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Nov 22, 2019
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November 22, 2019

Parents
[REDACTED]

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Bainbridge Island, WA 98110

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In re: Bainbridge Island School District
OSPI Cause No. 2019-SE-0056
OAH Docket No. 04-2019-OSPI-00745

Dear Parties:

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

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

Sincerely,

A handwritten signature in cursive script that reads "Courtney E. Beebe".

COURTNEY E. BEEBE
Administrative Law Judge

cc: Administrative Resource Services, OSPI

Nov 22, 2019
 OAH – SEATTLE

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

IN THE MATTER OF:

OSPI CAUSE NO. 2019-SE-0056

OAH DOCKET NO. 04-2019-OSPI-00745

BAINBRIDGE ISLAND SCHOOL DISTRICT

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

A telephonic hearing in the above-entitled matter was held before Administrative Law Judge (“ALJ”) Courtney E. Beebe on August 29, September 9, September 10, September 11, and September 12, 2019. The Parents of the Student whose education is at issue¹ appeared *pro se*. The Bainbridge Island School District (“District”) was represented by William A. Coats and Erin Sullivan-Byorick, attorneys at law. Diane Leonetti, Executive Director, and Briley Proctor, Coordinator of Special Services, also appeared for the District. The following is hereby entered:

STATEMENT OF THE CASE

The Parents filed a due process hearing request with the Office of Superintendent of Public Instruction (“OSPI”) on April 16, 2019. A prehearing conference was held on May 20, 2019, and the due date for the written decision was continued to thirty (30) days post close of record, pursuant to a motion by the District. A First Prehearing Order was issued on May 21, 2019, and a Second Prehearing Order was issued on May 31, 2019. The hearing record closed on October 25, 2019. The due date for the written decision is November 24, 2019.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: Exhibits J-1 to J-117 were admitted.

Parent Exhibits: Exhibits P-1 to P-14, P-16, P-19 to P-24, P-25, and P-30 to P-31 were admitted. Exhibits P-15, P-17, P-18, and P-26 to P-29, were excluded or withdrawn.

District Exhibits: D-4, D-13, D-16, D-19, D-20, D-21, D-24, D-26, D-28, D-29, D-42, D-55, D-56, D-63, D-65 to D-77, D-79 to D-81, and D-83 to D-90 were admitted. The remaining exhibits filed by the District were not offered for admission.

The following witnesses testified under oath. They are listed in order of their appearance: Dr. Stephanie Nelson, Neuropsychologist; Mother of the Student; Stacy Turner, Director of Hamlin Robinson School; Father of the Student; Carissa Tormanen, Special Education Teacher; Lydia Harrison, Tutor and Owner of Island Educational Services; Aira Jackson-Sams, Director of

¹ In the interest of preserving family privacy, the names of all family members of the Student are omitted from this decision. Instead, they are identified as, e.g., “Parents,” “Mother,” “Father,” “Student,” or “Sibling.”

English/Language Arts at OSPI; Krista Sodt, School Counselor; Teresa Bell, Second Grade Teacher; Milo Zaneski, School Psychologist; Reese Ande, Principal; Kathleen Pool, Second Grade Teacher; Terra Claiborne, First Grade Teacher; Janice Lee Colby, Kindergarten Teacher; Robin Stahl, Title I / LAP Teacher; Briley Proctor, Coordinator of Special Services and Multi-Tier System of Supports; and Diane Leonetti, Executive Director of Special Services.

ISSUES AND REQUESTED REMEDIES

Whether the District violated the Individuals with Disabilities Education Act ("IDEA") and denied the Student free appropriate public education ("FAPE") from April 17, 2017 to April 16, 2019, by:

1. Failing to provide access to instructional strategies and curricula aligned to challenging the State's academic content standards and ambitious goals based on the Student's unique circumstances;
2. Failing to provide special education teachers and paraeducators trained in instructional methods specifically targeting the Student's diagnosis of dyslexia and dysgraphia;
3. Failing to offer an Individualized Education Program (IEP) that could provide more than trivial progress with the Student's education;
4. Failing to correct the IEP Progress Reports of May 16, 2017, and April 30, 2018 and the IEP dated May 7, 2018 with accurate information;²
5. Failing to establish annual goals in the May 17, 2017, IEP that were aligned to both challenging State academic standards and that were ambitious based on the Student's unique circumstances;
6. Failing to adhere to the IDEA's Child Find mandate by not identifying and evaluating all of the Student's suspected areas of need, specifically writing, prior to the identification made by April 30, 2018; and
7. Failing to provide complete and accurate test scores in the area of reading in the IEP progress reports of April 21, 2018 and June 18, 2018, and the IEP dated May 7, 2018,

² It is important to clarify that the dates of the progress reports the Parents are challenging are incorrectly identified in the Parents' Request for Hearing and Amended Request for Hearing, and therefore incorrectly identified in the Second Prehearing Order. Throughout the proceedings the Parents asserted that they challenged the accuracy of the "May 16, 2017 progress report." However, May 16, 2017 is the effective date of the Student's IEP, and the Parents are actually challenging the April 21, 2018 progress report (J-41, p.10) that relates to the May 16, 2017 IEP. The Parents also asserted that they challenged the accuracy of the "April 30, 2018 and May 7, 2018 progress reports." However, April 30, 2018 is the date of the Student's evaluation and draft IEP, and May 7, 2018 is the date of the Student's most recent IEP. (J-91; J-92, pp.1-10.) The Parents are actually challenging the progress report dated June 18, 2018 that relates to the April 30, 2018 draft IEP and May 7, 2018 IEP. (J-92, pp.14-15.)

and thereby failing to provide the Parents with informed consent when the Parents signed the IEP dated May 7, 2018.

And, whether the Parents are entitled to their requested remedies:

1. An Order requiring the District to offer a full-day multi-sensory program to the Student;
2. Correct the IEP progress report of May 16, 2017 to state that the Student read three 2nd grade level Reading Mastery passages and that the goal for reading fluency was not completed;
3. Correct the IEP progress report of April 30, 2018 to state that the Student read two 2nd grade passages and that the goal for reading fluency was not completed;
4. Correct the IEP dated May 7, 2018 to reflect that the Student read three 2nd grade level Reading Mastery curriculum, with a fluency rate of 63.3 correct words per minute;
5. Correct the IEP dated May 7, 2018 to state that the Student's final 2nd grade level CBM assessment score and that the Student "receive a fluency score of 72 correct words per minute on the 2nd grade level CBM assessment on May 23, 2018 indicating 'high risk.'"
6. Reimbursement of tuition and transportation costs paid by the Parents to Hamlin Robinson School since September 1, 2018;
7. Or other equitable remedies, as appropriate.

(Second Prehearing Order, pp.3-5.)

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been 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 has been 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.

Student's Education and IEPs from September 2013 through June 2016.

1. At the time of the hearing in this matter, the Student was a nine-year old fourth grader. (Hearing Transcript, p.177; J-92, p.1.) The Student entered the District in 2013 at the age of three years old, and on November 26, 2013, the District evaluated the Student for special education services in the area of communication. (J-5, pp.1-10.) The evaluation revealed that the Student had a communication disorder in the area of speech articulation and the District determined that the Student qualified for special education services. (*Id.*) The Student received an Individualized Education Program ("IEP") to address the Student's communication disorder on November 26, 2013, November 14, 2014, November 11, 2015, November 15, 2016, and November 17, 2017. (J-6, J-8, J-9, J-10 and J-20.)

First Grade Assessments, Interventions, Evaluations, and IEPs 2016-2017

2. The District utilizes a Multi-Tiered System of Supports³ (“MTSS”) to provide all students with reading support. (Tr., pp.911-912.) The District assesses students’ reading ability with FastBridge CBM, a universal literacy screening tool that assesses a student’s reading ability by scoring students in the following categories: aReading⁴, oral reading fluency, and oral reading accuracy. (Tr., pp.643, 650; J-23.) The District also progress monitors students with below average reading ability by using the Developmental Reading Assessment 2nd Edition (“DRA2”) assessment tool. (Tr., pp.732; J-44.)

3. Multi-sensory instruction is a method or strategy of teaching that is paired with a curriculum. (Tr., pp.925, 978-979.) Multi-sensory instruction was devised by neurologist Samuel Orton and educator Anna Gillingham (“Orton-Gillingham”) as a one-on-one instructional approach to address literacy deficiencies. (Tr., pp.377-378.) The multi-sensory instructional approach was adapted by teacher Beth Slingerland (“Slingerland Approach”) for application in classrooms that could not use a one-on-one instructional approach. (Id.) Programs are accredited as an “Orton-Gillingham Multi-Sensory Program” by the International Multisensory Structured Literacy Educational Council (“IMSLEC”). (Id.)

4. The Student was placed in Terra Claiborne’s⁵ class for first grade beginning September 2016. (Tr., pp.851-852.) The Student ended his kindergarten year with a DRA2 Level 3 score (“normal developmental range” for ending kindergarten) and received the same score at the beginning of his first grade year (below normal developmental range for beginning first grade). (Tr., pp.855-857.) Ms. Claiborne taught the Student reading with “multi-sensory instruction techniques” including “writing letters and sounds . . . on the carpet . . . in the air.” (Tr., pp.854-853.) On November 4, 2016, Ms. Claiborne performed a DRA2 assessment that revealed the Student remained at Level 3, showing no progress. (Tr., pp.858-859; J-18; P-3.)

³ Students with FastBridge and DRA2 scores that fall into the “normal developmental” range for their grade level and who are not identified by teachers as needing interventions or additional supports, receive Tier 1 instruction. (Tr., pp.670-671; 930-931.) Tier 1 instruction is provided to all general education students in the form of small reading groups, small group instruction, and review lessons. (Tr., pp.653-655, 854; 930-931.) Students with FastBridge and DRA2 scores that fall outside the “normal developmental” range and/or who are identified by a teacher as needing additional reading support, receive Tier 2 instruction from a Title 1 / LAP coordinator. (Tr., pp.671-672; 859-862; 930-931.) Students in Tier 2 receive interventions in the form of supplemental instruction through small reading groups called “Reading Club” and additional formal progress assessments. (Id.) To determine the appropriate interventions a “General Education Intervention Team” (“GEit”) is assembled which includes general education teachers, Title I / LAP personnel, the school counselor, therapists, and administrators. (Id.) Students who do not benefit from Tier 2 supports are referred for a multi-disciplinary team meeting (“MDT”) to determine whether additional supports or an evaluation is appropriate. (Id.) Tier 3 supports consist of special education services. (Id.)

