

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Peninsula School District

Docket No. 12-2022-OSPI-01754

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2022-SE-0156

A due process hearing was held before Administrative Law Judge (ALJ) Jenna Schuenemann on April 3 – 6, 2023, via video conference. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Elicia Johnson and Luke Hackenberg, attorneys at law. The Peninsula School District (District) was represented by Carlos Chavez, attorney at law. Also present for the District was Janna Rush, Director of Special Education. The following is hereby entered:

**STATEMENT OF THE CASE**

**Procedural History**

The Parents filed a Due Process Hearing Request (Complaint) on December 9, 2022. The Complaint was assigned cause number 2022-SE-0156 and Office of Administrative Hearings (OAH) docket number 12-2022-OSPI-01754. A Scheduling Notice was entered on December 12, 2022, which assigned the matter to ALJ Jenna Schuenemann.

A prehearing conference was held on January 4, 2023, before ALJ Schuenemann. A second prehearing conference was held on February 16, 2023. On February 17, 2023, the Parents filed a Proposed Amended Complaint. The District did not object, and leave to amend the Complaint was granted on March 6, 2023. On March 24, 2023, the Parents filed a Second Proposed Amended Complaint. The District did not object, and leave to amend the Complaint was again granted on March 27, 2023.

The hearing was held as originally scheduled on April 3 – 6, 2023.

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<sup>1</sup> To ensure confidentiality, names of parents and students are not used.

On June 7, 2023, the District requested to supplement the record with exhibit D25, the Student's spring term iReady results. The Parents did not object to admission of D25. Accordingly, D25 is admitted.

### **Due Date for Written Decision**

In a previous order, the due date for written decision was extended to thirty (30) days after the record of the hearing closes. By agreement of the parties, the record closed after receipt of the parties' closing briefs on June 16, 2023. Accordingly, the decision due date in this case is July 16, 2023.

### **EVIDENCE RELIED UPON**

#### **Exhibits Admitted:**

District's Exhibits: D1-D25.

Parents' Exhibits: P1-P21 and P23-P61.

#### **Witnesses Heard (in order of appearance):**

Mother

Dr. Cindy Dupuy, Ph.D.

Laura Parker, Education Director, Hands On Learning Solutions (HOLS)

Dr. Melissa Grabner-Hagen, Ph.D.

Dr. Catherine McCutcheon, Elementary Special Education Coordinator, Peninsula School District

Magdalene Kamke, Special Education Teacher, Peninsula School District

Warren Fukuji, Special Education Teacher, Peninsula School District

Shauna Coxford, General Education Teacher, Peninsula School District

Father

Mary West, Speech Language Pathologist, Peninsula School District

John Yellowlees, Assistant Superintendent, Peninsula School District

Janna Rush, Director of Special Education, Peninsula School District

Dr. David Breiger, Ph.D.

### **ISSUES**

The issues for hearing were set forth in the Order Granting Parents' Second Request to Amend Complaint dated March 27, 2023. On the first day of hearing, the Parents elected to withdraw several issues, which are stricken below. T13-15.<sup>2</sup> The issues are as follows:

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<sup>2</sup> Citations to the hearing transcript are to T followed by the page number(s) on which the testimony appears. For example, a citation to T661-62 is to pages 661 and 662 of the transcript.

1. Whether the District violated the Individuals with Disabilities Education Act (IDEA), and denied the Student a free appropriate public education (FAPE) by:
  - ~~a. Failing to draft an Individualized Education Program (IEP) in June 2021 that was reasonably calculated to confer meaningful educational benefit to the Student;~~
  - ~~b. Failing to properly implement the June 2021 IEP;~~
  - c. Failing to draft an IEP in June 2022 that was reasonably calculated to confer meaningful educational benefit to the Student;
  - ~~d. Failing to properly implement the June 2022 IEP;~~
  - e. Failing to draft an IEP in December 2022 that was reasonably calculated to confer meaningful educational benefit to the Student;
  - ~~f. Failing to properly implement the December 2022 IEP;~~
  - g. Failing to draft an IEP in January 2023 that was reasonably calculated to confer meaningful educational benefit to the Student;
  - ~~h. Failing to properly implement the January 2023 IEP;~~
  - i. Failing to conduct an appropriate evaluation of the Student in October 2022;
  - j. Failing to consider the Parents' request for a specific intervention to address the Student's specific learning disability (dyslexia);
  - k. Significantly impeding the Parents' right to participate in the educational decision-making process, specifically by failing to consider the Parents' request for a specific intervention to address the Student's specific learning disability (dyslexia);
  - l. Failing to provide the Student with an evidence-based, multisensory, structured literacy program for students with dyslexia and implement it with fidelity;
  
2. And, whether the Parents are entitled to their requested remedies:
  - a. Declaratory relief finding that the District violated the IDEA and denied the Student FAPE;

- b. Compensatory special education and related services for the Student to allow her to obtain the educational benefit that she would have received but for the District's violations of the IDEA and denial of FAPE consistent with 20 U.S.C. sec. 1415(i)(2)(c)(iii);
- c. An IEP for the 2022-2023 school year that is reasonably calculated to facilitate meaningful educational progress;
- d. Reimbursement for private evaluations for the Student from December 9, 2020, to present;
- e. Or other equitable remedies, as appropriate.

### **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 reliable than the conflicting evidence. A more detailed analysis of reliability and weight of the evidence may be discussed regarding specific facts at issue.

#### ***Background***

1. At the time of the hearing, the Student was eight years of age. The Student resides with the Parents in the District. During the 2022-2023 school year the Student was in third grade at Swiftwater Elementary School (Swiftwater) in the District. D18p1<sup>3</sup>.
2. The Student attended first grade at Discovery Elementary School in the District during the 2020-2021 school year and transferred to Swiftwater in second grade during the 2021-2022 school year. T38.
3. The Mother has a Bachelor of Arts in Education from Eastern Washington University and she double minored in Early Childhood Education and Elementary Mathematics, Kindergarten through Eighth Grade. T31-32. The Mother taught in the District for 10 years. T30. The Mother remains active in the Student's classroom as an art docent and volunteer. She is also active in the District through participation in committees such as the 100% Reading Task Force Committee. T31.

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<sup>3</sup> Citation to the exhibits of record are by the party ("P" for the Parent and "D" for the District) and page number. For example, a citation to P20p1 is to the Parent's Exhibit 20 at page 1.

4. Although the Father has dyslexia, the Mother did not know much about dyslexia until the Student's older sibling was diagnosed with dyslexia. The sibling was assessed by Laura Parker at Hands On Learning Solutions (HOLS). T35

5. Ms. Parker is the Founder and Educational Director of HOLs. She is a certificated teacher in California and has taught in various capacities for 30 years. T327. For the past 15 years, Ms. Parker has owned and operated HOLs, which specializes in serving children with learning disabilities. *Id.* Eighty percent of the students that HOLs works with have dyslexia. T329.

6. Although Ms. Parker is not qualified to diagnose dyslexia, she believed that the sibling had dyslexia and dysgraphia. Ms. Parker indicated that she would likely use the Barton Reading and Spelling System (Barton) with the sibling if the family chose to use HOLs for tutoring. T35.

7. Ms. Parker uses four Orton-Gillingham (OG) influenced programs for students with dyslexia: Recipe for Reading; Barton; Sonday; and PRIDE Reading. Ms. Parker prefers to use Barton if it is an appropriate program for a student. She is also trained in all the Lindamood-Bell programs that are designed for students with dyslexia and used them for 20 years. She will sometimes use a Lindamood-Bell program with a student if she believes it is appropriate. T329.

8. The OG approach is a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive way to teach literacy when reading, writing, and spelling do not come naturally to individuals, such as those with dyslexia. Barton is an OG influenced, structured literacy curriculum which is evidence-based, multi-sensory, direct, and sequential. P3p6.

9. The Mother researched Barton and determined that with her educational background and teaching experience, she would be able to tutor the sibling using Barton. It was more cost effective for the family to purchase the Barton system and have the Mother tutor the sibling, than it would have been to pay for private tutoring. T35.

