with his teacher *and peers*. See D31p12. The District does not explain how this IEP goal could be accomplished without the Student having some sort of interaction in a small group which included a peer in addition to the SLP providing the related service. There is no evidence to find the Student participated in any small-group instruction following development of his February 2018 IEP. It is concluded that the Student has proven a procedural violation of the IDEA with respect to the provision of small-group instruction for this IEP goal.

28. The Student finally argues that he was not provided study outlines, guides, and graphic organizers. The evidence is conflicting on this point. Ms. McBennett asserts she provided such accommodations as needed. The Student denies he received such accommodations, at least during some periods of time. After careful review of the evidence, and recognizing the burden of proving any violation falls on the Student, it is concluded that the evidence does not support finding any violation with respect to the provision of these items on an as-needed basis.

Implementing IEP services prior to completion of the February 13, 2018 IEP and before consent to provide IEP services was given

29. The Student asserts that he began receiving speech-language services from Ms. Hargardt prior to the development of his IEP, and prior to his consent to IEP services. Student's Brief p10. The District asserts that there is no evidence that the District implemented any IEP services prior to completing the Student's IEP in February 2018. District's Brief p15. The Student signed consent for his receipt of IEP services on February 13, 2018. It is clear that Ms. Hargardt offered the Student a trial of therapy based upon her own records dated December 11, 2017, but it is equally clear the Student declined that offer. However, there is additional evidence of record to consider. Ms. Cochrane's January 5, 2018 email to the Father, where she clearly states the Student attended one of three scheduled sessions, is independent confirmation of the Student's otherwise questionable recollection of receiving services from Ms. Hargardt prior to his IEP being completed. It is concluded that the Student received at least one session of speech-language services from Ms. Hargardt prior to the development of his IEP and his consent to services. This is a procedural violation of the IDEA.

Failing its Childfind duty to identify and evaluate the Adult Student

30. School districts must conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. Childfind activities must be calculated to reach students even though they are advancing from grade to grade. WAC 392-172A-02040; 34 CFR §300.111.

31. This issue of whether the District failed with respect to its affirmative ChildFind duty has largely been considered within the issue of whether the District violated the IDEA and denied the Student FAPE when it failed to evaluate the Student in May or June 2016. See above. For all the same reasons it was concluded the District committed a procedural violation with respect to failing to evaluate the Student, it is concluded that the District also violated the IDEA and denied the Student FAPE with respect to its Childfind duty. The District was aware of an overwhelming amount of information that would have clearly placed any reasonable school district on notice the Student needed to be evaluated at least as early as May or June 2016. The District's violation continued until it finally agreed to evaluate the Student on October 16, 2017.

Failing to provide the Adult Student with appropriate transition planning and transition services

32. The District's own evaluation report confirms the Student did not complete the planned Career Exploration activities during the evaluation period. The remaining statements in the Age Appropriate Transition Assessment section of the evaluation are generalities, the basis for which is generally not apparent from the face of the evaluation. With respect to the Secondary Transition section of the Student's IEP (D31p8), there is very little to no evidence to conclude the Student

was provided the transition services identified in the IEP. It is concluded that the Student has proved he was not provided with appropriate transition planning or transition services. This is a procedural violation of the IDEA.

Amending the Student's February 13, 2018 IEP without the Adult Student's consent

33. The Student's argument on this issue is difficult to follow. As can best be understood, the Student compares the draft IEP prepared in advance of the February 12, 2018 IEP meeting (S87), with the "Final IEP," and argues the "amendment" changed the location or setting for the provision of services "from Special Education to General Education." Student's Brief p15. But then, the Student appears to argue that the "amendment" at issue occurs at the May 1, 2018 IEP meeting,²⁰ without mentioning the final IEP with changes made based upon the team's decisions at the February IEP meeting (S90/D31). This issue will be resolved based upon an understanding that the Student is comparing the location or setting for services in the final IEP from the February 2018 meeting (S90/D31) with the same in the May 1, 2018 IEP (S88). This is consistent with the Student's assertion that there was a change in setting "from Special Education to General Education." Student's Brief p15. The May 1, 2018 IEP changed the location or setting for the Student's Learning Strategies and Organization Skills from "Special Education" to "General Education." Compare S90p15 with S88p17. This change constitutes an amendment in the Student's IEP.