⁴ The term “aReading” and its significance for testing is not set forth in the record. No findings of fact or conclusions of law are based on the “aReading” assessments.

⁵ Terra Claiborne is a certificated teacher, has a master’s degree in curriculum and technology instruction, and has taught kindergarten through second grade since 2001. (Tr., pp.849-851; D-81.)

5. Ms. Claiborne, Robyn Stahl⁶ (Title I / Learning Assistance Program (“LAP”) coordinator) and other members of the District’s MTSS team met with the Parents on November 11, 2016, and determined that it was necessary to implement Tier 2 reading supports for the Student. (Tr., pp.859, 865-866; J-17; J-19.)

6. On November 11, 2016, the District set specific reading fluency and accuracy goals for the Student, provided the Student with supplemental reading instruction four days per week for 25 minutes per session with Ms. Stahl, and placed the Student in the “Reading Club,” where he received additional instruction from Ms. Claiborne. (Tr., pp.858-859; 898-899; J-19; J-23.) The instructional support from Ms. Claiborne included multi-sensory instruction “using some explicit phonics with him . . . which is very tactile, and hands-on, and there’s a lot of repetition and blending of sounds.” (Tr., pp.859-860.) The instructional support from Ms. Stahl included “stretching and shrinking sounds” using Slinkies, body movement, chalkboard writing, finger writing on an iPad, and using hands to “stretch sounds and [jumping] for sounds and lots of dictation.” (Tr., p.900.)

7. The District performed a FastBridge CBM assessment of the Student on January 24, 2017. (J-23.) The Student scored as follows: aReading = 428 (goal of 435); oral reading fluency = 9 (goal of 14); oral reading accuracy = 53% (goal of 95%). (*Id.*) The assessment revealed that the Student was not meeting the specific fluency and accuracy goals set on November 11, 2016. (J-23.)

8. On January 24 and 26, 2017, Ms. Claiborne and Ms. Stahl asked Karin Knight, school counselor, to refer their concerns about the Student’s lack of progress to the District’s school psychologist Milo Zaneski.⁷ (Tr., pp.861-862; J-25.) Included in the referral were three FastBridge reports: Individual Benchmark Report Early Reading English, Individual Benchmark Report aReading, and Individual Benchmark Report CBM English. (J-27, J-28, and J-29.) Ms. Claiborne and Ms. Stahl identified the areas of concern as “READING, writing, and maybe Math.” (Tr., pp.861-862, 902; J-25.) The District’s multi-disciplinary team met with the Parents on February 16, 2017, and determined that a special education evaluation of the Student in the areas of reading and cognition was appropriate. (Tr., pp.233, 753-755, 862-863; J-25, J-26 J-27, J-28, J-29, J-30, J-31, and J-35, pp.9-10.)

9. The Parents consented to a reevaluation of the Student on March 1, 2017, but it was not received by the District until March 3, 2017. (Tr., pp.304, 706; J-35, pp.9-10.) The Parents consented to reevaluation of the Student in the areas of reading and cognition only. (Tr., pp.233-234, 760-761; J-35.)

10. Mr. Zaneski began the reevaluation of the Student on April 13, 2017 (“April 2017 Reevaluation”). (Tr., pp.743-745; J-35; D-13.) Mr. Zaneski evaluated the Student in the areas of reading and cognition. (*Id.*) Mr. Zaneski used the Wechsler Intelligence Scale for Children, Fourth Edition (“WISC-IV”) to assess cognition and the Student received a full-scale IQ score of 113,

⁶ Robyn Stahl is a certificated special education teacher, has a master’s degree in developmental reading, and has thirteen years of instructional experience. (Tr., pp.892-894; D-83.) Ms. Stahl has been the Title I / LAP coordinator at the District for six years.

⁷Milo Zaneski is a certificated school psychologist and has worked for the District for four years, and as a psychologist for six years. (Tr., pp.743-745, 749-750; J-111.) Mr. Zaneski is trained to administer the WISC-IV, WIAT III, and KTEA-III assessments. (Tr., pp.745-748, 766-771, 788-789.)

which is in the 81st percentile. Mr. Zaneski observed the Student in the classroom on April 17, 2017. (Tr., pp.743-745; P-4; J-35, p.3.) Mr. Zaneski observed the Student engage with a book by flipping through the pages, sit silently while the class verbally spelled out words, and “write diligently.” (Tr. pp.743-745, 771-772.)

11. Mr. Zaneski also administered the Weschler Individual Achievement Test, Third Edition (“WIAT III”), to assess the Student in the area of reading. (Tr., pp.764, 766-768; J-35, pp.4-5.) Mr. Zaneski concluded that the Student performed below average in the areas of Word Reading, Oral Reading Fluency, and Reading Comprehension. (*Id.*) Mr. Zaneski concluded that there was a “severe discrepancy⁸ between [the Student’s] cognitive ability and reading skills,” and that he qualified for special education services in the areas of “Basic Reading and Reading Comprehension and Fluency.” (Tr. pp.771-772; J-35, p.6.) Mr. Zaneski recommended specially designed instruction (“SDI”) in the areas of Basic Reading Skills and Reading Fluency Skills. (Tr., pp.771-772; J-35, p.7.)

12. The Parents provided information about the Student as part of the April 2017 Reevaluation. (Tr. pp.761-764; J-34; D-13.) The Parents did not identify writing as an area of concern. (*Id.*)

13. The District’s reevaluation team met on April 25, 2017, to discuss the April 2017 Reevaluation and the Parents were provided with notice of the meeting and Student test results. (Tr., pp.773-774; J-35, p.13.) The April 2017 Reevaluation Team consisted of Krista Sodt⁹, special education teacher, Ms. Claiborne, the Mother of the Student, Ms. Stahl, and Mr. Zaneski. (Tr., pp.773-774; J-35, p.8.) The Mother signed the April 2017 Reevaluation report and did not object to the comprehensiveness or results of the evaluation, or request assessments in other areas. (Tr., pp.304-305, 485-486, 774; J-35, p.8)

14. The IEP Team scheduled a meeting for May 16, 2017. (J-38.)

15. On May 12, 2017, the Parents emailed Ms. Knight and asked if she had any recommendations for where and how to have the Student tested for dyslexia, and stated that the Student would receive support over the summer from a tutor. (Tr., p.253; J-39.)

16. On May 16, 2017, the District provided the Parents with a draft IEP. (Tr., pp.746-748; J-40.) The IEP identified that the Student “reads a 1st grade passage at a rate of 30 words per minute. His accuracy in reading a first grade passage is 75%.” (Tr., pp.740-748, J-41, p.1.)

17. The draft IEP included the following annual goals for Basic Reading Skills:

[The Student] will read with sufficient fluency to support comprehension from a rate of 30 words per minute on a first grade level passage to a rate of 70 words per minute on a second grade level passage as measured by the following evaluation methods: Criterion Referenced every grading period by 5/16/2018.

⁸ See Tr., pp.929-930.

⁹ Krista Sodt is a certificated special education teacher with degrees in social work and education. (Tr., pp.661-663; J-110.) Ms. Sodt has worked as school counselor and special education teacher for the District for four years. (*Id.*)

[The Student] will read with sufficient accuracy to support comprehension from 75% accuracy on a first grade passage to a 95% accuracy on a second grade passage as measured by the following evaluation methods: Criterion Referenced every grading period by 5/16/2018.

(Tr., pp.238-241, 665, 678-688; J-41, pp.1-2.) The standard for students finishing the second grade is reading 100 plus words per minute with 95% accuracy. (Tr., pp.241; J-4.)

18. The draft IEP included the following: pull-out services in reading with a special education teacher for 150 minutes weekly (30 minutes per day, five days per week). (Tr., pp.238-241, 678-686; J-41, p.7.) The District selected 30 minutes per day of intensive instruction with a special education teacher because it was appropriate given the Student's age and attention span, and the Student also received reading instruction in the general education classroom. (Tr., pp.686-687.)

19. The draft IEP did not specifically include the use of multi-sensory instructional strategies or the use of a particular reading curriculum. (Tr. pp.237-239; J-41.) The Parents noted that the IEP did not mandate use of multi-sensory instructional strategies, but the District personnel confirmed that the teachers assigned to the Student used multi-sensory instructional strategies. (Tr., pp.239-240, 700-702, 859-860.) The Mother of the Student called another elementary school in the District and determined that it offered multi-sensory instructional strategies. (*Id.*) The Parents did not request to transfer the Student to the other elementary school. (*Id.*)

20. The IEP Team met on May 16, 2017. (Tr., pp.236-237, 688-689; J-41, p.8.) The IEP Team consisted of the Mother, Ms. Sodt, Ms. Claiborne, and Ms. Knight. (*Id.*) The IEP Team members signed the IEP ("May 16, 2017 IEP"). (*Id.*) Ms. Knight acted as the District representative. (J-41, p.8.) Mr. Zaneski did not attend the IEP meeting and did not sign the IEP. (Tr., pp.236-237, 767-769; J-41, p.8.)

21. Ms. Sodt selected the Reading Mastery curriculum¹⁰ as the program she would use with the Student. (Tr., pp.267, 551-552, 700, 727-698, 924-925; D-19; P14, pp.1-8.) The Reading Mastery curriculum is an evidence based, research based curriculum that consists of grade level reading passages and allows for multiple methods and strategies of reading instruction depending on the needs of the child. (Tr., pp.464-466, 702-704; P-14, p.9.) The Reading Mastery curriculum provides direct instruction through scripted passages using phonemic awareness and phonics, and requires students to "master" a skill before moving on to more difficult reading passages. (Tr., pp.825-826.) The curriculum scores a student by determining how many words correct per minute the Student reads. (*Id.*) Reading Mastery is not an IMSLEC approved, Orton-Gillingham multi-sensory instructional curriculum. (Tr., pp.821-823.)

22. The Parents requested a "gentle transition" to the "resource room" with Ms. Sodt where he would receive special education services, and that the Student remain in the Reading Club in the general education class room. (Tr., pp.691-693; D-16; D-19.) On May 22, 2017, the District accommodated the Parents' request. (*Id.*) Ms. Sodt delivered the curriculum to the Student using

¹⁰ School districts select the curriculum package they will use to implement OSPI educational standards. (Tr., pp.644-647.)

multi-sensory instruction strategies (clapping hands, using physical and auditory cues, and kinesthetic movements).¹¹ (Tr., pp.700-702, 924.)