10. There are 10 levels or "books" in the Barton system. The Parents purchased Barton books one through eight, starting in September 2020. The first two books cost \$300.00 each, plus \$14.95 for shipping. Books three through eight cost \$350.00 each plus \$14.95 for shipping. P27p6-13.

## ***Student's First Special Education Evaluation***

11. The Student was first evaluated and found to be eligible for special education on January 15, 2019, under the category of Developmental Delays. She received specially designed instruction (SDI) in the areas of communication and motor skills. D1p5. When the Student entered the first grade (2020-2021 school year), the Student's difficulties with reading became more pronounced. The Student was reevaluated in May 2021 and the evaluation and IEP team met on June 17, 2021. The Student was found to be eligible under the category of Specific Learning Disability (SLD), using the discrepancy model. D1p5. The Student was found eligible for SDI in reading and communication (speech intelligibility and articulation). D1p7.

12. At the June 17, 2021 IEP meeting, the IEP team finalized the Student's IEP. In the IEP, the Student's first grade general education teacher noted that the Student's reading skills had not improved as expected given that the Student had been working very hard on her reading. D2p6. At the time, the Student was reading "level D" books, whereas the benchmark for the end of first grade was "level J" books. *Id.*

13. The June 17, 2021 IEP contained two annual goals for reading. The first goal was: "By 06/16/2022, when given a list of the 200 words from the Fry high frequency word list [Student] will be able to decode 100 words correctly, improving Phonics skills from Baseline to 100 words as measured by data collected by school personnel." D2p6.

14. Although the Parents signed the IEP, the Mother was concerned about the first reading goal because "high-frequency" or sight-words are ones that are not rule-based (meaning they cannot be decoded using rules) but require memorization. The Mother was concerned that teachers would focus on having the Student memorize words instead of teaching her how to decode and read. T41.

15. The Student's second reading goal from the June 17, 2021 IEP was: "By 06/16/2022, when given a passage to read [Student] will be able to correctly identify initial, medial, and final phonemes in various structured activities improving knowledge of phonics from reading with 69% accuracy to reading with 90% accuracy as measured by data collected by school personnel." D2p6.

16. The June 17, 2021 IEP called for the Student to receive 45 minutes per day, five days per week, of SDI in reading in the resource room with a special education teacher. D2p13.

17. At the time the June 17, 2021 IEP was developed, the Student was more than 1.5 grade levels below her general education classroom level in reading, meaning that she was reading at a kindergarten level or below at the end of first grade. D2p16.

18. During the summer of 2021, the Mother started tutoring the Student at home. She began with a program called Foundation in Sound, a precursor to Barton, and then progressed to Barton. T46.

19. The Parents paid \$341.00 for the Foundation in Sound program. P27p19.

### ***2021-2022 School Year (Second Grade)***

20. The Student started second grade at Swiftwater in September 2021. Her general education teacher was Stacy Bigger, and her special education teacher was Warren Fukuji. D3p1.

21. The Student was excited to start the school year, but her excitement quickly waned when the Student became aware of her learning differences in relation to her classmates. The Student was not able to complete assigned tasks without asking for help and she was aware that her classmates were finishing their work before her and that their work did not look like hers. T42.

22. The District's core reading curriculum for elementary students was Reading Wonders. The District-approved supplemental reading curriculum for students with reading difficulties was Reading Mastery. P5p13. Neither program is evidence-based or peer-reviewed, nor are they designed as interventions for students with dyslexia. Reading Mastery is not a structured literacy program. P5p17.

23. Mr. Fukuji is a certificated special education teacher in Washington State. He received his undergraduate degree in special education from Eastern Washington University. He has a master's degree in general education. T592.

24. Mr. Fukuji worked with the Student during the 2021-2022 school year, delivering SDI for 45 to 50 minutes, five days per week. T597; D2p13.

25. Mr. Fukuji started the school year using Reading Mastery with the Student. After a few sessions, he also supplemented the Reading Mastery curriculum with other materials that he found online or was otherwise able to access. T597.

26. Mr. Fukuji first measured the Student's progress toward her first IEP reading goal on October 26, 2021. At that time the Student was able to decode 38 out of the first 100 words on the Fry high frequency word list. Mr. Fukuji noted that the Student was making "sufficient progress" toward the first IEP reading goal. D5p1.

27. On November 21, 2021, Mr. Fukuji noted that the Student was able to identify initial, medial, and final phonemes from reading with 35% accuracy. D5p1-2. The Student's June 17, 2021 IEP goal indicated that her starting accuracy in June 2021, was 69%. D5p1; D2p6.

### ***Hands On Learning Evaluation***

28. The Parents were concerned that the Student was not getting the support that she needed at school, so the Mother contacted Ms. Parker at HOLS to have the Student evaluated. The Mother understood that Ms. Parker could not diagnose dyslexia, but she wanted to know more about the Student's strengths and weaknesses and how the Parents could help the Student close her learning gap. T43.

29. After evaluating the Student over the course of two days, on November 19, 2021, and December 1, 2021, Ms. Parker concluded that the Student's areas of weakness were consistent with dyslexia and dysgraphia. Ms. Parker made several recommendations, noting that the Student "needs to receive Orton-Gillingham reading and spelling instruction in order to appropriately address her weaknesses." P1p16. Since the Mother was already using Barton at home, Ms. Parker recommended using Barton consistently across settings, in the home and school. *Id.* In her report, Ms. Parker noted: "Mixing programs, or having [Student] try to memorize sight words from a different program, will confuse her and slow down her remediation." P1p17.

30. The Parents paid HOLS \$485.00 for the assessment with Ms. Parker. This fee was not covered by the Parents' insurance. P27p1; T702.

31. After meeting with Ms. Parker to discuss her report, the Mother contacted Mr. Fukuji and asked to schedule a meeting so that the Parents could provide the District with a copy of the HOLS report and discuss how to move forward. Mr. Fukuji set an informal meeting for December 15, 2021. T48-49. The Parents provided the full HOLS report to the District on December 31, 2021. P23p2.

32. The Parents, Mr. Fukuji, Ms. Bigger, and David Brooks, the Swiftwater Principal, were present at the December 15, 2021 meeting. The Mother discussed that she was using Barton at home with the Student and that using different programs was confusing to the Student. Mr. Fukuji offered that he was trained in Barton and had used it in Oregon where he taught previously. T50.

33. Mr. Fukuji was enthusiastic about trying Barton with the Student given that he had prior training and experience using it, and he wanted to do whatever he could to support the Student. T603; T606. Mr. Fukuji was willing to go "above and beyond" for



all his students because he cares deeply about student growth. He was willing to try whatever he could to help the Student in this case. T606.

34. Although the Mother recalled that Mr. Fukuji initially used Barton in Oregon, Mr. Fukuji clarified that he was initially trained in using Barton by the Anchorage School District in Alaska. He taught, using Barton, in Alaska for two years. T603-04.

35. After the December 15, 2021 meeting, Mr. Fukuji emailed Dr. Cathy McCutcheon, Elementary Special Education Coordinator for the District, and Lynne Truitt, the Director of Special Education at the time. Mr. Fukuji wrote:

I am working with a student that is working on Barton at home and as a team we are looking at utilizing the program in school to meet our student's needs. What is the process to get the program in the school? I am trained and well versed in the program and would like to support this amazing student. I am including the team so that we are on the same page as to what the process is.

P7p1.

36. Shortly after he sent the email about Barton, Ms. Truitt and Dr. McCutcheon called Mr. Fukuji and expressed their displeasure with him for including the Student's IEP team on the email about Barton. Ms. Truitt and Dr. McCutcheon told Mr. Fukuji that Barton was not a District-approved curriculum and that he needed to follow certain procedures to suggest a curriculum for District approval. T613-16.

37. Ms. Truitt and Dr. McCutcheon insisted that Barton was not District-approved and had not gone through the curriculum committee for approval. According to Ms. Truitt: "We cannot just bring a random curriculum onto a school campus that had not gone through our vetting process and through our Curriculum Committee." T544-45' T422. However, Ms. Truitt and Dr. McCutcheon gave approval for District special education teachers to use "random," unvetted resources from the internet to supplement their instruction and assessment of their students, including the Student in this case. T422.