34. The District argues that a school district is not required to obtain consent to amend a student's IEP. District's Brief p19. Legally, this is a correct statement of the law to the extent that when an IEP team is unable to agree on changes or amendments to a student's IEP, the school district may amend an IEP over the objection or disagreement of parents or an adult student. When that occurs, the remedy for parents or adult students is to request a due process hearing to contest the amendment. WAC 392-172A-05080(1). It is concluded that the Student has not proven any violation of the IDEA with respect to the IEP team's decision to change the location or setting for services in the Student's IEP over his objection or without his consent.

Attempting to inappropriately terminate the Adult's Student's special education and related services by graduating the Adult Student

35. The parties spent much of the due process hearing offering evidence on this issue. However, after careful review of the record and much consideration, it is concluded that this issue is not ripe for adjudication. Graduating a student eligible for special education from high school constitutes a change in a student's educational placement, requiring written prior notice. WAC 392-172A-02000(2)(b). The facts in this case are clear. The District has not produced, and the Student has not argued he ever received, a PWN that informed the Student that he would be graduated from the District. While there is evidence that the District considered graduating the Student, or was planning to graduate the Student, it could not do so without first issuing a PWN, memorializing that decision for the Student and providing him with sufficient advance notice of

²⁰ The Student's Brief references the "Amended IEP meeting...on 04/25/2018." There was no IEP meeting on April 25, 2018. The Student's Brief appears to be referencing the IEP meeting on May 1, 2018, but misidentifies the date of the meeting, perhaps because the *invitation* for the May 1, 2018 meeting is dated April 25, 2018. See S88p2.

graduation to request a due process hearing to contest the District's action. It is concluded that until such time as the District issues proper prior written notice that it is graduating the Student, this issue is not ripe for adjudication. What the Student is alleging is best characterized as an *anticipatory breach* of the IDEA by the District. But such an anticipatory breach is insufficient to raise a live issue for adjudication. It is concluded the Student has failed to prove any violation of the IDEA with respect to this issue at the present time. If in the future the District determines it will graduate the Student and issues a proper prior written notice, the Student may request a due process hearing to contest his graduation.

Failing to consider whether the Adult Student was eligible for extended school year (ESY) services during 2017 and 2018

36. Extended school year (ESY) services are services provided to students eligible for special education beyond the normal school year and in accordance with a student's IEP. WAC 392-172A-02020(1). The purpose of ESY services is the maintenance of a student's learning skills or behavior, not the teaching of new skills or behaviors. *Id.* at (5). This means that ESY services are intended to provide the services necessary for a student to *retain* what the student has learned during the regular school year over the summer break, and to avoid having to *recoup* or relearn skills that would otherwise be lost over summer breaks absent the provision of ESY services. In order for the failure of a school district to provide ESY services to constitute a denial of FAPE, the ESY services must be necessary in order to provide the student with an educational benefit.

37. The Student asserts that the IEP team *failed to consider* whether he was eligible for ESY services. This is a legally distinct issue from whether or not the Student *required* ESY services in order to receive FAPE. The first is a potential procedural violation of the IDEA, the second an alleged substantive denial of FAPE.

38. The Student asserts the IEP team, "never made [him] aware ESY services were considered nor was the Student involved in any way in said determination." Student's Brief p19. This is not supported by the evidence. The Student was present at the February 2018 IEP meeting. The Brother was also present and recalls discussion of regression at the end of the school year. Ms. Stendahl and Ms. Coleman also recall discussion of ESY services at the IEP meeting. Ms. Stendahl was unaware of any information regarding the Student's regression or recoupment to support the provision of ESY services for the Student. It is concluded that the Student's IEP team did not fail to consider whether the Student was eligible to receive ESY services, and the Student has proven neither procedural nor substantive violations of the IDEA.