23. On June 1, 2017, the Student participated in the first grade general education end of year FastBridge CBM assessment, and he received a DRA2 Level 4 score, placing his reading ability at a beginning first grade level. (Tr., pp.731; J-44.)

24. At the end of the 2016-2017 year, Ms. Claiborne noted on the Student's report card that "[i]n writing, the Student has been working on writing opinion pieces, informative writing with citing resources, and narratives while adding details to his writing. He understands how to use the writing processes." (Tr., pp.864-865; J-3, p.3.)

25. Neither Ms. Claiborne, Ms. Stahl, Mr. Zaneski, or Ms. Sodt identified any concerns with the Student's writing ability that were not within the developmental range, age appropriate, or related to the Student's difficulty reading. (Tr., pp.763-764, 766, 853, 864-865.)

26. The District issued a "Final IEP Progress report for [the Student]" on June 19, 2017, in which Ms. Sodt stated that progress was "too soon to measure," because the IEP started on May 16, 2017. (J-41, p.10.)

27. The Parents hired Lydia Harrison,¹² owner of Island Educational Services, to tutor the Student during the summer of 2017. (Tr., pp.253-255, 602; J-43.) Ms. Harrison observed the Student in May 2017 in school, coordinated with Ms. Sodt regarding instruction, and reviewed the Student's May 16, 2017 IEP. (Tr., pp.604-606.) Ms. Harrison created a tutoring plan of 30 minutes of reading, 4 days per week. (Tr., pp.604-605, 614-615; J-43.) Ms. Harrison determined that 30 minutes of tutoring instruction was appropriate based on the Student's age, needs, and attention span. (Tr., p.617.) Ms. Harrison and the Parents agreed that the Student's tutoring would focus on comprehension skills, decoding, and sight words. (J-43, p.1.) Ms. Harrison personally tutored the Student in a one-on-one setting in July and August 2017. (Tr., pp.604-606.) Ms. Harrison used structured literacy strategies, a skill building method involving multi-sensory instruction. (Tr., pp.623-625.)

28. Ms. Harrison observed that the Student struggled with reading and spelling, but worked hard. (Tr., pp.605-606.) Ms. Harrison also observed that the Student did not like to write and could become frustrated, but she worked with the Student on writing skills because in her experience working with a student with reading difficulties always includes working with the student on writing skill. (Tr., pp.608; 611.)

29. After working with the Student, Ms. Harrison recommended keeping the Student in the District for school and building further educational supports at the District, as opposed to placing the Student in a private education facility. (Tr., pp.608-609, 625-626.)

¹¹However, adding the multi-sensory instructional strategies to the non-multi-sensory Reading Mastery curriculum, did not make the curriculum itself a multi-sensory instructional curriculum. (Tr., pp.396-398; 551-552.)

¹² Lydia Harrison has a master's degree in elementary guidance and has owned and operated Island Educational Services since 1994. (Tr., pp.602-603; J-114.)

District's Assessments, Evaluations, and IEPs, November 2017 to January 2018

30. For the 2017-2018 academic year, the District placed the Student in a second grade classroom with general education teachers Teresa Ball and Kathleen Pool, as well as paraeducator Tina Schrager.¹³ (Tr., pp.715-716.)

31. Carissa Tormanen¹⁴ replaced Ms. Sodt as the special education teacher assigned to the Student, and delivered the SDI in reading in the District's resource room using the Reading Mastery curriculum and multi-sensory instructional strategies. (Tr., pp.552-556; J-113.) Ms. Tormanen taught the Student in a small group, one-on-one, and also employed the skills of a paraeducator, in what was a quiet environment the majority of the time.. (Tr., pp.555-558.)

32. Ms. Pool, the library media specialist, and Ms. Ball team taught the Student's general education second grade class. (Tr., pp.820-821.) Ms. Pool worked with the developers of Reading Mastery when she was obtaining her master's degree, and has trained others in the curriculum since 1982. (Tr., pp.821-823.) Ms. Pool has used the Reading Mastery program with multi-sensory strategies to educate struggling readers with dyslexia. (Tr., pp.825-832.)

33. Ms. Ball has used the Slingerland multi-sensory instructional approach in general education classrooms and relied on the strategy to teach the Student reading. (Tr., pp.722-723.)

34. The Parents requested a meeting to coordinate the Student's special education services and general education schedule and on September 20, 2019, Ms. Pool, Ms. Ball, and Ms. Tormanen met with the Mother of the Student and the tutor Ms. Harrison. (Tr., pp.253, 607, 706; J-45; D-24.) No one at the meeting identified that the Student's writing ability was an area of concern.

35. On October 17, 2017, another teacher conducting reviews of second grade student math skills emailed Ms. Ball and asked her to provide input regarding the Student's math skills. (Tr., pp.253; J-46, p.1.) The other teacher stated that the Student "seems to not know how to add double digits. He seems to like the obvious choice." (Tr., p.717; J-46, p.1.) Ms. Ball responded that "[the Student] has dylexic(sic)/graphic issues that may be contributing to his issues." (Tr., pp.250, 716-717; J-46.) Ms. Ball, however, does not have the training or expertise to diagnose dysgraphia or dyslexia. (Tr., pp.737-738.)

36. The Mother met with Ms. Ball on October 27, 2017 for the regularly scheduled fall parent-teacher conference. (Tr., pp.254, 719-720.) At the parent-teacher conference, Ms. Ball discussed her concerns about the Student's reading progress and mentioned that the Student may benefit from dyslexia screening and private instruction. (Tr., pp.254-55, 265-266, 719-720.) Ms. Ball, however, believed that the District could address the Student's needs with the curriculum and instructional strategies available. (Id.)

¹³ Teresa Ball is a certificated teacher since 1993 and has a master's degree in special education. (Tr., pp.721-722.) Kathleen Pool is a certificated teacher with a master's degree in education and has taught at the District since 1996. (Tr., pp.820-821; D-80.), Tina Schrager is a certificated paraeducator. (J-35; J-112.)

¹⁴ Carissa Tormanen has been a certified teacher since 1991, is a certified special education teacher, and has taught special education since 2004. (Tr., pp.548-550; D-84.)

37. Ms. Tormanen performed an assessment of the Student's reading fluency progress on October 20, 2017, using a second grade reading passage. (P-7 and J-47.) The Student received a DRA2 score of level 8, a STAR Reading Grade Level Equivalence score of .7, a Fastbridge CBM Reading score of 20 wcpm, and an aReading score of 450. (P-7, pp.1-2.) These scores placed the Student in the "high risk" category for reading. (J-47, p.1.)

38. The Parents requested a meeting with the IEP team (Tr., pp.268-269; J-49; D-26; P-8, p.1), and on November 7, 2017, the District and the Parents met to discuss the Parents' concerns and suggestions for improving the services (Tr., pp.727-728; J-48; J-49; D-28; D-29).

39. After the meeting the IEP Team agreed to revise the Student's May16, 2017 IEP. (Tr., pp.533, 561, 725-727; J-49.) The IEP Team agreed to add the following:

- 1) *Weekly testing and check –in from [Ms. Tormanen].*
- 2) *Adding one hour a week with [Ms. Tormanen] . . . a. Starting 11/13 b. The IEP will also be updated to reflect this change.*
- 3) *Everyone working with [the Student] will work with the same materials and are in good communication with each other [Ms. Tormanen, Ms. Harrison, Mother].*
- 4) *Ms. Tormanen will schedule a follow up meeting just before winter break, to talk about progress.*

(Tr., pp.562-562; D-28; D-29; J-54, p.1.) More specifically, the IEP Team agreed to 1) weekly, timed reading fluency assessments using the "Reading Mastery" curriculum reflecting words correct per minute ("wcpm") scores that would be emailed to the Parents each week, and 2) an additional hour of reading SDI per week with Ms. Tormanen in the resource room. (J-54, p.1.)

40. On November 20, 2017, the District implemented the revised IEP ("November 20, 2017 IEP") increasing the SDI from 150 minutes per week to 210 minutes per week. (J-49, p.7.) The IEP was signed by the Mother of the Student, Ms. Tormanen, Ms. Ball, and Principal Reese Ande. (Id. at p.9.) The District issued a prior written notice on November 10, 2017. (J-49.)

41. While the Student struggled with spelling, capitalization, and organization of his writing, Ms. Pool and Ms. Ball believed he was in the normal developmental range and that he responded to interventions in the general education classroom. (Tr., pp.728-729, 737, 832, 834-35.) The Parents, Ms. Tormanen, Ms. Pool, and Ms. Ball did not identify the Student's writing ability as an area of concern. (Id.)

42. Ms. Tormanen implemented the "Reading Mastery" curriculum with the Student, and began performing weekly fluency probes as required by the IEP. (Tr., pp.544-545, 551, 566-567; J-116, pp.3-4.) The Student received the following "words correct per minute" ("wcpm") scores on first grade level Reading Mastery passages:

October 20, 2017: 51
November 17, 2017: 76, 72, 87
December 1, 2017: 85
December 15, 2017: 88
January 5, 2018: 80
January 12, 2018: 75

January 19, 2018: 83

(Tr., pp.566-567, 360-361; J-116; P-7, pp.1-4;) After each assessment, Ms. Tormanen emailed the results to the Parents. (P-7, pp.4-29; J-55, J-56; J-57; J-59; J-65, J-66; J-70.) The Parents were notified of the Student's November 17, 2017 scores via email. (J-55, pp.1-2.)

43. Ms. Ball administered DRA2 assessments throughout the fall, winter and spring of the Student's second grade year, with the following results:

September 17, 2017: Level 8
January 8, 2018: Level 12
June 1, 2018: Level 16.

(Tr., pp.731-733; J-44; D-77, p.2.) Ms. Ball believed the testing showed that the Student was making solid growth. (Id.)