38. Ms. Truitt informed Mr. Fukuji that the District had approved another Orton-Gillingham influenced program, the Seeing Stars program from Lindamood-Bell, that he could potentially use with the Student. T617.

39. Mr. Fukuji had previously purchased the Seeing Stars curriculum himself. He did not seek approval to purchase it for his classroom because it was District-approved.

T617. Mr. Fukuji used Seeing Stars with other students before he worked with the Student. T621.

40. Mr. Fukuji chose not to use Seeing Stars with the Student because he “didn’t want to keep throwing more curriculum at [the] Student because [he] thought [he] would really confuse her.” T618. Mr. Fukuji also felt the decision to switch the curriculum used for the Student’s SDI should be an IEP team decision. T619.

41. District schools went on winter break from December 20, 2021 through January 2, 2022. School resumed on January 3, 2022. D24p2.

42. On January 3, 2022, Mr. Fukuji emailed the Parents to inform them that Barton was not a District-approved curriculum, and he would not be able to use it with the Student. P8p1.

43. On January 4, 2022, the Parents responded to Mr. Fukuji’s email, copying Mr. Brooks and Ms. Bigger. The Parents expressed that they were sorry to hear that the District denied the request to use Barton and disappointed that the District did not offer an alternative program to meet the Student’s educational needs. P9p1.

44. The Parents also included a copy of Revised Code of Washington (RCW) 28A.320.260 Dyslexia Interventions. The Parents highlighted several portions of the statute and included multiple questions about how the District was implementing the law in general and with respect to the Student. The Parents ended the email noting: “Ultimately we would like a clear, detailed and specific plan from the Peninsula School District of how it proposes to meet [Student’s] individual educational needs.”

***Communication with Lynne Truitt***

45. Mr. Fukuji and Mr. Brooks discussed the Parents’ email and forwarded it to Ms. Truitt. On January 5, 2022, Mr. Fukuji informed the Mother that he had forwarded the email to Ms. Truitt and that she should contact him if she did not hear anything from Ms. Truitt by the end of the day. P9p1.

46. On January 5, 2022, Ms. Truitt forwarded the Parents’ email to John Yellowlees, Executive Director of Student Services for the District. Ms. Truitt asked Mr. Yellowlees if he would be willing to review her response to the Parents’ email. P10p1.

47. On January 11, 2022, Ms. Truitt responded to the Parents’ email explaining the District’s screening process for identifying students who may have dyslexia. She also provided some very broad information about the elementary core reading curriculum (Reading Wonders) as well as the District’s Tier 3 (special education) reading

curriculum, Reading Mastery. Ms. Truitt stated that both programs were “research based” but did not elaborate further. P11p1.

48. On January 19, 2022, the Parents responded to Ms. Truitt’s email, copying Mr. Fukuji, Ms. Bigger, and Mr. Brooks. P11p1. The Parents attached a letter which outlined the Student’s history with the District as well as the steps the Parents had taken to have the Student evaluated within the District for special education services. In the letter, the Parents also highlighted their concerns about what Ms. Truitt had characterized as the Student’s progress in her January 11, 2022 email. The Parents noted that although the Student’s raw scores on the DIBELS (Dynamic Indicator of Basic Early Literacy Skills) test had risen, she was still well below grade level in reading. P12p1.

49. The Parents, again, requested a “clear, detailed and specific plan from the Peninsula School District of how it proposes to meet [Student’s] individual educational needs.” P12p2.

50. Ms. Truitt responded to the Parents that she received the email and that a response would be forthcoming. P13p1.

51. Ms. Truitt forwarded the Parents email and letter to Mr. Yellowlees on January 20, 2022, and asked him for guidance as to how to respond. P13p1.

52. On February 1, 2022, Ms. Truitt emailed Mr. Yellowlees again asking for an appointment to discuss how to respond to the Parents. P14p1.

53. Mr. Yellowlees replied on February 1, 2022, advising Ms. Truitt to respond to the Parents with a request to schedule a meeting with the Student’s IEP team. Mr. Yellowlees also advised Ms. Truitt to meet with the District members of the IEP team before the meeting to prepare. P14p1.

54. Between February 2, 2022, and February 16, 2022, the Parents and Ms. Truitt exchanged several emails in which the Parents explained that they were willing to meet, but that they would like a written response to their questions before meeting. The Parents explained that they wanted the meeting to be as productive as possible with everyone prepared and on the same page. In the past, the Parents’ experience with IEP team meetings was that District staff was often not prepared, the meetings lacked an agenda, and often started late, and the District used many acronyms that the Parents did not understand. The Parents asked Ms. Truitt multiple times to provide dates and times for the proposed IEP meeting. Ms. Truitt never responded with available dates. P16p1-3.

55. On February 16, 2022, the Parents emailed Ms. Truitt again because they had not received a written response to their January 19, 2022 email. The Parents expressed that their patience was running thin because the Student continued to fall further behind in reading. P15p1-2.

56. Ms. Truitt forwarded the Parents' email to Mr. Yellowlees on February 16, 2022. He responded the same day advising Ms. Truitt to respond to the Parents' questions in writing as well as schedule an IEP meeting. P15p1.

57. On February 16, 2022, Ms. Truitt responded to the Parents' email and indicated that she would still like to convene an IEP Team meeting to review the HOLS report and discuss the Student's progress. Ms. Truitt addressed the Parents' concerns about prior IEP meetings being disorganized or chaotic by indicating that she would work with Mr. Fukuji to prepare an agenda for the meeting. Ms. Truitt also provided a draft agenda in her email. P19p3.

58. On February 17, 2022, the Parents responded that they agreed that another IEP meeting was needed, but would like the following information provided in writing before the meeting:

- a. A response to the January 19, 2022 letter;
- b. All of the Student's iReady and DIBELS scores and any other test results that the District deemed important;
- c. Academics and daily schedule;
- d. Curriculum used to specifically address the Student's dyslexia;
- e. The District's recommendation(s) for a modified education plan.

P19p2-3.

59. The Parents also indicated that Ms. Truitt's draft agenda was a good start and they added three agenda items including discussion of the District's recommendations for a modified education plan and discussion of an action plan for moving forward. P19p3.

60. Ms. Truitt responded to the Parents' email on February 18, 2022. In response to the Parents' request for information before the meeting, Ms. Truitt responded to some, but not all, of the Parents' requests by indicating that they would be provided information at the IEP meeting. Ms. Truitt did not respond at all to the Parents' request for information about what curriculum the District was using to specifically address the Student's dyslexia. P19p2.

61. On February 20, 2022, the Parents responded, again requesting written information before the meeting so that they could be prepared and have the meeting

run as efficiently as possible. The Parents again requested information about what curriculum the District was using to address the Student's dyslexia. P21p7.

62. Ms. Truitt did not respond to the Parents questions by email. She and the Parents had agreed to speak on the phone on February 28, 2022. Ms. Truitt still had questions about the Parents' January 19, 2022 letter. P19p1.

63. On March 1, 2022, Ms. Truitt emailed the Parents with her understanding of the discussion points from their February 28, 2022 phone call. The Parents responded by email on March 2, 2022, noting that they felt the discussion was productive and they were eager to move forward with the IEP meeting process for the Student. P20p3.

64. On March 14, 2022, Ms. Truitt emailed the Parents to schedule the IEP meeting. She indicated that District staff would be available on March 23, 2022, from 3:30 to 4:30 p.m. P20p2-3. In her email, Ms. Truitt informed the Parents that they would receive the information they had requested in writing (academic schedule, diagnostic testing results, information about curriculum to address the Student's dyslexia, District recommendations for modifications to the Student's IEP) by March 18, 2022. P20p3.

65. On March 15, 2022, the Parents confirmed by email that this time worked for them. P20p2.

66. As of March, 22, 2022, the Parents had not received any of the requested information from the District. P20p1.

67. From the Parents' perspective, the March 23, 2022 IEP meeting was frustrating and started off "very rough." T59. The District was not prepared with an agenda, so Mr. Fukuji just brought up the prior emails between the Parents and Ms. Truitt that outlined a draft agenda. T60.