Failing to educate the Adult Student in his least restrictive environment (LRE)

39. The IDEA creates a strong presumption that children with disabilities will be educated in regular classes with appropriate aids and services. However, the IDEA does not mandate full inclusion in regular classes. 71 Fed. Reg. 46,585 (2006). The IDEA requires that:

To the maximum extent appropriate, children with disabilities...are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. §1412(a)(5)(A); See also WAC 392-172A-02050. This is the so-called least restrictive environment (LRE) mandate. In Washington State, the LRE mandate is codified at WAC 392-172A-02050. In the Ninth Circuit, the seminal case on LRE is *Sacramento Unified Sch. Dist. v. Rachel H.*, 14 F. 3d 1398 (9th Cir. 1994), *cert denied*, 114 S. Ct. 2679 (1994). *Rachel H.* adopted a four-part balancing test to determine a student's LRE:

1. What are the educational benefits available to the student in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom;
2. What are the non-academic benefits of interaction with students who are not disabled;
3. What is the effect of the student's presence on the teacher and other students in the classroom; and
4. What is the cost of mainstreaming the student in a regular classroom.

40. An IEP team's decision where to place a student on the LRE continuum is reviewed using the "snapshot" analysis to determine the appropriateness of an IEP; that is to say, a team's LRE decision is analyzed in light of what the team knew or reasonably should have known at the time the team made the LRE decision. *Baquerizo v. Garden Grove Unified Sch. Dist.*, 826 F.3d 1179, 68 IDELR 2 (9th Cir. 2016); *Adams v. Oregon*, 195 F.3d 1141, 31 IDELR 130 (9th Cir. 1999).

41. The Student first argues that the District placed him into the StudentLink program once the District decided to conduct his initial evaluation in October 2017. This argument, that the District placed or compelled or coerced the Student into StudentLink has been considered and rejected. The Student next argues that he was not placed in his LRE after he was suspended in late March 2018. That argument is addressed below, and found to be without merit. It is concluded that the District has not violated the IDEA with respect to educating the Student in his LRE.

Holding an IEP meeting during fall 2017 without the Student in attendance

42. The extent of the Student's evidence on this issue consists of reference to an email from Mr. Peretti on November 3, 2017, wherein he asks if various District staff can get together to talk about the Student. This email was in the context of considering the Student's high school credits towards graduation. There is nothing in this email upon which to conclude Mr. Peretti's request to meet with other District staff constituted an IEP meeting for the Student. It is concluded the Student has failed to prove any violation of the IDEA with respect to this issue.

Failing to provide the Adult Student with prior written notice (PWN) of its intent to graduate the Adult Student

43. As with the issue of whether the District violated the IDEA by attempting to inappropriately graduate the Student, it is concluded that this issue is not ripe for adjudication. The District has not to date graduated the Student, and therefore is not obligated to provide a PWN of any such decision. The Student has not proven any violation of the IDEA.

Failing to provide the Adult Student with a procedural safeguards notice until June 2016

44. The Mother received a procedural safeguards notice for the first time on June 22, 2016, with her receipt of the District's decision not to evaluate the Student. Much of the Student's brief argument on this issue addresses events occurring *after* June 22, 2016, and therefore are not

relevant to resolution of this issue. Student's Brief pp21-22. The Student's argument on this issue boils down to the assertion that because the Parents informed the District prior to June 22, 2016 that the Student had an IEP in the past, the District had a duty to provide them with a procedural safeguards notice. WAC 392-172A-05015 provides in part that:

- (1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education one time a school year, and:
 - (a) Upon initial referral or parent request for evaluation;
 - (b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;
 - (c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and
 - (d) Upon request by a parent.

45. Of the circumstances identified when a school district is obligated to provide parents with a procedural safeguards notice only one, upon a request by parents for an evaluation, is relevant here. The earliest request from the Parents for an evaluation was the Mother's email on March 10, 2016 to Mr. Peretti, requesting to "Please start the IEP process." Reasonably construed from an unrepresented parent, this request was functionally equivalent to a request that the District evaluate the Student to determine if he was eligible for special education. Upon receipt of this request from the Parents for an evaluation, the District should have provided them with a procedural safeguards notice. It did not until June 22, 2016, approximately three months later. It is concluded this is a procedural violation of the IDEA. However, not all procedural violations of the IDEA amount to a denial of FAPE, thus warranting a remedy. See WAC 392-172A-05105(2), above.

46. The Student has not in any meaningful way articulated how or why this procedural violation warrants a remedy. It is concluded that this procedural violation does not warrant any remedy.