44. Ms. Ball also performed FastBridge CBM reading probes to assess reading comprehension at weekly intervals. (P-9, p.1) The Student received the following wcpm / percentage accurate scores on second grade level reading passages:

November 15, 2017: 44 / 88%
November 21, 2017: 51 / 93%
December 5, 2017: 45 / 92%
January 2, 2018: 46 / 88%
January 3, 2018: 64 / 96%

(Tr., pp.358-359, 916-918; D-66, pp.2-4; P-9, pp.1-3; P-6)

45. Ms. Stahl performed also performed STAR reading assessments, and the Student received the following scores:

aReading: Fall 428
Oral Reading Fluency: Fall 9
Oral Reading Accuracy: Fall 53%

(D-67, pp.1-4; P-6.)

46. Overall the testing reflected that Student had progressed from a grade equivalent of 0.7 (mid-kindergarten) to 1.5 (mid-first grade) between September 12, 2017 and January 19, 2018. (D-69.) On January 19, 2018, the District included an IEP a progress report in the May 16, 2017 IEP reflecting this progress. (J-67, p.1.)

47. On December 5, 2017, the Parents emailed the IEP Team and expressed concern that the Student was not receiving one-on-one SDI in reading with Ms. Tormanen, but instead with a paraeducator who was not certificated as a special education teacher. (Tr., pp.277-78; J-58.) The Parents informed the District that they specifically agreed to the Student receiving one-one-one instruction from Ms. Tormanen in a quiet setting with no other students. (Id.) Ms. Tormanen

confirmed that she provided one-on-one instruction, but that there were other students in the resource room at the same time and occasional disruptions occurred. (Tr., pp.554-555.)

48. On December 19, 2017, the Parents informed the District that they had contracted with Dr. Stephanie Nelson to perform a comprehensive evaluation of the Student for dyslexia. (J-60.) The District agreed to provide Dr. Nelson with all information requested. (J-63.)

49. The IEP Team met with the Parents on January 3, 2018, to discuss the Student's progress. (J-61 and J-62.) The Parents again expressed concerns about the Student's progress and the manner in which the District delivered special education services. (Id.) The Parents informed the District that Dr. Nelson would evaluate the Student in all areas, including writing. (J-62, p.2.)

50. On January 8, 2018, the Mother emailed Ms. Ball and stated "we are submitting an application to Hamlin Robinson School, which is due Thursday, January 11 . . . I toured the school on Friday [January 5, 2018] and learned of the deadline then." (J-64.)

Dr. Stephanie Nelson's Evaluation of the Student, January 16, 2018

51. Dr. Stephanie Nelson performed a comprehensive¹⁵ neuropsychological evaluation of the Student on January 16, 2018. (Tr., pp.62-66, 72-75; J-68; J-86.) Dr. Nelson is a board certified pediatric and clinical neuropsychologist with a B.S. in Psychology and a Ph.D in Philosophy in Clinical Psychology. (Tr., pp.25-29; J-109.)

52. Dr. Nelson conducted the evaluation because the Student was of the appropriate age for an accurate diagnosis. (Tr., pp.33-35, 100.) Dyslexia is "fairly easily diagnosed or recognized around age seven or eight," but signs and symptoms may appear prior to that age. (Tr., pp.34-35; 387-389.) Signs and symptoms include speech delays (poor articulation), color blindness or difficulties, and an inability to distinguish words. (Tr., pp.35; 387-389.)

53. Dr. Nelson reviewed teacher questionnaires from Ms. Ball and Ms. Tormanen, Parental questionnaires, the Student's IEPs, and other information provided by the District regarding the Student's academic performance and assessments. (Tr., pp.30, 93-94; J-86; P-11; P-12.) The Mother mentioned she assists the Student with writing during homework (P-11), and Ms. Ball and Ms. Pool stated that they had a concern about the Student's "writing planning" (Tr., pp.717-718; P-12). The Parents provided Dr. Nelson with the Student's handwriting samples from October and November 2017. (P-24.)

54. Dr. Nelson administered the Woodcock Johnson 4th Edition Broad Reading Assessment ("WJ-IV Broad Reading") and concluded that the Student was "well below average range for his grade level" in overall reading ability, placing him in the early to mid-first grade level for all subtests. (Tr., pp.75-77, 102-105; J-68; J-86.)

¹⁵ Making a diagnosis of dyslexia or dysgraphia is not the domain of the District personnel; District personnel are charged with conducting evaluations of students and making determinations regarding eligibility for special education based on whether a student falls into one of thirteen categories of disability. (Tr., pp.105-106; 656-657, 794-796, 927-929.) Students with a diagnosis of dyslexia do not automatically qualify for special education services. (Tr., p.966.)

55. Dr. Nelson also administered the Woodcock Johnson 4th Edition Broad Writing Assessment (“WJ-IV Broad Writing”), and concluded that the Student’s “broad writing skills fall in the low-average range . . . with his scores falling at about the early first grade level for single-word spelling, and the mid-first grade level for writing fluency and written expression.” (Tr., pp.68-69, 78-79, 102-105; J-68; J-86.) In her summary, Dr. Nelson noted that the Student’s “hand-writing is also poorly formed given his age appropriate visual-motor integration.” (J-68; J-86.)

56. Dr. Nelson concluded that the Student’s cognitive development was “on-target” for his age (seven at the time) and that the Student’s ability to “communicate his ideas and to understand others are solidly average for his age.” (Tr., pp.81-83; J-68; J-86.) Additionally, Dr. Nelson concluded that the Student demonstrated “solid sensorimotor skills, with a strength in fine-motor dexterity,” and a “good ability to perceive, interpret, and remember social information during this evaluation.” (*Id.*) Dr. Nelson noted the Student makes “nice progress in math,” and did not demonstrate any social, emotional, or behavioral concerns. (*Id.*)

57. Regarding the “language-based learning services,” that the Student received from the District, Dr. Nelson concluded that the Student was “clearly benefiting” and he was able to perform in the average range on measures of his phonological processing . . . [and the Student] will clearly benefit from ongoing support for these language-based learning vulnerabilities.” (Tr., pp.97-99; J-68; J-86.)

58. Dr. Nelson identified that the Student experienced some executive functioning weaknesses in the areas of “auditory attention, cognitive inhibition, and planning and organizational skills.” (Tr., pp.30-33; J-68; J-86.)

59. Ultimately, Dr. Nelson concluded that there was a:

substantial gap between [the Student’s] intellect and his academic achievement in reading and writing and the amount of progress that he has made in fairly intensive services, [the Student] meets the criteria for the diagnosis of the language-based learning disorders Dyslexia (a specific learning disorder in reading and Dysgraphia (a specific learning disorder in writing), both at the moderate level.

(Tr., pp.73-76; J-68; J-86.)

60. Dyslexia is “deficits in . . . phonological awareness, which is being able to break words down into sounds and combine those sounds together and understand how those sounds differentiate from each other, and a weakness in the ability to quickly and automatically pull up information that is well known by the student.” (Tr., pp.30-31, 387-389.) Dyslexia results from a combination of genetics, perinatal insults, injury, and is common as a secondary disorder to other neurodevelopmental disorders. (Tr., pp.33, 387-389.)

61. Dysgraphia is a disability that affects writing ability that is “almost always secondary to dyslexia” (Tr., p.69), and Dr. Nelson does not generally make a secondary diagnosis because “if the student is just having the expected problems in writing that you would expect a student with dyslexia to have, you just need to do the intervention for dyslexia and the writing will follow.” (Tr., pp.112-113.) Dr. Nelson concluded that the Student exhibited signs of dysgraphia because his writing skill “was roughly at the 18th percentile for his age and grade level.” (Tr., p.80.) The District,

however, used “different criteria” to evaluate the Student than a trained neuropsychologist uses for determining the need for special education services in writing. (Tr., p.105.) “Characteristic signs of dysgraphia . . . such as that really poor letter formation and things like that are hard to statistically quantify.” (Tr., p.106.)

62. Dr. Nelson recommended the following interventions:

...continued, intensive and specialized instruction in reading that is provided at least four days per week in an individual or very small group format, as outlined in his IEP. Multisensory instruction is recommended given [the Student's] profile of well-developed verbal and nonverbal abilities. [The Student's] current profile also indicates a need for specialized instruction in writing, provided at least 2-3 days per week. Given [the Student's] executive functioning weaknesses, such as his vulnerability in auditory attention, it will be essential for any small-group instruction to be provided in a calm, quiet setting with reduced distractions. [The Student] also continues to require speech-language services 1-2 times per week, with a particular focus on word-finding, as well as an ongoing focus on articulation and auditory processing.”

(J-68, p.3; J-86.)

63. In addition, Dr. Nelson identified that “other interventions may be helpful” to the Student, such as “a primarily multisensory curriculum¹⁶ (e.g., visual and kinesthetic curriculum).” (Id.) Dr. Nelson recommended multisensory instruction because

if a brain pathway or structure is not working as well in a student, they essentially have to use other parts of their brain or co-opt other areas of their brain and get them involved in the process that that brain regions would normally support . . . [T]o help those students become more efficient, what we want to do is give them as many other tags to that information as possible so that the those brain regions that are working a little bit less efficiently have more opportunities to grab that information that they need that other students may only need one way to access. They need multiple ways because it's inefficient and so we need to give them as many tools as we can to get that information as efficiently as they can . . . In general, multi-sensory instruction is going to be more efficient, be more likely to reinforce concepts, help the student if one of those processes doesn't work as efficiently as the other, which is often the case for students with dyslexia . . . The research has been very clear that multi-sensory interventions are generally preferable in terms of outcome, especially over a fixed amount of intensity and length, to single-modality instruction.

(Tr., pp.31-32, 40-43.) Dr. Nelson recommended any Orton-Gillingham based program as an appropriate multi-sensory instructional program, and identified research showing 50-110 minutes

¹⁶ Not all students with dyslexia respond to or need a multi-sensory instructional program to make progress in reading. (Tr., p.396.) But, generally, it is recommended that students with dyslexia who do not respond to a non-multisensory reading program should be given a multi-sensory instructional program. (Id.)

of reading instruction per day, four days per week, would benefit students with dyslexia the most. (Tr., pp.41-45, 56-62, 114-116; J-68; J-86; P-25, pp.1-2.)

64. Dr. Nelson noted that "if [the Student] remains in the public school setting, continuing to supplementing (sic) the services he receives through his IEP with outside tutoring by a reading specialist is especially recommended." (Tr., pp.126-127; J-68; J-86.)

65. Dr. Nelson issued her summary report on January 25, 2018. (J-68; J-86.) Dr. Nelson provided the Parents and the District with the complete comprehensive neuropsychological evaluation report three months later on April 19, 2018. (J-68; J-86.)