68. At the March 23, 2022 meeting, the Parents asked again if the District would use Barton for the Student's SDI programming. The Parents offered to purchase the curriculum for the District, and Ms. Truitt's response was that Barton was not District-approved and if the Parents wanted to purchase it, they would have to purchase it for all schools in the District. Ms. Truitt offered that she could "talk to her team" about getting Barton for the District, but that it was a very long process. T60.

69. Ms. Truitt did not inform the Parents that Seeing Stars was a District-approved curriculum and a possible alternative to Barton. T60; T830.

70. The Parents left the meeting feeling frustrated and like the team had not made any progress toward addressing the Student's needs and helping her close the gap in reading. T61. At the time of the IEP meeting, the Student was reading at a kindergarten level. P36p5. The Student was struggling emotionally due to her difficulties with reading. She would continually tell herself that she was stupid. T62.

71. The IEP team did not draft a new IEP for the Student. P21p3.

72. On March 28, 2022, the Parents emailed Ms. Truitt to follow up on action items from the IEP meeting. Ms. Truitt had agreed to provide typed meeting minutes to the Parents the day after the meeting, and they still had not received them. The Parents also requested the Student's iReady and DIBELS scores, information and research related to the District's reading curricula, and a response to their January 19, 2022 email, which they had requested before the meeting and still had not received. P21p3.

73. On March 31, 2022, Ms. Truitt responded with information from the District's curriculum department regarding Reading Mastery, Reading Wonders, and Enhanced Core Reading Instruction (ECRI). She indicated that she had asked Mr. Fukuji if he had started a new draft IEP. P21p2-3. Ms. Truitt indicated that she was waiting on iReady and DIBELS data from Swiftwater, and that she was working on typing up the meeting notes. P21p2.

74. Ms. Truitt also wrote:

The response to your January 19<sup>th</sup> letter is that the plan to address the reading disability of your daughter is that as a district the general education classroom provides a 90-minute reading block through a combination of Reading Wonders and ECRI which the resource room provides 45 minutes of reading instruction daily as an intervention based on the current IEP through Reading Mastery. The team will continue to look at DIBELS, I-Ready [sic], classroom and resource room data to lead their IEP discussion about if the IEP minutes need to be adjusted based on your child's data. The team can also look at what accommodations are being successful in helping your daughter access her education. In addition, as an IEP team we can look at if the reading intervention is being delivered at the best time of the day or should this be adjusted to pre-teach a reading skill so that your daughter can be more successful in her general education class or should it be delivered as a review to reinforce the skill taught in her general education class.

P21p3 (punctuation or lack of in original).

75. On April 1, 2022, Ms. Truitt emailed the Parents 116 pages of the Student's second grade work samples, including iReady and DIBELS data. P28; P29; T552.

76. At this point, the Parents felt extremely frustrated with Ms. Truitt, and decided to request a meeting with the District Superintendent. They chose to bypass John Yellowless, Ms. Truitt's direct supervisor, because he had been copied on all of the email correspondence with Ms. Truitt and had not intervened or assisted with ensuring timelier responses. T66-67. The Superintendent declined to meet with the Parents, but offered a meeting with Mr. Yellowlees instead. T67.

77. Ultimately, the Parents met with Mr. Yellowlees and John Hellwich, Assistant Superintendent of Elementary Schools on May 2, 2022. T67; T764.

78. On May 4, 2022, the Parents sent a follow-up email to Mr. Yellowlees and Mr. Hellwich, thanking them for the meeting and outlining follow-up action items and questions from the Parents. P23p2. The Parents indicated that they were looking forward to receiving a draft IEP, as it had been over 40 days since the March 23, 2022 IEP meeting, and a list of all District-approved curricula for elementary level reading, writing, spelling, and grammar. The Parents also thanked Mr. Yellowlees for removing Ms. Truitt from the Student's IEP team and asked him to confirm who the new point person would be. P23p2.

79. After the meeting, Mr. Yellowlees provided the Parents with access to information about ECRI and arranged a meeting between the Mother and District staff to review the ECRI program. P23p2.

80. Mr. Yellowlees responded to the Parents email on May 5, 2022, noting that Mr. Fukuji was the Student's IEP case manager and the point person on the IEP team. Mr. Yellowlees had contacted Mr. Fukuji and asked him to develop a draft IEP, schedule another IEP meeting, and provide the Parents with a draft at least one week before the meeting. P23p1.

81. Mr. Yellowlees also provided the Parents with a list of District-approved curriculum. P23p1; P23p4-5. Mr. Yellowlees and the District's reading specialist developed the curriculum list after meeting with the Parents. T765.

82. Although it was a District-approved curriculum at the time, Seeing Stars was not on the list of approved curricula provided by Mr. Yellowlees. P23; T617.

83. In his email to the Parents, Mr. Yellowlees noted, however, that "for special education purposes and as defined in the IDEA and the special education Washington Administrative Code, special education (specially designed instruction) is not always a packaged program/curriculum (depending on the individual needs of the student) and is rather defined as 'adapting, as appropriate to the needs of an eligible student, the

content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability.” P23p1.

### ***Dyslexia Diagnosis***

84. On April 2, 2022, the Student was evaluated by Dr. Maureen Turner, Psy.D., a licensed psychologist in Washington State. P2p1; P2p18. Dr. Turner completed her report on June 3, 2022. P2p1.

85. The Parents sought out Dr. Turner for a diagnostic evaluation for the Student to understand cognitive factors that may have been contributing to the Student’s challenges with reading and writing. P2p1.

86. The Parents also felt like the District was not taking their concerns seriously, and they believed that if the Student had a formal diagnosis, it might help in conveying their concerns more effectively to the District. T122.

87. Dr. Turner interviewed the Parents and reviewed the Student’s educational records, including the June 2021 District evaluation and DIBELS results from first grade. P2p2. Dr. Turner noted the results of the District’s cognitive and achievement assessments in her report. P2p1.

88. Dr. Turner administered a battery of assessments to the Student, including the Vanderbilt Assessment Scales (Parent and Teacher), Behavior Rating Inventory of Executive Function Second Edition (BRIEF-2), Process Assessment of the Learner – Second Edition (PAL-II): Diagnostic Assessment for Reading and Writing, and the Behavior Assessment System for Children – Third Edition (BASC-3). P2p3.

89. In the Summary and Impressions section of her report, Dr. Turner noted that “previous testing revealed overall average cognitive abilities,” and that the Student “evidenced a personal strength in verbal comprehension which placed in the superior range. This suggests superior facility acquiring vocabulary, expressing ideas, and comparing verbal concepts. Her capacity to recognize logical patterns, integrate parts into whole images and mentally manipulate visual spatial information placed in the average to high average range.” P2p10

90. Dr. Turner noted that “measures of specific abilities underlying reading revealed areas of weakness that contribute to the learning difficulties that [Student] is experiencing.” The Student demonstrated below average phonological awareness “which evidenced itself in decreased accuracy and fluency in a pseudoword and real word decoding task.” Dr. Turner also noted that measures “of orthographic coding suggests that [Student] has significant deficits in this area.” P2p10.



91. Dr. Turner noted in her report:

Student evidenced weaknesses in many cognitive abilities contributing to the process of reading, which results in her decreased accuracy, fluency, spelling, and comprehension. This is consistent with previous testing which identified significant discrepancies between [Student's] overall abilities and achievement levels. The degree of impairment is even more notable when comparing language tasks in general [Student] has superior verbal reasoning abilities (receptive and expressive language) but below average reading (receptive written language) and writing (expressive written language). This suggests that despite a greater facilitate [sic] than her peers in understanding, organizing, and expressing language, [Student] evidences differences in processing that undermine her ability to translate her strengths into text. These deficits are consistent with the diagnostic criteria of a specific learning disorder with impairment in reading (DSM-5 315.00; ICD-10 F81.0), with a specific pattern of deficits more commonly referred to as *Dyslexia*.

P2p11.

92. Dr. Turner also noted that the “severity of [Student's] spelling deficits and the substantial impact on her written expression is consistent with the diagnostic criteria of a specific learning disorder with Impairment [sic] in written expression (DSM-5 315.2; ICD-10 F81.81), with a specific pattern of deficits more commonly referred to as *Dysgraphia*.” P2p11.