Failing to obtain the Adult Student's special education records from his prior school district

47. WAC 392-172A-03105 provides in part that:

To facilitate the transition for a student the new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled.

WAC 392-172A-03105(6)(a). As a preliminary matter, is it concluded that "reasonable steps" to obtain a student's records from a prior school district do not include the new school district having to pay for the records from the prior school district.

48. Despite the Mother's failure to indicate upon the Student's enrollment in the District that he had received special education services or had an IEP in the Antioch School District, the District requested the Student's records on October 15, 2014; the day after the Mother registered the Student in the District. The District made a second request on October 29, 2014. The District made a third request on April 21, 2015. However, as late as February 19, 2015, the District was informed that there was still a balance due and owing on the Student's account in the Antioch School District. This was after the Father represented he cleared the Student's balance with the

Antioch School District. It appears that some records from the Antioch School District were received by the District on or about April 27, 2015, but those records apparently did not include the Student's special education records. Given these facts, it is concluded that the District made reasonable steps to obtain the Student's special education records, and the Student has not proven any violation of the IDEA.

Failing to evaluate the Adult Student in all areas of suspected disability

49. When evaluating a student to determine if the student is eligible for special education, a school district must assess a student in all areas related to a suspected disability. WAC 392-172A-03020(3)(e). When the District determined it would evaluate the Student in October 2017, it determined it would evaluate the Student in areas including cognitive and observation. By its own admission, the District failed to properly assess the Student in these two areas. First, the District simply did not conduct any observation of the Student. Second, and most importantly, the District has conceded that the results of its own cognitive assessment of the Student were "not considered to be a valid representation of [the Student's] cognitive functioning levels and should not be used in educational decision making." This was due to difficulty the Student had sustaining his concentration and attention due, at least in part, to experiencing headaches during the cognitive assessment by Ms. Cochran. The District ultimately relied on previous cognitive measures of the Student's cognition. This is manifestly inappropriate and constituted a violation of the IDEA regulations governing evaluations, particularly in light of the fact that the Student sustained a TBI or Post-Concussive Syndrome from a motor vehicle accident in March 2017, and was reporting impaired cognition as a result. The District's expressed reliance on the results of Dr. Tyson's evaluation of the Student in April 2018 is not compelling. See District's Brief p.26. It is concluded that the District failed to evaluate the Student in all areas of suspected disability, committing a procedural violation of the IDEA. It is concluded that this violation also denied the Student FAPE, thus warranting a remedy. Without a current, valid assessment of the Student's cognitive functioning, the IEP team could not have developed an IEP that provided FAOE for the Student.

Failing to implement and provide the Adult Student with IEP progress reports

50. With respect to this issue, the evidence is unequivocal. The District did not produce or provide the Student with IEP progress reports. Progress on the Student's Learning Strategies/Organizational Skills was to be reported on a monthly basis. The District argues that Ms. McBennett's StudentLink weekly-to-do lists fulfilled the requirement for monthly IEP progress reporting. Even a cursory examination of the StudentLink weekly-to-do lists leads to a conclusion that they in no meaningful way reported the Student's progress towards this IEP goal. It is concluded that the Student have proved the District committed a procedural violation of the IEP with respect to this issue.

Failing to provide behavior intervention strategies or have a manifestation determination meeting after implementing discipline lasting longer than 10 school days

51. The Student was suspended from school by the District for six school days starting in late March 2018. There is no other evidence of record to find the District excluded the Student for more than six school days during the 2017-18 school year for disciplinary reasons. School Districts are not required to hold a manifestation meeting until a student has been excluded from school for disciplinary reasons for more than ten school days in a school year. WAC 3921-172A-

05146(1).