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66. On January 22, 2018, Ms. Tormanen updated the May 5, 2017 "IEP Progress Report for [the Student]," stating: "[The Student] currently reads at a fluency rate of 83 words correct per minute when provided with a middle of first grade level passage." (Tr., pp.534-536; J-41, p.10.)

67. The Parents provided Dr. Nelson's summary report to the District on January 29, 2018, and requested a reevaluation of the Student. (J-69, p.1) The District agreed to commence an IEP Team meeting with Ms. Tormanen, Ms. Ball, Mr. Zaneski, the Parents, and any other pertinent individuals on February 7, 2018. (*Id.*) The District also informed the Parents of the deadlines for determining whether a reevaluation was necessary, conducting the reevaluation, and the option of amending the IEP with Dr. Nelson's recommendations. (J-42, p.1.)

68. The District scheduled a meeting with the Parents and a District multi-disciplinary team on February 28, 2018 (J-78, p.3), but the meeting was rescheduled to March 13, 2018 (Tr., pp.774-775; J-78, p.4.) The purpose of the meeting was to determine whether to perform a reevaluation of the Student. (Tr., pp.775; J-78, pp.1-2.) In the meeting agenda, Mr. Zaneski noted that in the area of "scribing" the District had been providing interventions in the general education classroom three times per week to assist with spelling and interpretation and that the interventions were "working for him, he feels successful." (Tr., pp.776-778; J-78.)

69. The following people attended: the District's speech and language pathologist, Ms. Tormanen, Ms. Sodt, the Parents, and Mr. Zaneski. The attendees agreed to reevaluate the Student in the area of speech articulation to potentially exit the Student from special education services in that area, and to evaluate the Student in the area of writing. (Tr., pp.775-778; J-78, p.2.) The Parents consented to a reevaluation of the Student in the areas of written language and communication on March 19, 2018. (Tr., pp.783; J-91.)

70. On February 1, 2018, Ms. Tormanen informed the Parents that beginning the following week she would work with the Student one-on-one for 20 minutes per day, 3 days per week using the Wilson Reading System, and incorporate the Wilson Reading System strategies during the Student's small group sessions during the remaining 150 minutes per week of SDI. (J-71, p.1.) On February 8, 2018, the Parents asked Ms. Tormanen if she would continue to use the Reading Mastery program or if she planned on changing to the Wilson Reading System exclusively, and Ms. Tormanen confirmed that she would continue with Reading Mastery for fluency assessments and incorporate Wilson Reading System during instruction. (Tr., pp.569, 575-576; J-71, p.1; J-73, p.1.)

71. The Wilson Reading System is a curriculum that uses multi-sensory instructional strategies and is Orton-Gillingham approved. (Tr., pp.960-961.) Ms. Tormanen had received 15 hours of training in using the Wilson Reading System on February 7 and 8, 2008. (Tr., p.544; J-113.)

72. Ms. Tormanen performed weekly fluency probes using Reading Mastery first grade reading passages, and the Student received the following scores.

February 1, 2018: 86
February 9, 2018: 100
February 15, 2018: 89
February 27, 2018: 114
March 6, 2018: 78
March 16, 2018: 104
March 23, 2018: 91
March 27, 2018: 100
April 13, 2018: 91

(J-73; J-75; J-76; J77; J-80; J-81; J-83; J-85; J-87.)

73. Ms. Tormanen performed a weekly fluency probe using the Wilson Reading System on April 24, 2018, and the Student received a score of 85 wcpm on a second grade level passage. (J-116.)

74. Ms. Ball continued to conduct FastBridge assessments of the Student, and the Student received the following fluency and accuracy scores on second grade reading passages:

March 6, 2018: 112 / 94% and 66 / 97%
March 13, 2018: 83 / 95%
April 16, 2018: 59 / 94%
April 23, 2018: 72 / 97%
April 25, 2018: 87 / 95%
May 7, 2018: 71 / 95%
May 29, 2018: 83 / 95%

(Tr., pp.358-359, 916-918; P-9, pp.1-3; D-66, pp.2-4; P-6)

75. Ms. Stahl performed also performed STAR reading assessments. The Student received the following scores for the Winter 2018 testing period:

aReading: 441
Oral Reading Fluency: 11
Oral Reading Accuracy: 65%

(D-67, pp.1-4; P-6.)

76. On April 26, 2018, Ms. Tormanen tested the Student on two second grade reading passages, and the Student scored 73 wcpm and 70 wcpm. (Tr., pp.243-247, 536-540, 563-564; J-90, p.2; P-30, p.2.) The passages were second grade Reading Mastery passages. (Tr., pp.243-245; P-30, pp.4-5.) Ms. Tormanen emailed the Parents the testing results on April 27, 2018, reporting that the Student had “an average rate of 71.5 correct words per minute” on the assessments. (J-89.)

77. On April 21, 2018,¹⁷ Ms. Tormanen updated the May 5, 2017 “IEP Progress Report for [the Student],” (“April 21, 2018 Progress Report”) with testing data from April 26, 2018, stating:

On 4/26/18 [the Student] read two 2nd grade level Ready Mastery passages at an average fluency rate of 74.5 cwpm(sic), from 3/13/18 to 4/13/18 [the Student's] reading fluency scores averaged at 98.5 correct words per minute, when assessed using middle of first grade leveled (Ready Mastery) passages.

(Tr., pp.535-537; J-41, p.10.) Ms. Tormanen stated that the Student had achieved the IEP goal of 75 wcpm. (Tr., pp.242; J-41, p.10.)

78. Ms. Tormanen misreported the average wcpm as 74.5, not 71.5, in the April 21, 2018, Progress Report. (Tr., pp.243-247, 559-564.) Ms. Tormanen corrected the error in the April 30, 2018, IEP by reporting the average of 71.5 wcpm. (Tr., pp.243-247, 561; 564; J-92, pp.1-2.)

79. At the same testing, Ms. Tormanen administered a Reading Mastery “Placement Test” on comprehension. (Tr., pp.243-247, 563-564; P-30, p.3.) The Student scored 47 wcpm. (Id.) Ms. Tormanen did not complete the assessment and determined that the “Placement Test” was not appropriate to evaluate the Student’s reading ability and that the data point was invalid. (Id.) Ms. Tormanen did not report the score to the Parents or include it in the April 21, 2018 Progress Report. (Tr., pp.243-247, 543, 563-564; J-90, p.2; P-30, p.2.)

80. On April 30, 2018, the District completed a reevaluation of the Student in the areas of speech articulation and writing (“April 2018 Reevaluation”). (Tr., pp.779-783; J-91, p.2.) The District reviewed Dr. Nelson’s April 19, 2018, comprehensive neuropsychological evaluation report (J-86) and January 25, 2018, summary report (J-68) as part of the April 2018 Reevaluation. (Tr., pp.779-781; J-91.)

81. Mr. Zaneski¹⁸ administered the Kaufman Test of Educational Achievement, Third Edition (“KTEA-3”) to examine the areas of reading, math, oral language and written language. (J-91, p.3.) The results of the examination showed that the Student is able to write a typical amount of words compared with peers the same age, but he struggled to organize written work. (Tr., pp.778-781; J-91, p.4.) Mr. Zaneski concluded that, consistent with Dr. Nelson’s assessment, the Student suffered from a “disability that adversely impacts his Written Language skills, and he is in need of special education services in this area. Areas of support may be paragraph writing and spelling.” (Tr., pp.778-782; J-91, p. 5.)

¹⁷ It is not clear from the record why the date for the progress report (April 21, 2018) is five days prior to the testing the progress report references.

¹⁸ Mr. Zaneski is trained to administer the Kaufman Test of Educational Achievement. (Tr., pp.778-781.)

82. The reevaluation team consisting of the Parents, Ms. Tormanen, Ms. Ball, the speech and language pathologist, and Mr. Zaneski met on April 30, 2018 (“April 2018 Reevaluation Team”). (Tr., pp.783-787; J-91.) The April 2018 Reevaluation Team agreed that the Student was eligible for special education in the area of written expression, basic reading skills, and reading fluency skills. (Tr., pp.783-784; J-91, p.7.) The April 2018 Reevaluation Team also agreed that exiting the Student from special education services in the area of communication was appropriate. (Id.) The April 2018 Reevaluation was signed by the Parents, Ms. Tormanen, Ms. Ball, Mr. Zaneski, and the speech and language pathologist. (Tr., pp.783-787; J-91.) The District issued a prior written notice on May 3, 2018. (J-91, p.8.)

83. The same day, April 30, 2018, the IEP Team (“April 2018 IEP Team”) met. (Tr., pp.571-573; J-92.) The IEP Team consisted of: the Parents, Ms. Tormanen, Ms. Ball, Briley Proctor (District Representative), Mr. Zaneski, and Ms. Pool. (Tr., pp.571-573; J-92.) The April 2018 IEP Team reviewed a draft IEP that was emailed to the Parents on April 27, 2018. (Tr., pp.571-573; J-92.) In regards to reading, Ms. Tomanen summarized the Student’s reading progress and current levels as follows:

...[the Student] has progressed from reading passages at the first grade level with a fluency rate of 30 correct words per minute and an accuracy rate of 75% (5/17/17) to his recent level of reading middle of first grade Reading Mastery passages with an average fluency rate of 98.5 correct words per minute and an average accuracy rate of 95% on end of passage comprehension questions. Currently, on 4/26/18, [the Student] read two 2nd grade level passages from the Reading Mastery curriculum, with a fluency rate of 71.5 correct words per minute.

...[the Student] received a fluency score of 42 correct words per minute on the 2nd grade level [FastBridge] CBM assessment in January of 2018 . . . The CBM will be administered a final time . . . at the end of the current (2017/18) school year. His classroom teacher has been giving him weekly FastBridge reading fluency probes, set at the first grade level. These fluency probes show gradual and fluctuating growth.

(Tr., pp.571-573; J-92, pp.1-2.)

84. The IEP proposed an annual SE-Reading – Spelling & Vocabulary goal of “analyzing new and unfamiliar words . . . from 0/4 observed trials to 3/4 observed trials as measured by the following evaluation methods: Curriculum Based, Work Samples every grading period by 4/29/2019.” (Tr., pp.571-573; J-92, p.2.) The IEP proposed an annual SE Reading – Basic Reading Skills goal of reading:

with sufficient fluency to support comprehension from a rate of 71 correct words per minute on a 2nd grade level passage to a rate of 70 correct words per minute on a 3rd grade level passage as measured by the following evaluation method: Criterion Referenced, Curriculum Based, Reading Assessment scores every grading period by 4/29/2019.