93. Dr. Turner recommended that “all interventions, modifications, and accommodation strategies...should be utilized in all settings, including general education classrooms across subjects, during interventions, as well as while working with specialists.” Dr. Turner noted that “[i]n particular, it will be important to utilize the same interventions for reading and spelling instruction across settings to reinforce strategies and avoid confusion. Reading and writing related techniques and strategies should be used consistently to ensure meaningful educational progress.” P2p12.

94. Dr. Turner also opined:

Given [Student's] processing differences she will need an evidence-based intervention program designed for individuals with dyslexia. In determining the appropriateness for children with dyslexia, it is important that there is peer reviewed independent research showing its efficacy with children identified as dyslexic. Training and adherence to program components with fidelity is integral to achieving similar levels of efficacy as those evidenced in the research supporting each program. Evidence-based interventions rely heavily on a structured literacy learning approach. Examples include Orton-Gillingham, Barton Reading and Spelling System, Read Naturally, and Wilson Reading

System. Components of an effective structured literacy program include systematic and direct instruction in (1) phonology (developing phonemic awareness through segmenting, blending, and rhyming), (2) sound-symbol association (direct teaching on phonics explicitly and systematically), (3) syllable instruction (teaching the six basic syllable types), (4) morphology (teaching base words, roots, prefixes, and suffixes), (5) syntax (grammar and mechanics of language), and (6) semantics (to promote comprehension).

P2p12.

95. Dr. Turner also recommended a multitude of school-based accommodations, see P2p12-17, home-based accommodations, and resources for the Parents. P12p17-18.

96. Dr. Turner completed her report on June 3, 2022. The Parents provided Dr. Turner's report to the District on June 10, 2022. P25.

97. The Parents paid \$2,000.00 for Dr. Turner's evaluation, feedback session with the Parents, and report. P27p2-3. The Parents' insurance did not cover any of Dr. Turner's evaluation and report because it was for educational and not medical purposes. T702.

### ***Structured Literacy***

98. Both Dr. Turner and Ms. Parker from HOLS opined that the Student requires an evidence-based intervention designed for students with dyslexia to be able to access her education. P2p12; P1p16.

99. Evidence-based interventions for students with dyslexia rely on the structured literacy learning approach. Structured literacy programs must also address a student's language needs through explicit, direct instruction in the areas of phoneme awareness, phoneme-grapheme correspondence, orthography, morphology, syntax, and semantics. P5p16.

100. Structured literacy programs follow a specific scope and sequence to gradually teach skills. They must cover the five general parts of reading which are phonemic awareness, phonics, fluency, vocabulary, and comprehension. P5p16.

101. Structured literacy programs for students with dyslexia must also be multisensory, meaning the instruction is interactive and relies on a student using multiple modes of learning through hands-on instruction. Students are also given repeated practice to learn skills and teachers use controlled, decodable text to enhance a student's skills. P5p16.

102. Fidelity means that a program is implemented as it is intended to be implemented. T373.

103. Dyslexia interventions must be evidence-based as effective for students with dyslexia, and they must also be implemented with fidelity and consistency. According to Dr. Melissa Grabner-Hagen, who consulted with the Parents on the Student's case:

The provision of multiple methodologies throughout the day without clear coordination and structure...can result in confusion for a student and be detrimental for a student with dyslexia. According to the literature on reading intervention, students should be getting planned, structured "double doses," or even "triple doses," of interventions. This means that any instruction through multiple interventions must be coordinated, structured, and planned based on the student's specific needs.

P5p18.

104. Dr. Grabner-Hagen is a lecturer at Purdue University in the Department of Educational Studies, specifically teaching in the Master's Program in Special Education. P58p1; T367. She has a Ph.D. in Educational Psychology from Indiana University with a cognate in Special Education. P58p1; T366. Her dissertation focused on dyslexia. T368. Dr. Grabner-Hagen also volunteers as a parent advocate for students with disabilities. She frequently attends IEP meetings and works with families to ensure children are receiving appropriate educational programming. T367. Her advocacy focuses on children with dyslexia, ADHD, and autism. T367.

### ***Second Grade Academic Data (2021-2022 School Year)***

105. The District uses iReady and DIBELS as benchmark tests for all students three times per year, in the fall, winter, and spring. T836. The District uses the scores to monitor progress and to assist in determining if students are in need of greater support in reading or math. T837.

106. iReady is a computer-adaptive assessment that students take individually on their Chromebooks. T838. The computer program asks questions to understand a student's baseline. If a student is answering questions correctly, it will increase the difficulty of the questions. If a student is answering questions incorrectly, it will decrease the difficulty of the questions. T835. Questions are different every time a student takes the iReady test. T836.

107. DIBELS is administered to students one-on-one with a teacher or paraeducator. T838.

108. The Student's first iReady reading test during her second-grade school year took place September 21, 2021. She completed the iReady math testing on September 29, 2021. P36p4-5. On the iReady math assessment, the Student's overall score was 389, placing her at a first grade level in math. P36p4.

109. The Student's overall math score increased slightly to 401 (still first grade level) on the January 21, 2022 iReady math assessment. On the April 26, 2022 iReady math assessment, the Student's overall math score was 381, at the kindergarten level. P36.

110. On the September 2021 iReady reading assessment, the Student's overall reading score was 412, which placed her at a kindergarten reading level. All of her subtest scores were either one or two grade levels below second grade as follows:

1. Phonological awareness – 428 (first grade)
2. Phonics – 387 (kindergarten)
3. High frequency words – 389 (kindergarten)
4. Vocabulary – 457 (first grade)
5. Comprehension: Literature – 387 (kindergarten)
6. Comprehension: Informational Text – 427 (first grade)

P36p5.

111. On the January 20, 2022 iReady reading assessment, the Student's overall reading score was 411, which placed her at a kindergarten reading level. All of her subtest scores were either one or two grade levels below second grade as follows:

7. Phonological awareness – 384 (kindergarten)
8. Phonics – 366 (kindergarten)
9. High frequency words – 374 (kindergarten)
10. Vocabulary – 450 (first grade)
11. Comprehension: Literature – 463 (first grade)
12. Comprehension: Informational Text – 443 (first grade)

P36p5.

112. On the April 21, 2022 iReady reading assessment, the Student's overall reading score was 414, which placed her at a kindergarten reading level. All of her subtest scores were either one or two grade levels below second grade as follows:

13. Phonological awareness – 428 (first grade)
14. Phonics – 398 (kindergarten)
15. High frequency words – 402 (kindergarten)

- 16. Vocabulary – 449 (first grade)
- 17. Comprehension: Literature – 410 (kindergarten)
- 18. Comprehension: Informational Text – 396 (first grade)

P36p6.

113. For the DIBELS assessment, the District uses two of the subtests as benchmark tools, Nonsense Word Fluency (NWF) and Oral Reading Fluency (ORF). T836. Within NWF there are scores for Correct Letter Sounds (CLS) (measures basic phonics skills) and Words Recoded Correctly (WRC) (measures basic phonics skills and blending skills). Within ORF there are scores for Words Correct (WC) (measures the ability to read accurately and automatically) and Accuracy (the percent of words that a student read correctly). P28p39-40.

114. During the second grade, all of the Student's DIBELS scores were in the "well below goal range." Based on the winter or mid-year testing for the 2021-2022 school year, she was in the 17th percentile for NWF-CLS, the 18th percentile for NWF-WRC, the 8th percentile for ORF-WC, and the 6th percentile for ORF- Accuracy. P28p39-40.

115. Although her raw scores increased slightly on each of the three DIBELS assessments, her scores remained within the "well below goal" range. P28p39-40; P36.

116. Despite the Student scoring in the "well below goal" range on all her DIBELS assessments, which is also noted as "consider adjusting intervention" on the scoring sheets, Dr. McCutcheon's review of the Student's progress monitoring data led her to believe that the Student was making "very good progress", which aligns with Dr. McCutcheon's view that students in need of special education services "make slow progress." T433; T461; P28p39-40; P36; P33p2.

### ***June 2022 IEP***

117. On May 10, 2022, Mr. Fukuji emailed the Parents to schedule another IEP meeting to review a new IEP for the Student. Mr. Fukuji suggested meeting the week of May 30, 2022. P24p8.