52. The Student argues that the District changed his educational placement because of his discipline because after the discipline he was restricted to participating in his StudentLink program by email, telephone, or video conferencing with his StudentLink teacher, Ms. McBennett. The Student argues this constituted a change in his educational placement for disciplinary reasons, triggering the District's duty to hold a manifestation determination meeting. It is concluded that, to any extent this constituted a change in the Student's educational placement, the change was not a material change. The Student was required to meet with Ms. McBennett for only one hour per week for his StudentLink program. The overwhelming majority of the time students spend completing their StudentLink courses or classes is spent working independently. The StudentLink regulations permit students to meet with their StudentLink teachers remotely. Restricting the Student to remote contact with Ms. McBennett, which occurred only from the end of March 2018 until stay-put was invoked by operation of law with the filing of the Student's Complaint on April 27, 2018, was not a material change in the Student's educational placement, and was not a violation of the IDEA. It is concluded the Student has not proven any violation of the IDEA with respect to this issue.

Failing to have IEP team member Cheryl Cochrane attend an IEP meeting on February 13, 2018

53. An IEP team is required to include an individual who can interpret the instructional implications of evaluation results. WAC 392-172A-03095(1)(e). The Student argues that by failing to have Ms. Cochrane attend the February 2018 IEP meeting, the District violated this regulation. The evidence does not support the Student's argument. Ms. Coleman attended the February 2018 IEP meeting. It has been found as fact that her education, training, and experience qualified her to interpret the instructional implications of the Student's evaluation. It is concluded that the Student has not proven any violation of the IDEA with respect to this issue.

Remedies for Procedural Violations of the IDEA

54. The Student has proven multiple procedural violations of the IDEA: Failing to evaluate the Student in May or June 2016; Failing to provide all the accommodations the Student needed in order to receive FAPE; Implementing IEP services prior to completion of the Student's February 2018 IEP and before the Student provided consent; Failing its Childfind duty to identify and evaluate the Student; Failing to provide the Student with appropriate transition planning and transition services; Failing to provide the Student with a procedural safeguards notice until June 2016; Failing to evaluate the Student in all areas of suspected disability; and failing to implement and provide the Student with IEP progress reports.

55. As noted above, not all procedural violations warrant a remedy. However, the violations proven by the Student individually and collectively are significant and warrant remedies because it is concluded they impeded the Student's right to FAPE and deprived the Student of an educational benefit as early as June 2016, when the District denied the Student an evaluation for special education. This is a far easier conclusion than the next: determining precisely what remedies shall be awarded to the Student. At the hearing and in his Brief, the Student offered very, very little evidence or argument going to the specific remedies, *i.e.* the type and amount, he believes are appropriate to place him in the position he would be in today but for the District's denial of FAPE. The District asserts in its brief that it committed no violations, and does not offer

any hint as to what remedies it believes the Student might deserve if the undersigned ALJ did find violations deserving of remedies.

56. In his Complaint, the Student requested five specific remedies, one of which, a stay-put order, has already been granted via interlocutory order. The remaining four specific remedies are:

- i. The District shall incorporate the findings of the Adult Student's neuropsychological evaluation and other diagnoses into a new IEP;
- ii. The District shall continue to provide special education and related services until the Adult Student fulfills requirements for graduation and the Adult Student has recovered from his traumatic brain injury (TBI);
- iii. Compensatory education and reimbursement of costs and fees;
- iv. The District shall facilitate the Adult Student attending the next available session of Running Start.

57. The Student has not been graduated and so presently remains eligible for special education through the end of the 2019-20 school year, as this is the school year during which he turned 21 years old. Accordingly, the District is ordered to consider Dr. Tyson's evaluation and any other additional evaluations or information relevant to developing an appropriate IEP for the Student it has received to date and develop a new procedurally compliant and substantively appropriate IEP for the Student. The development of this new IEP shall include appropriate transition planning and the provision of appropriate transition services for the Student. Should the District determine the Student has met all graduation requirements, it shall issue an appropriate prior written notice before graduating the Student. If the Student disagrees with the determination to graduate him, he may file for a due process hearing.

58. It is concluded that an order for the District to continue to provide special education and related services until the Adult Student has recovered from his TBI is too speculative and uncertain. For example, in a worst-case scenario, the Student might never fully "recover" from his TBI. Were the Student awarded this remedy and the District ordered to continue providing special education, how would the District comply with that duty in 5, 10, or 15 years? This remedy is simply unrealistic. This requested remedy is denied.

59. With respect to the District "facilitating" the Student attending the next available session of Running Start, that seems moot given the Student is now old enough to attend a community college as a community college student; there appears no need to consider or facilitate, whatever that might mean, Running Start. This requested remedy is denied.