(J-92, p.2.)

85. The IEP Team proposed the following written language goals:

[The Student] will write clearly and effectively, improving his use of grade appropriate conventions, including spelling from 4 or more errors per paragraph to 2 or fewer errors per paragraph as measured by the following evaluation methods: work samples every grading period by 4/29/2019.

[The Student] will, when provided with prewrite strategies as well as graphic organizers, rubrics, and/or checklists to organize his writing, demonstrate understanding and use of the writing process by drafting a paragraph which includes a topic sentence, related details, facts or reasons (depending on purpose) as well as a concluding sentence from 0/4 observed trials to 3/4 observed trials as measured by the following evaluation methods: Work Samples every grading period by 4/29/2019.

(Tr., pp.571-573; J-92, p.3.)

86. The proposed IEP provided for 210 minutes per week of SDI in reading with a special education teacher, and 100 minutes per week of written language SDI with a paraeducator. (Tr., pp.571-575; 735 ;J-92, p.8.)

87. The following individuals signed the April 30, 2018 proposed IEP: the Parents, Ms. Tormanen, Ms. Ball, Ms. Proctor and Ms. Pool. (Tr., pp.734; J-92, p.10.) The District issued a prior written notice on May 7, 2018. (J-92, p.13.) The IEP was implemented on May 7, 2018 ("May 7, 2018 IEP"). (J-92.) Also on May 7, 2018, Ms. Tormanen informed the Parents that she would use exclusively the Wilson Reading System to implement the IEP. (J-95.)

88. During his second grade year, the Student participated in the District's library reading challenge and read ten non-fiction books at grade level (with modifications) and passed Accelerated Reader quizzes. (Tr., pp.836-843;D-55; D-75.) The Student received an award for the accomplishment. (D-56.)

89. Fastbridge testing performed in the Fall, Winter and Spring revealed that the Student achieved a 58% growth in fluency, which was above average for students at his level. (Tr., pp.918-922; J-115; J-116.) The Student received a final DRA2 score of 16. (D-77.) The Student received a STAR Reading grade equivalent score of 2.1 (beginning second grade) on June 1, 2018. (Tr., pp.733-736, 918-922; J-97; D-73, p.4.)

90. The Student completed the second grade in June 2018. (Tr., pp.727; J-4.) Ms. Ball noted that the Student "needs some extra help to organize his ideas on paper" when writing, and that he "has made steady growth" in reading. (Tr., pp.531-532, 727-729; J-4.) Ms. Ball gave the Student "3P = making satisfactory progress on IEP goals" in the area of reading, and "2P = making little progress on IEP goals for this subject," in the area of writing. (Id.)

91. Ms. Tormanen performed a weekly fluency probe using second grade level Reading Mastery passages on May 16, 2018 and the Student received a score of 86 wcpm. (J-96.)

92. Ms. Tormanen performed a Reading Mastery progress monitoring of the Student on June 8, 2018, and allowed the Student to read the same second grade passage two times because he

was not feeling well. (Tr., pp.541-543; J-117, p.1.) The Student scored 61 wcpm on the first reading, and 79 wcpm on the second reading. (Id.) Ms Tormanen discarded the score of 61 wcpm. (Id.)

93. On June 18, 2018, Ms. Tormanen updated the "IEP Progress Report for [the Student]" (Tr., pp.541-543, 567-568, 734; J-92, p.14.) In the progress report Ms. Tormanen noted that "[the Student] has recently read a [second grade level] passage at a fluency rate of 79 correct words per minute," and that his progress was "satisfactory." (Id.) Ms. Tormanen also included that "[the Student] has recently answered 2nd grade end of passage comprehension questions with 75% accuracy." (Id.)

94. The Parents enrolled the Student at Hamlin Robinson, a private educational institution, for the third grade in August 2018. (Tr., pp.263, 503-505.) Hamlin Robinson uses the Slingerland approach to multi-sensory, structured literacy instruction and specializes in educating children with dyslexia. (Tr., pp.378-89.) Teachers at Hamlin Robinson have significant hours of training in the Slingerland approach and other multi-sensory instructional approaches. (Id.) Hamlin Robinson, as a private institution, can provide interventions and supports at any time without making a determination regarding whether the Student qualifies for special education services. (Tr., pp.410-412.)

95. After leaving the District and enrolling at Hamlin Robinson, the Student was subsequently tested on a number of occasions. (Tr., pp.513-517, 918-924; D-71, D-72, D-73, J-102.) The Student received the following STAR grade equivalent reading scores:

October 4, 2018 = 1.2
October 25, 2018 = 1.8
January 28, 2019 = 2.3
February 7, 2019 = 2.1
April 3, 2019 = 2.9
May 13, 2019 = 2.7.

(D-71; D-73; J-102.)

96. Overall, the Student progressed from grade level equivalency of 1.2 to 2.7 while at Hamlin Robinson. (Id.) The Student's report card for the 2018/2019 academic year at Hamlin Robinson reflects that the Student progressed from the first trimester to the second trimester, and remained steady in performance from the second to the third trimester; the report card, however, does not reflect any testing or test results. (Tr., pp.413-414; J-101.) Regardless, Hamlin Robinson expects "a typically developing student . . . to . . . make a year's worth of growth in a year's worth of time." (Tr., p.440.)

97. On October 25, 2018, the Parents notified the District that they intended to seek reimbursement for tuition at the Hamlin Robinson School. (P-15; J-100.¹⁹) The Parents submitted a tuition reimbursement request to the District on October 25, 2018. (Tr., pp.979-985; J-100.) The District issued a prior written notice denying the request on March 5, 2019. (Tr., pp.979-985; J-100, pp.7-8.)

¹⁹ Joint Exhibit 100 is misidentified as exhibit "D-90" in the hearing transcript. (Tr., pp.979-980.)

98. Tuition at Hamlin Robinson is \$20,698.35 for the 2018-2019 school year. (Tr., pp.356-357; J-104.) The Parents also expended funds transporting the Student to Hamlin Robinson. (Tr., pp.458-459; 502-504; J-105; J-106; J-107.)

CONCLUSIONS OF LAW

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 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 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. School Districts are required to "provide every student who is eligible for special education between the ages of three and twenty-one years, a free appropriate public education program (FAPE). WAC 392-172A-02000; 34 C.F.R. Part 300.

3. 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 IDEA, 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, supra, 458 U.S. at 206-207 (footnotes omitted).

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

Procedural Issues

The Parents Received a Meaningful Opportunity to Participate in the April 30, 2018 and May 16, 2017 IEP Meetings and Exercised Informed Consent When They Signed the May 16, 2017 and May 7, 2018 IEPs.

5. Parents have a right to be involved in the development of a student's IEP. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877 (9th Cir.2001). The IDEA requires districts to provide for meaningful parental participation in the IEP meeting. WAC .392-172A-03100; 20 U.S. 1400(c)(5)(B); 34 C.F.R. 300.322; *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed. Appx. 342 (9th Cir., 2007). Specifically, parents shall be given notice of the meeting, an opportunity to attend the meeting at a mutually agreeable time and place, information about the purpose of the meeting and who will attend. WAC 392-172A-03100.

6. An IEP team must include the parents of the student, one general education teacher, one special education teacher, a representative of the District, and, if necessary, an individual who can interpret the instructional implications of evaluation results. WAC 392-172A-03095. The school district or the parent, at their discretion, may add other individuals who have knowledge or special expertise regarding the student. *Id.*

7. The Washington Administrative Code defines consent as follows:

- (a) *The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;*
- (b) *The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released and to whom they will be released or records that will be requested and from whom; and*
- (c) *The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.*

(WAC 392-172A-01040.)

8. It is not disputed that the Parents received notice of the May 16, 2017 and April 30, 2018 IEP meetings and attended the meeting at a mutually agreeable time and place. The Parents do not dispute that they had an opportunity to participate in the May 16, 2017 and April 30, 2018 IEP meetings by inquiring of the District IEP team members that were present.

9. The issue is whether the Parents had been fully informed of all information relevant to the formation of the May 7, 2018 IEP, and whether the Parents had been provided a meaningful opportunity to participate in the May 16, 2017 and April 30, 2018 IEP meetings.

10. The Parents argue that because Ms. Tormanen discarded the April 26, 2018 "Placement Test" score of 47 wcpm and did not inform the Parents that she had performed the "Placement Test," the Parents could not meaningfully participate in the April 30, 2018 IEP meeting or give informed consent to the May 7, 2018 IEP. The Parents largely rely on their personal testimony in support of their claim.

11. While it is true that Ms. Tormanen did not inform the Parents, the "Placement Test" score is not relevant to the development of the IEP because it was an invalid data point that was not used to develop the May 7, 2018 IEP. It would be difficult to conclude that Parents, then, could not participate meaningfully in the April 30, 2018 IEP meeting or consent to the May 7, 2018 IEP without the test score.

12. The Parents also assert that Ms. Tormanen's incorrect reporting of the average fluency score of 74.5 wcpm in the April 21, 2018 Progress Report and 71.5 in the April 30, 2018 draft IEP prevented the Parents from meaningfully participating in the April 30, 2018 IEP meeting and giving informed consent to the May 7, 2018 IEP.

13. However, the Parents only offer their testimony in support of their claim. In contrast, the record shows that the Parents were informed of the 71.5 average test score on April 27, 2018

when Ms. Tormanen emailed the Parents and stated that the Student had read two second grade level Reading Mastery passages with an average fluency rate of 71.5 wcpm. Second, Ms. Tormanen included the average score of 71.5 in the April 30, 2018 draft IEP that was emailed to the Parents on April 27, 2018. Thus, while the April 21, 2018 Progress Report may have incorrectly reported a score of 74.5 wcpm, the record shows that the Parents had the correct information. Moreover, the Parents had an opportunity to ask any questions about the inconsistent reporting at the April 30, 2018 IEP meeting.

14. The Parents also asserted at the hearing that they could not meaningfully participate in the May 16, 2017 IEP meeting because the District psychologist Mr. Zaneski was not present and they could not ask him questions about the implementation of multi-sensory instruction. The Parents also claim that the District did not provide a district representative at the meeting.