118. After multiple emails between Mr. Fukuji and the Parents, the meeting was scheduled for May 31, 2022. On May 25, 2022, the Parents emailed Mr. Yellowlees, Dr. McCutcheon, and Mr. Fukuji because they had not received a draft IEP. The Parents informed the District that they had hired legal counsel who would be present at the IEP meeting. P24p3.

119. Ultimately, the IEP meeting was scheduled for June 13, 2022 by zoom video conference. P24p1.

120. On June 10, 2022, Parents' attorney emailed counsel for the District with a list of questions, Parents' requests for the IEP, and topics for discussion at the IEP meeting. The Parents' attorney included Dr. Turner's report as an attachment and asked that the email and attachment be shared with the IEP team. P25. The Parent's attorney also included a list of questions, Parents' requests for the IEP, and topics for discussion at the IEP meeting. The Parents' attorney's email requested the following:

1. The IEP reflect that the Student had been diagnosed with dyslexia and dysgraphia and that outside evaluations indicated deficits in working memory, phonological awareness, phonological processing, and orthographic processing.
2. Additional information regarding the "particular evidence-based intervention that will be used for [Student] including whether it addresses all components of reading." Parents requested that the HOLS and Dr. Turner recommendations for an evidence-based, structured literacy program for students with dyslexia be reflected in the IEP.
3. Additional information regarding the special education setting for SDI delivery for both reading and communication, including information on who will deliver SDI, how many students are in the class with the Student, and do the other students have similar needs.
4. Present levels of academic and functional performance for writing, and a written expression goal.
5. Quarterly benchmark monitoring for IEP goals.
6. Additional information regarding how IEP goals will be assessed by data collection and teacher-made assessments. Parents also requested that specific grade levels be included in goals.
7. Greater access to assistive technology and accommodations to allow the Student to work with her strengths.
8. Addition of a reading comprehension goal. Additional information about the distinction between goals two and three on the draft IEP, and that reading goals be broken into sub-categories based on the area of reading being targeted.

9. Include test results in the section “Team Considerations – Testing.”

10. Inclusion of the following accommodations in the IEP:

- a. Allow use of audio books;
- b. Pen reader;
- c. Additional time for tests, quizzes, work, projects, and lessons;
- d. Allow speech-to-text for written responses;
- e. No peer editing or grading unless Student allows it;
- f. Only call on Student when she has her hand up;
- g. Have instructions, questions, and other daily work read aloud by the teacher;
- h. Provide a quiet and distraction free environment for tests, quizzes, and direct instruction;
- i. Careful consideration of when SDI is provided in order to minimize drawing attention to the Student being pulled out for services;
- j. Present substitute or specialist teachers with a short list of key information about the Student’s accommodations;
- k. Allow math grade to account for problems solving approach and not just the correct answer being produced.

P25p1-2.

121. The email was either not shared with the District members of the IEP team, or the team did not read the email in advance of the meeting, which was noted in the PWN for the IEP. D6p19. The Parents felt like the District members of the IEP team had no idea what the Parents were asking for or what their concerns were for the Student. T71.

122. The Parents, their counsel, counsel for the District, Mr. Fukuji, Ms. Bigger, and Mr. Yellowlees were present at the June 13, 2022 IEP meeting. The Parents were also consulting with Dr. Grabner-Hagen, who was present at the meeting. D6p23.

123. Prior to attending the June 13, 2022 IEP meeting, Dr. Grabner-Hagen reviewed the Student’s current IEP, the HOLS report, Dr. Turner’s report, and email communication between the District and the Parents. T369.

124. Based on her review of the Student’s June 2021 IEP, Dr. Grabner-Hagen believed that the District was not providing targeted instruction to address the Student’s dyslexia as outlined by HOLS and Dr. Turner. T370.

125. Dr. Grabner-Hagen recalled that the Parents were asking for more specifics about the Student’s reading program, and the District was not able to provide specific information. T370.

126. At the June 13, 2022 IEP meeting, the Parents expressed concern about the Student's writing and math abilities and asked if a written expression and math goal could be added to the IEP. Ms. Bigger also expressed concern about the Student's writing and math. The District responded that it would need to do a comprehensive reevaluation to assess the Student's eligibility for services in writing and math. T70.

127. At the end of the meeting, the Parents felt discouraged because there was no sense of urgency from the District to address the Student's needs and lack of progress in reading during second grade. T71.

128. The Parents also did not have a clear sense of how the Student's SDI in reading was being delivered. T74.

129. The Parents also felt discouraged when they were told that the reevaluation would have to wait until school started again in September 2022. T73.

130. After the IEP meeting, the District agreed to make revisions based on the Parents' input. Mr. Fukuji emailed the revised draft IEP to the Parents. On June 27, 2022, the Parents' attorney emailed the District's attorney noting that the IEP did not address the Parent's fundamental concern, that the District's reading intervention was not an evidence-based intervention designed for students with dyslexia. The Parents again requested that the District implement Barton with the Student. The email also stated: "Please be advised that Parents will also consider other evidence-based interventions designed for students with dyslexia but the District to date has not proposed any such intervention." P25p1.

131. In the Team Considerations section of the June 2022 IEP, the District wrote: "[Parents] requested that the IEP include documentation of reports written by Hands on Learning and Dr. Turner indicating that [Student] has been identified as a student with Dyslexia, Dysgraphia and corresponding deficits in working memory, phonological awareness, phonological processing and orthographic processing." D6p7.

132. Other than this paragraph, there is no discussion of the findings of the HOLS or Dr. Turner assessments or their recommendations. D6.

133. The Student's iReady results from second grade were also noted, although they do not appear to be complete. D6p7.

134. The Present Levels of Performance and Measurable Annual Goals section of the June 2022 IEP noted that the Student could consistently read 74 of the first 200 high frequency words. Her goal from the prior IEP was to be able to read 100 of the first 200 Fry high frequency words. D6p9-10.



135. The Student's second goal from the June 2021 IEP was "when given a passage to read [Student] will be able to identify initial, medial, and final phonemes in various structured activities improving knowledge of phonics from reading with 69% accuracy to reading with 90% accuracy as measured by data collected by school personnel. D6p10.

136. As of June 2022, the Student's ability had regressed to being able to identify initial, medial, and final phonemes with 62% accuracy. D6p10.

137. Due to the Student not meeting her goals, and regressing in certain areas, the District proposed to change the Student's goals to "meet [the Student] at her level." D6p10.

138. The Student's new reading goals were as follows:

1. By 6/19/2023, when given 20 vowel digraphs [Student] will be able to state the sounds of the digraphs improving decoding skills from 4/20 or 20% of the digraphs. [sic] to 20/20 or 100% as measured by data collection and teacher made assessments.
2. By 6/19/2023, when given the DIBELS 1st grade reading fluency assessment [Student] will be able to read 100 correct words per minute with 90% accuracy improving ability to read fluently from [Student] is able to read 36 correct words per minute with 82% accuracy. [sic] to 100 correct words per minute with 90% accuracy. [sic] as measured by data collection.
3. By 6/19/2023, when given The [sic] second grade Dibels [sic] MAZE [Student] will be able to answer comprehension questions improving her ability to understand what she reads from 16% accuracy to 80% accuracy as measured by the Dibels [sic] MAZE assessment.

D6p10-11.

139. All of the Parents proposed accommodations from the June 10, 2022 email to the District's counsel were incorporated into the June 2022 IEP. D6p13-14. See Finding of Fact 120 *supra*.

140. The June 2022 IEP continued with the same frequency and duration of SDI in reading (45 minutes per day, five days per week). The Student continued to receive SDI in communication for speech articulation for 30 minutes, three times per month. D6p16.

141. The PWN for the June 13, 2022 IEP does not mention the Parents' request for Barton or other evidence-based structured literacy program for students with dyslexia. The PWN does not contain any response to the Parents' requests or discussion of alternative interventions that the District considered in light of the Student's lack of progress toward the goals set forth in the June 2021 IEP. D6p19.

142. At the time of the June 13, 2022, IEP meeting, the District had already purchased additional kits of Seeing Stars and spots for 12 people to be trained in using Seeing Stars. P57.