60. It is concluded that the Student will be awarded compensatory education, as follows. First, the District shall pay for private speech-language services to be provided by an appropriately credential speech-language pathologist. The District shall pay for **75 hours of SLP services** for the Student at the prevailing hourly rate for SLP therapy in the Student's local professional community. This quantum of SLP services is determined based on the District's own determination that the Student required 30 minutes per week of SLP services, multiplied by an approximately two year period (essentially from June 2016 through April 2018), with an additional quantum added to account for any adverse impact of not timely receiving such services due to

the District's IDEA violations. The Student must use this 75 hours of SLP services within sixteen months of the entry of this order, or he shall forfeit all remaining unused hours. The Student shall have the sole discretion to select his SLP provider, who must be properly qualified and credentialed. The Student shall be responsible for scheduling his receipt of SLP services. If the Student schedules an appointment to receive his SLP services but fails to appear without prior notice to the provider, thus incurring a fee, the District shall still pay the provider for the missed appointment, but the time missed shall count towards the total 75 hours of SLP services.

61. Dr. Tyson opined the Student should continue treatment with a psychiatrist or psychologist. This is reasonable and appropriate, as the District's procedural violations were clearly at least one proximate cause for the Student experiencing increasing anxiety and school avoidance. As compensatory education, the Student is awarded **50 hours of psychotherapy services** to be paid for by the District at the prevailing hourly rate for psychotherapy in the Student's local professional community. The Student must use this 50 hours of psychotherapy services within fourteen months of the entry of this order, or he shall forfeit all remaining unused hours. The Student shall have the sole discretion to select his psychotherapy provider, who must be properly qualified and credentialed. The Student shall be responsible for scheduling his receipt of psychotherapy services. If the Student schedules an appointment to receive his psychotherapy services but fails to appear without prior notice to the provider, thus incurring a fee, the District shall still pay the provider for the missed appointment, but the time missed shall count towards the total 50 hours of psychotherapy services.

62. The Student is awarded **40 hours of learning strategies and organization skills (LS/OS) services**. This quantum of services is determined based on the District's own determination that the Student required 15 minutes per week of LS/OS services, multiplied by an approximately two year period (essentially from June 2016 through April 2018), with an additional quantum added to account for any adverse impact of not timely receiving such services due to the District's IDEA violations. The Student must use this 40 hours of LS/OS services within twelve months of the entry of this order, or he shall forfeit all remaining unused hours. The Student shall have the sole discretion to select his provider for these services, who must be properly qualified and credentialed. The Student shall be responsible for scheduling his receipt of LS/OS services. If the Student schedules an appointment to receive his LS/OS services but fails to appear without prior notice to the provider, thus incurring a fee, the District shall still pay the provider for the missed appointment, but the time missed shall count towards the total 40 hours of LS/OS services.

63. Finally, the Student is awarded **80 hours of academic tutoring services**. This quantum of services is determined based on a conservative and reasonable estimate of the instructional time lost by the Student over the course of approximately two years (essentially from June 2016 through April 2018) during which the Student was experiencing anxiety-related school refusal, and then more probably than not inappropriate instruction given the effects of his TBI. The Student must use this 80 hours of tutoring within twelve months of the entry of this order, or he shall forfeit all remaining unused hours. The Student shall have the sole discretion to select his provider for these services, who must be properly qualified and credentialed. The Student shall be responsible for scheduling his receipt of tutoring services. If the Student schedules an appointment to receive his tutoring services but fails to appear without prior notice to the provider, thus incurring a fee, the District shall still pay the provider for the missed appointment, but the time missed shall count towards the total 80 hours of tutoring services.

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

ORDER

The Vashon Island School District has violated the Individuals with Disabilities Education Act and denied the Student a free appropriate education as concluded herein. The Student is awarded the remedies at Conclusion of Law #57 and Conclusions of Law #60 through #63.

Signed at Seattle, Washington on December 23, 2019



MATTHEW D. WACKER
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 this final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

CERTIFICATE OF SERVICE

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

Student



Kathryn Coleman, Director of Student Services
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PO Box 547
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Father and Brother, Representatives



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cc: Administrative Resources Services, OSPI