15. While Mr. Zaneski was not present at the May 16, 2017 IEP meeting, WAC 392-172A-03095 does not require that the school psychologist be present for the IEP meeting. Moreover, Mr. Zaneski was present at the April 25, 2017, Reevaluation meeting when the Parents met with the April 2017 Reevaluation Team to review the Student's reevaluation. The Parents, despite their testimony to the contrary, had an opportunity to ask Mr. Zaneski any questions at that meeting or ask for additional time to inquire of Mr. Zaneski and they did not do so. Importantly, Mr. Zaneski, as the school psychologist, does not select the specially designed instruction curriculum or the strategies used to implement the curriculum.

16. Also, it is clear from the record that the school counselor Ms. Knight was present at the May 16, 2017 IEP meeting and acted as the District's representative.

17. Given the record available and the arguments of the parties, it must be concluded that the Parents have not met their burden. The record reflects that the Parents had a meaningful opportunity to participate in the May 16, 2017 and April 30, 2018 IEP meetings and provide informed consent when they signed the May 7, 2018 IEP.

The Process for Correction of the Student's Educational Records is Governed by WAC 392-172A-05215 and 05220.

18. The Parents seek correction of the assessment information reported by Ms. Tormanen in the Student's April 21, 2018 Progress Report. Specifically, the Parents want the April 26, 2018 discarded score of 47 wcpm on the Reading Mastery "Placement Test" included in the April 21, 2018 Progress Report. Additionally, the Parents seek to replace the misreported "average fluency rate of 74.5 wcpm" with the actual average of 71.5 because this would be consistent with the average fluency rate Ms. Tormanen reported in the April 30, 2018 draft IEP and May 7, 2018 IEP.

19. The Parents also seek correction of the June 18, 2018, Progress Report to include additional testing data. Specifically, Ms. Tormanen administered two fluency assessments to the Student on June 8, 2018, but Ms. Tormanen only reported the Student's score of 79 wcpm. The Parents seek to include the discarded score of 61 wcpm on the same reading passage.

20. "A parent of a student who believes that information in educational records collected, maintained, or used under [WAC 392-172A] is inaccurate, misleading or violated the privacy or other rights of the student, may request that the school district which maintains the information

amend the information.” WAC 392-172A-05215(1). Thereafter, the school district will make a determination to amend or deny the request, and provide the parent with an opportunity for a hearing to challenge information. WAC 392-172A-05215 and 05220.

21. The Parents’ request to amend the Student’s educational records cannot be addressed through the due process hearing procedures of WAC 392-172A-05080 through 05125. Should the Parents desire to have the Student’s progress reports of April 21, 2018 and June 18, 2018 amended they must obtain relief via the procedure set forth in WAC 392-172A-05215 and 05220. This tribunal does not have the authority to amend the Student’s educational records as requested. The Parents, therefore, have not shown that a violation of the IDEA occurred, or that they are entitled to the relief requested.

Substantive Issues

The District Offered the Student IEPs on May 16, 2017 and May 7, 2018 that were Reasonably Calculated and Appropriately Ambitious in Light of the Student’s Circumstances.²⁰

22. 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. The Supreme Court recently clarified the substantive portion of the *Rowley* test:

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., 852 F.3d 840, 2017 U.S. App. LEXIS 9359, at 22 (9th Cir. 2017), cert. denied, 583 U.S. ___, 138 S.Ct. 556 (2017).

23. The Parents argue that the goals established by the May 16, 2017 IEP were not ambitious enough for the Student to make more than trivial progress because the goals were lower than the State standard of 100 wcpm for average second graders.²¹ The District argues that the goals set for the Student were realistic and ambitious.

²⁰ The same legal standard applies to issues #3 and #5 raised by the Parents, and therefore these issues will be considered together.

²¹ In their closing brief, the Parents argued for the first time that because the May 16, 2017 IEP did not include a goal for improving the Student’s writing ability, that the May 16, 2017 IEP did not allow for the

24. The record shows that when the Student presented for evaluation in April 2017, the Student was nearing the end of his first grade year, but was reading at a grade equivalency of late kindergarten (.7). The May 16, 2017 IEP established a goal of bringing the Student up one grade level within one year with an ability to read 75 wcpm. This goal required the Student to make the same progress as the average second grader (one grade level over one year's time) and more progress than 50% of the students at the same reading level.

25. The testing data available shows that on April 24, 2018 and May 16, 2018, the Student met the 75 wcpm goal reflecting a reading growth that was greater than 58% of other students at his level. The Student also achieved a STAR grade level equivalency of 2.1 which was a 1.4 grade level improvement, exceeding the average second grader's achievement of advancing one grade level within the same period of time.

26. Notably, all of the District's witnesses testified that in their professional experience and opinion the Student's growth was ambitious, not trivial. Both Mr. Turner from Hamlin Robinson and Dr. Nelson offered similar testimony that the average student would make one grade level's worth of growth in a year's worth of time, and that the Student's test scores showed he was progressing at an above average rate.

27. The record also shows that the Student did not progress at any greater rate at Hamlin Robinson. Significantly, the Student dropped from a 2.1 grade level equivalency in June 2018 to a 1.2 grade level equivalency in October 2018 after entering Hamlin Robinson. Additionally, the Student made the same progress at Hamlin Robinson (1.5 grade level gain) between September 2018 and May 2019 as he did at the District between May 16, 2017 and June 8, 2018.

28. Given that the Student was required to meet (and then exceeded) the growth of similarly situated students and the growth of an average second grader, it must be concluded that the goals set forth in the May 16, 2017, IEP were reasonably ambitious in light of the Student's circumstances and allowed the Student to make more than trivial progress. The Parents have not carried their burden and have not shown the District violated the IDEA or denied the Student FAPE.

The District Used Appropriate Instructional Strategies and Curricula to Implement the May 16, 2017 and May 7, 2018 IEPs.

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

“[S]pecial education and related services” need only be provided “*in conformity with*” the IEP. [20 USC §1401(9)] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

Student to make more than trivial progress. This issue is actually an extension of Parents' claim that the District failed to meet its child find obligation discussed below.

...
We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.

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

30. School districts are generally given discretion to choose methodology and curriculum. *J.L. v. Mercer Island School Dist.*, 592 F.3d 938, 945 n. 5 (9th Cir. 2010). As found above, OSPI only requires that the curriculum chosen be an effective, evidence / research based curriculum. See, footnote 10, *supra*.

31. The Parents largely argue that the Reading Mastery curriculum was not an appropriate curriculum and the District should have implemented the May 16, 2017 IEP with an IMSLEC approved, Orton-Gillingham, multi-sensory instructional curriculum. The Parents offered undisputed evidence in support that the Reading Mastery curriculum used to implement the May 16, 2017 IEP through May 7, 2018, is not an IMSLEC approved, Orton-Gillingham, multi-sensory instruction curriculum. The Parents argue that the District should have implemented the Wilson Reading System or similar program prior to May 7, 2018.

32. In contrast, the District argues that it acted within its authority when it selected the methodology and curriculum it would use to implement the May 16, 2017 IEP. Also, the District points out that from May 16, 2017 through at least January 16, 2018, the Student had not received a diagnosis of dyslexia and there was no specific recommendation that the District use an IMSLEC approved, Orton-Gillingham multi-sensory instructional curriculum.

33. The record reflects that the District selected an evidence and research based reading curriculum that was appropriate for implementing the May 16, 2017 IEP because it allowed for consistent evaluation of the Student in the area of reading and, when partnered with multi-sensory instructional strategies, improved the Student's reading fluency. Additionally, the evidence presented shows the special education and general education teachers assigned to the Student actually used multi-sensory instructional strategies to deliver the Reading Mastery curriculum. The Student's assessment scores between May 16, 2017 and June 8, 2018, reflect the success of using the Reading Mastery curriculum with multi-sensory instructional strategies because the Student's reading ability improved at the same rate as when the District switched to using the Wilson Reading System and when the Student was placed at Hamlin Robinson.

34. While it is true that Dr. Nelson recommended an IMSLEC approved, Orton-Gillingham curriculum on January 16, 2018, it cannot be concluded that the District had an obligation to immediately change curriculums. The District took the opportunity to conduct a reevaluation of the Student, complete the Reading Mastery curriculum, and develop a new IEP for the Student. Regardless, the District implemented the Wilson Reading System in February 2018, thus meeting the demands of the Parents for an IMSLEC approved, Orton-Gillingham multi-sensory instructional curriculum.

35. The Parents also extend their argument to the implementation of the May 7, 2018 IEP. However, the Parents have not carried their burden in regards to the May 7, 2018 IEP because it

is undisputed that Ms. Tormanen implemented the Wilson Reading in February 2017, which is an IMSLEC approved, Orton-Gillingham, multi-sensory instructional curriculum.²²

36. The Parents have not met their burden. The evidence in the record does not support the Parents' claim that the District failed to provide multi-sensory instructional strategies or evidence / researched based curriculum when it implemented the May 16, 2017 IEP or the May 7, 2018 IEP. It is concluded that the District did not violate the IDEA or fail to provide the Student with FAPE.

The District Provided Appropriately Trained Special Education Teachers and Paraeducators to Implement the May 16, 2017 and May 7, 2018 IEPs

37. District personnel that provide special education services and/or related services shall meet the following qualifications:

(a) All employees shall hold such credentials, licenses, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment . . .

(b) In addition . . . all special education teachers providing, designing, supervising, monitoring, or evaluating the provision of special education shall possess "substantial professional training" . . . [which] shall be evidence by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI professional education and certification section.

....

(h) Paraprofessional staff and aides shall present evidence of skills and knowledge established under the rules of the professional educator standards board, necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement, or a certificated educational staff associate or licensed staff.

(i) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by a special education certificated staff . . . Student progress must be monitored and evaluated by special education certificated staff

WAC 392-172A-02090.

38. It is important at the outset to note that WAC 392-172A- 02090(4) does create any right of action on behalf of an individual student or class of students to challenge the credentials required

²² The Parents primarily argue that Ms. Tormanen did not have the training or ability to deliver the Wilson Reading System curriculum. This issue is discussed below.

of persons who teach special education or general education. The Parents may file a state citizen complaint with the Office of Superintendent of Public Instruction to address this issue. (WAC 392-172A-05025 through 05040.)