### ***OSPI Community Complaint***

143. The Mother continued to tutor the Student at home during the summer using Barton. The Mother felt that given her advocacy and work with the Student, the Student would eventually be able to read. However, both Parents were upset with the way that the District had handled the Student's case during her second-grade year and were worried that other students and families with fewer resources might be struggling and not have the capacity to address the situation with the District. T74-75.

144. The Parents ultimately filed a community complaint with the Office of Superintendent of Public Instruction (OSPI) on July 11, 2022. In the community complaint, the Parents proposed three solutions to the District's alleged violation of RCW 28A.320.260, which requires school districts in Washington provide evidence-based, structured literacy interventions to students who show "indications of below grade level literacy development or indications, or areas of weakness, associated with dyslexia." RCW 28A.320.260; P3p4.

145. The Parents proposed the following solutions:

1. Issue a finding that the District has failed to implement evidence-based multisensory structured literacy interventions for students including [Student];
2. Order the District, via third-party expert on dyslexia and reading interventions, to conduct a district-wide assessment of its approach to dyslexia interventions and issue a public report of findings and recommendations; and/or
3. Order the District to implement evidence-based multisensory structured literacy interventions at all grade levels and ensure that teachers who provide instruction are trained in the instructional methods specifically targeting students' areas of weakness.

P3p9.

146. Following a proposed amendment of the community complaint by the Parents, OSPI ordered the District to submit a written response to two issues:

1. Did the District consider Parent input and the requirement that services be based on peer-reviewed research to the extent practicable per WAC 392-172A-03090(1)(d) in developing an individualized education program (IEP) that met Student's unique needs during the 2021-22 school year?
2. Did the District review and revise the Student's IEP to address any unexpected lack of progress toward the annual goals during the 2021-22 school year?

P4p1.

147. The District filed its response to the community complaint on July 9, 2022. P4p1. In its response, the District stated that Reading Mastery and ECRI are evidence-based direct instruction programs. P4p6.

148. On August 12, 2022, the Parents filed a reply to the District's response. P5p1.

149. Dr. Grabner-Hagen consulted with the Parents on the reply and provided a declaration regarding (a) her opinion on whether the District's dyslexia interventions are evidence-based and/or supported by peer-reviewed research; (b) whether the District's implementation of its dyslexia interventions as described in its response to the community complaint has been with fidelity; and (c) to assess the Student's progress toward her IEP goals using the District's curricula. P5p12-13.

150. Prior to providing her opinion, Dr. Grabner-Hagen reviewed the community complaint, the District's response, including all attachments, the Student's two most recent IEPs and progress reports, Dr. Turner's evaluation, and the HOLS assessment. Dr. Grabner-Hagen also had multiple discussions with the Parents regarding the Student's unique needs. P5p12.

151. Dr. Grabner-Hagen also reviewed information provided by the District about the reading curricula used for the Student (Reading Wonders, Reading Mastery, and ECRI). She searched the What Works Clearinghouse for information on the District's curricula, and she searched for peer-reviewed journal articles regarding the District's curricula. T374.

152. Based on Dr. Grabner-Hagen's review of the District's reading curricula (Reading Wonders, Reading Mastery, and ECRI), she determined that none of the curricula are evidence-based, structured literacy programs for students with dyslexia. Regarding Reading Mastery, the curriculum used for the Student's SDI, she noted that

there was not “any clear indication that it was specifically for someone with dyslexia or even a reading-based learning disability.” P5p16; T373.

153. A 2021 review of Reading Wonders, the District’s core reading curriculum for all students, by an independent nonprofit, found that Reading Wonders was lacking in some fundamental areas of reading such as fluency and phonemic awareness. P5p17.

154. In her declaration, Dr. Grabner-Hagen also expressed her concern regarding the fidelity of the interventions that were delivered to the Student. P5p18. Dr. Grabner-Hagen opined that the District had not delivered ECRI, Reading Wonders, or Reading Mastery with fidelity. P5p20.

155. Dr. Grabner-Hagen noted:

It is my understanding that the District believes the Student was making progress toward her IEP goals in the Fall of 2021 and therefore concludes its interventions were adequate to ensure meaningful educational progress. I have reviewed [Student’s] relevant IEPs and progress reports as well as the independent evaluation done by Hands on Learning and disagree with the District. Additionally, [Student’s] goals are not based on a systematic, structured literacy program and are, therefore, of limited utility in rating her actual progress. The data the District shared about [Student’s] progress is not data from explicit, systematic, or cumulative instruction, which is what she needs...While the District may test regularly, curriculum based measures for progress monitoring have not been provided on [Student’s] phonological and phonemic awareness, phonics and word recognition, automatic, fluent reading of text, vocabulary, listening and reading comprehension. This data is important because it is meant to regularly inform [Student’s] intensive instruction. For the IEP ending in June 2022, [Student] did not meet either of her two below-grade level reading goals. Regardless of any progress she may have made, it is clear [Student] is not meeting her goals.

P5p21.

156. On September 8, 2022, OSPI issued its decision regarding its investigation into the Parents’ community complaint. P6p14.

157. Noting that the Student’s progress report for goals from her June 2021 IEP indicated that she did not meet her first reading goal and that she had regressed from her baseline on the second reading goal, OSPI concluded:

Based on the lack of progress in decoding during the first and second [progress reporting] periods, the District should have conducted an IEP meeting to address the unexpected lack of progress sooner than the March 2022 IEP

meeting. Additionally, the Student's IEP team should have addressed the Parent's [sic] December 2021 request for the Barton program and considered other interventions to address the Student's regression and growth during the third [progress reporting] in light of the Parents' tutoring, and provide a prior written notice documenting the decision. Based on the failure to timely meet and address the lack of progress and hold an IEP meeting to address the Parents [sic] reading program request, a violation is found. The District is required to convene the IEP team to consider Parents' requests and provide training to staff regarding the requirement to review and revise the IEP to address a lack of progress.

P6p12.

158. OSPI ordered the District to hold an IEP meeting no later than September 30, 2022, to "review the Student's progress and determine if the Student's IEP is reasonably calculated to provide the Student meaningful benefit in reading, taking into account the Student's rate of progress in light of the Parents' tutoring and the Student's absences." P6p13.

159. OSPI also ordered the District to provide OSPI with a copy of the meeting notice, IEP, prior written notice, and meeting minutes by October 7, 2022. P6p13.

160. The District was also required to work with a non-District employee to develop and conduct a training on (1) the requirement to convene a student's IEP team if a student is not making expected progress toward annual goals and the general education curriculum, and (2) the requirement to consider parents' input and suggestions and provide prior written notice. OSPI required the following to attend the training: District special education administrators and psychologists as well as the Swiftwater principal, assistant principal, and special education teachers. The District was required to complete the training and submit documentation that required staff participated by October 28, 2022. P6p13.

161. The District received a letter from OSPI in December 2022 or January 2023 stating that the District had complied with the required corrective actions and that the case was closed. T833-34.

### ***2022-2023 School Year (Third Grade)***

162. The Student entered third grade at Swiftwater in September 2022. The Student's general education teacher was Shauna Coxford and her special education teacher was Magdalene (Maggie) Kamke. T670; T481.

163. Mr. Fukuji and Ms. Kamke did not speak about the Student before she transitioned to working with Ms. Kamke. T495. Prior to working with the Student, Ms. Kamke read the Student' IEP to familiarize herself with the Student's case. T495.

164. Ms. Kamke did not use Reading Mastery with the Student. She used a variety of resources that she found on various websites such as Teacher Pay Teacher, Education to the Core, and Reading A-Z. Ms. Kamke was allowed by the District to use resources that she found on the internet with her students. T485-86.

165. On September 12, 2022, the Parent's attorney sent a letter to the District's attorney to outline expectations for an IEP meeting that was scheduled for September 27, 2022. P26

166. The Parents' attorney's letter noted that, to date, the District had not issued a PWN regarding the Parents' request for Barton or other Orton-Gillingham influenced curriculum. P26p1. The letter also outlined the Student's lack of progress and regression in some areas as measured by her iReady scores. P26p2.