39. Regardless, as found above, both of the District's special education teachers assigned to teach the Student possess graduate level degrees in special education, are certificated to teach special education in the State of Washington, and have substantial teaching experience. Additionally, all of the District's general education teachers assigned to teach the Student also possessed the education, substantial experience, and certification to teach the Student.

40. The Parents argue that the District was required to provide a special education teacher that was trained to deliver an IMSLEC approved, Orton-Gillingham, multi-sensory instructional curriculum in order to implement the May 16, 2017 and May 7, 2018 IEPs.

41. There is no statute or rule in the State of Washington that requires Districts to train special education or general education teachers in specific strategies or methods to teach dyslexic students. The relevant inquiry is whether District personnel assigned to instruct the Student are sufficiently trained to teach special education and general education, and sufficiently trained to implement the May 16, 2017 and May 7, 2018 IEPs. *LC v Issaquah Sch. Dist.*, 2019 US Dist. LEXIS 77834 (W.D. Wash., May 8, 2019).

42. The record reflects that the District's personnel assigned to instruct the Student were sufficiently trained to use multi-sensory instructional strategies to implement the selected curriculum and deliver the specially designed instruction set forth in the IEP. Ms. Ball, Ms. Pool, and Ms. Tormanen all testified to extensive experience using multi-sensory strategies and effectively used the strategies with the Student. Specifically, Ms. Tormanen credibly testified that she was trained to implement the Reading Master curriculum and Wilson Reading System, and was capable of using multi-sensory strategies. Given the substantial evidence in the record regarding the high level of experience and training the teachers assigned to the Student possessed, it cannot be concluded that the District personnel were not trained to implement the May 16, 2017 and May 7, 2018 IEPs.²³

43. Regardless, Ms. Tormanen's credible testimony that she was trained to use the Reading Mastery program and that she was capable of implementing the program with the Student using multi-sensory strategies is corroborated by the consistency of the reading fluency assessments she performed and the progress of the Student. The Parents are correct that Ms. Tormanen improperly used a "Placement Test" on April 26, 2018 resulting in an irrelevant data point, but this error cannot be said to be a reflection of Ms. Tormanen's ability to implement the May 16, 2017, IEP or Reading Mastery curriculum with multi-sensory instructional strategies given the other evidence in the record.

44. The Parents have not met their burden and have not shown by a preponderance of the evidence that the District's personnel assigned to the Student to implement the IEP lacked the necessary training and qualifications to implement the May 16, 2017 or May 7, 2018 IEPs.

²³ The Parents also claim that Ms. Tormanen failed to properly assess the Student's reading fluency by using the Reading Mastery curriculum, instead of the Wilson Reading Program or other Orton-Gillingham / IMSLEC approved curriculum. This issue is addressed above.

Therefore, it is concluded that the District did not violate the IDEA and provided the Student with FAPE.

The District Complied with the IDEA's Child Find Mandate by Identifying and Evaluating All of the Student's Suspected Areas of Need Between April 16, 2017 and January 16, 2018.

45. The IDEA requires that states enact policies to ensure that “[a]ll children with disabilities . . . regardless of the severity of their disabilities . . . who are in need of special education and related services, are identified, located, and evaluated.” 20 USC § 1412(a)(3)(A). This is known as the child find requirement.

46. Washington’s child find regulation requires school districts to “conduct child find activities calculated to reach all students with a suspected disability” for the purpose of locating, evaluating and identifying students in need of special education, regardless of the severity of their disability:

(1) School Districts shall 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. . . Methods used may include, but are not limited to activities such as:

....

(f) Using internal district child find methods such as screening, reviewing district-wide test results, providing in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic intervention based, process within the general education for determining the need for a special education referral.

WAC 392-172A-02040(1); see 34 CFR § 300.111.

47. The “child find” requirement does not require school districts to conduct a formal evaluation of every student who is struggling. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3rd Cir. 2012). The child find duty is “triggered when the [school district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.” *Kanongata’a v. Washington Interscholastic Activities Ass’n*, No.C0501956C, 2006 WL 1727891 at *20 (W.D. Wash. June 20, 2006). A disability is “suspected” when the district has notice that the child has displayed symptoms of that disability. *E.S., et al., v. Conejo Valley Unified School District*, 72 IDELR 180, 118 LRP 31548 (C.D. Calif., 2018), citing *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016). Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not “exclusively in hindsight.” *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999), citing *Fuhrmann v. East Hanover Bd. of Education*, 993 F.2d 1031, 1041 (3rd Cir. 1993).

48. The issue is whether the District’s obligation to evaluate the Student in the area of writing was triggered between April 16, 2017 and January 16, 2018. Specifically, the Parents argue that the District had a reason to suspect the Student had a disability in writing and reason to believe that special education services may be needed to address that disability.

49. Importantly, the Parents have not alleged that the District failed to conduct a full evaluation that assessed the Student in all areas of suspected disability when Mr. Zaneski performed the April 16, 2017 Reevaluation. *Timothy O.*, 822, F.3d at 1118. The Parents only allege that the District failed in its child find obligation between April 16, 2017 and January 16, 2018.

50. The record shows there are only three instances where District personnel encountered information regarding the Student's writing struggles. First, Ms. Claiborne and Ms. Stahl identified that writing (along with reading and math) may be an area of concern in the January 24, 2017, email when they referred the Student to Mr. Zaneski for an evaluation. However, this referral occurred outside the statute of limitations in this case. Regardless, after the Parents and the District's multi-disciplinary team met on February 16, 2017 to discuss concerns about the Student, the team determined that the Student's only area of concern was reading and that the Student was within the normal developmental range for writing.

51. Next, Ms. Ball made an off-hand comment in her October 17, 2017 email to another educator about the Student having "dyslexia/graphia" issues. However, Ms. Ball is not trained to diagnose the Student with dysgraphia and was actually referring to the Student's general struggles with his reading disability and how it impacts his ability to complete double-digit math problems. Also, both Ms. Ball and Ms. Pool, knowing that the Student's struggle to organize his writing was related to his difficulties reading, provided writing interventions in the general education classroom that garnered a positive response and improved the Student's writing. Therefore, Ms. Ball and Ms. Pool did not identify writing as an area of concern.

52. Ms. Ball, Ms. Pool, and the Mother later mentioned writing as an area of concern in the context of preparing materials for Dr. Nelson's comprehensive evaluation of the Student in January 2018.

53. The District personnel assigned to the Student, his private tutors, and the Parents did not otherwise identify the Student's writing ability as an area of concern between April 16, 2017 and January 16, 2018, despite weekly assessments, intensive instruction, general education interventions, and information sharing between the District and the Parents. Moreover, the Student's general education teachers and tutors noted that the Student performed within the normal developmental range in writing given his age, grade level, and reading ability.

54. The Parents largely rely on the testimony of Dr. Nelson that students with dyslexia also struggle with writing and that the Student also struggled to spell, capitalize and organize writing. The Parents also point to the Student's October 2017 and November 2017 writing samples as evidence of his writing disability, and Dr. Nelson's evaluation of those writing samples as part of her conclusion that the Student suffered from dysgraphia.

55. However, Dr. Nelson persuasively testified that a writing disability like dysgraphia is secondary to a diagnosis of dyslexia and when educators address reading ability, writing generally improves along with reading ability. Also, Dr. Nelson persuasively testified that the ability of school districts to evaluate for writing disabilities in children with a reading disability is limited compared to the evaluative skill and tools she can employ.

56. Regardless, even Dr. Nelson placed the Student's writing ability at "low-average," and made her diagnosis secondary to the Student's dyslexia diagnosis. Mr. Zaneski's evaluation of

the Student was similar. Both Dr. Nelson and Mr. Zaneski recommended that writing support be provided in the general education classroom in the same fashion it was already being provided by Ms. Ball and Ms. Pool along with paraeducator Ms. Schreager.

57. Dr. Nelson's comprehensive neurological assessment of the Student that identified writing as an area of concern is the first time the District knew or should have known that the Student suffered from a writing disability such that an evaluation of the Student was warranted. Thereafter, the District considered the informed suspicions of the Parents and Dr. Nelson's assessment and diagnosis, and performed a timely reevaluation of the Student in the area of writing that resulted in an appropriate IEP on May 7, 2018.

58. Given the period of time at issue and the evidence in the record, it cannot be concluded that the District's child find obligation in the area of writing was triggered prior to January 16, 2018, or that the District failed to conduct an appropriate evaluation after receiving Dr. Nelson's report. The Parents, then, have not met their burden and have not shown that the District violated the IDEA and denied the Student FAPE.

Remedies

59. Because the Parents did not prevail on any of the issues raised in the due process hearing request, the Parents are not entitled to any of the remedies requested.

ORDER

The District did not violate the IDEA and did not deny the Student FAPE from April 17, 2017 to April 16, 2019, because:

1. The Parents received a meaningful opportunity to participate in the May 16, 2017 and April 30, 2018 IEP meetings and exercised informed consent when they signed the May 7, 2018 IEP.
2. The process for correction of the Student's educational records is governed by WAC 392-172A-05215 and 05220.
3. The District offered the Student IEPs that were reasonably calculated and appropriately ambitious in light of the Student's circumstances to enable the Student to make more than trivial progress.
4. The District used appropriate instructional strategies and curricula to implement the May 16, 2017, and May 7, 2018 IEPs.
5. The District provided appropriately trained special education teachers and paraeducators to implement the May 16, 2017 and May 7, 2018 IEPs.
6. The District complied with the IDEA's child find mandate by identifying and evaluating all Student's suspected areas of need between April 16, 2017 and January 16, 2018.

Signed and issued on the date of mailing.



COURTNEY E. BEEBE
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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

Parents



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Addendum

392-172A-03020 Evaluation procedures.

(1) The school district must provide prior written notice to the parents of a student, in accordance with WAC [392-172A-05010](#), that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

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

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

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and

subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

392-172A-03025 Review of existing data for evaluations and reevaluations.

As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

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

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

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

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

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (2) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

392-172A-03030 Evaluations before change in eligibility.

(1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC [392-172A-03020](#) through [392-172A-03080](#) before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC [392-172A-02000](#) (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's

academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

392-172A-03035 Evaluation report.

(1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC [392-172A-03080](#) for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

392-172A-03040 Determination of eligibility.

(1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC [392-172A-03090](#) through [392-172A-03135](#).

392-172A-05005 Independent educational evaluation.

(1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and

the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