167. The letter also responded to what the Parents understood the District to be claiming as the Student's "chronic absenteeism" impacting her educational progress. The letter noted that the Student missed six days of school for family activities, and the remaining 10 day were due to the District's COVID-19 policies. P26p3. The Student or her family had COVID two times during the 2021-22 school year which required the Student to miss five days of school each time. However, the Mother consistently called or emailed teachers to pick up assignments for the Student to ensure that she was completing her work. The Mother also continued her tutoring in Barton while the family was required to quarantine. T82-83.

168. On September 27, 2022, the IEP team met to review the Student's June 2022 IEP and the Student's progress in accordance with OSPI's Order. T79-80.

169. Before the meeting, the Parents received a new draft IEP from the District with new goals and information about the Student's absences during the 2021-22 school year. T80.

170. The September 27, 2022 IEP meeting only lasted about 20 minutes because the District was not prepared and asked to reschedule. T81. The meeting was rescheduled for October 11, 2022. P61p1; T82.

171. At the October 11, 2022 meeting, the Mother was upset that the Student's absences were noted in the draft IEP as a basis for her lack of progress. T82. The IEP

team discussed this issue and agreed that the Student's absences did not impact or cause the Student's lack of progress. P61p3; T83.

172. The Parents again requested Barton and raised concerns about the District's reading curriculum not being evidence-based for students with dyslexia. Despite specifically being ordered by OSPI to convene an IEP meeting to consider the Parents' requests for Barton, the District told the Parents that "the team hears the concerns, but today is not the place to decide on Barton." P61p3; P6p12.

173. The IEP team agreed that the next steps would be to meet again to review and discuss the Student's reevaluation results. P61p3.

### ***October 2022 Re-evaluation***

174. At the beginning of third grade (2022-2023 school year), the District conducted an early reevaluation of the Student due to concerns regarding her math and writing skills (in addition to ongoing concerns regarding her reading). The evaluation was conducted to determine whether she continued to require special education and related services, her present levels of performance and educational needs, and whether any modifications to the Student's IEP were needed. D9p1.

175. Sami Ewing, the school psychologist at Swiftwater, conducted the reevaluation, on September 16, 2022. D9p1.

176. Ms. Ewing did not complete cognitive testing, but, rather, used the Student's scores on the WISC-V from May 2021, when the Student' was initially found eligible for special education under the category of Specific Learning Disability. D9p6.

### **Math**

177. Ms. Ewing reviewed the Student's iReady math data from the 2021-2022 school year, noting that she earned overall scores of 389 (Grade 1), 401 (Grade 1), and 381 (kindergarten). The Student's iReady math overall score from September 19, 2022 was 368 (kindergarten). D9p7.

178. Ms. Ewing also administered the Kaufman Test of Educational Achievement – Third Edition (KTEA-3). The Student's math skills were in the low average to average range as follows:

- MATH COMPOSITE SS = 90, 25%ile, Average
- \*Math Concepts and Applications SS = 98, 45%ile, Average
- \*Math Computation SS = 85, 16%ile, Average
- \*Math Fluency SS = 87, 19%ile, Average

D9p7.

## Reading and Written Expression

179. Ms. Ewing also administered the KTEA-3 for reading and written expression. The Student's scores were as follows:

READING COMPOSITE SS = 72, 3%ile, Below Average  
\*Letter & Word Recognition SS = 66, 1%ile, Low  
\*Reading Comprehension SS = 81, 10%ile, Below Average

DECODING COMPOSITE SS = 74, 4%ile, Below Average  
\*Letter & Word Recognition SS = 66, 1%ile, Low

\*Nonsense Word Decoding SS = 85, 16%ile, Average

READING FLUENCY COMPOSITE SS = 76, 5%ile, Below Average  
\*Silent Reading Fluency SS = 76, 5%ile, Below Average  
\*Word Recognition Fluency SS = 76, 5%ile, Below Average  
\*Decoding Fluency SS = 83, 13%ile, Below Average

READING UNDERSTANDING COMPOSITE SS = 80, 9%ile, Below Average  
\*Reading Comprehension SS = 81, 10%ile, Below Average  
\*Reading Vocabulary SS = 85, 16%ile, Average

WRITTEN LANGUAGE COMPOSITE SS = 83, 13%ile, Below Average  
\*Written Expression SS = 89, 23%ile, Average  
\*Spelling SS = 77, 6%ile, Below Average

D9p8-9.

180. The reevaluation team met to consider the results of the reevaluation on October 13, 2022. D9p18.

181. The team considered adding SDI in math, but rejected this option, noting that the Student's "performance on standardized assessments of her math skills fell within the average range for her age and she is not demonstrating a need for specially designed instruction at this time. [Student] is able to participate in math interventions within general education as needed." D9p18.

182. The team found that the Student was eligible for and in need of SDI in reading and writing skills, and that she continued to meet the eligibility criteria under the category of Specific Learning Disability. D9p18.

183. The Parents refused to sign the evaluation report and informed the team that they would submit a dissenting opinion later. D9p18.



**Dr. Cindy Dupuy Dissenting Opinion**

184. Dr. Cindy Dupuy was hired by the Parents to conduct a review of the District’s evaluation and conduct an observation of the Student. T174. Dr. Dupuy ultimately prepared a Dissenting Opinion to the District’s October 13, 2022 reevaluation. T174.

185. Dr. Dupuy has a Bachelor of Science in Chemistry (University of California at Riverside, 1992), a Master of Secondary Education (Western Washington University, 1997), and a Ph.D. in Learning Disabilities (Northwestern University, 2001). P39p1. She holds a Washington State teaching certificate in secondary education with endorsements in Chemistry, Science, and Special Education. P39p2.

186. Dr. Dupuy has completed the necessary coursework to be qualified to administer standardized achievement and intelligence tests, and she has had extensive supervision in the administration, scoring, and interpreting testing data. T137.

187. Dr. Dupuy currently works in private practice conducting diagnostic evaluations for learning disabilities. She also does some interventions with students if they cannot be placed with another clinician due to the severity or unique nature of their learning needs. T137.

188. Dr. Dupuy’s dissenting opinion was provided to the District via email on January 9, 2023. P38p1.

189. In her dissenting opinion, Dr. Dupuy noted that she reviewed the District’s testing protocols and noted that the District’s administration of the WISC-V did not follow standard administration recording procedures. P38p5.

190. The Student’s results on the WISC-V administered by the District in May 2021 are as follows:

Index/Subtest	Standard Score/Scaled Score	Percentile	Description
<b>Verbal Comprehension Index</b>	<b>121</b>	<b>92</b>	<b>Very High</b>
Similarities	13		Very High
Vocabulary	15		Very High
<b>Visual Spatial Index</b>	<b>108</b>	<b>70</b>	<b>Average</b>
Block Design	11		Average
Visual Puzzles	12		Average
<b>Fluid Reasoning Index</b>	<b>106</b>	<b>66</b>	<b>Average</b>
Matrix Reasoning	10		Average
Figure Weights	12		Average
<b>Working Memory Index</b>	<b>94</b>	<b>34</b>	<b>Average</b>
Digit Span	7		Low Average
Picture Span	11		Average
<b>Processing Speed Index</b>	<b>103</b>	<b>58</b>	<b>Average</b>
Coding	9		Average
Symbol Search	12		Average
<b>Full Scale IQ</b>	<b>107</b>	<b>68</b>	<b>Average</b>

D9p6-7.

191. Dr. Dupuy first took issue with the District's use of the Student's Full Scale IQ (FSIQ) noting that the authors of the WISC-V developed a General Ability Index Score (GAI) that can be used when students have significant variability in their performance. P38p5.

192. After conducting the GAI analysis pursuant to the WISC-V protocols, Dr. Dupuy concluded that the difference between the Student's average score of all subtests and her index scores in the areas of Verbal Comprehension and Working Memory were statistically significant. Dr. Dupuy opined, "This analysis indicates that it is relatively rare for an individual to have the magnitude of difference between scores in different domains, calling [the Student's] Full Scale IQ into question as it may not accurately represent her true ability." P38p6.

193. Ultimately, Dr. Dupuy concluded that when the GAI analysis is conducted, the Student's FSIQ is not an accurate estimate of the Student's true intellectual ability. P38p8.

194. Dr. Dupuy then discussed the District's eligibility decision. P38p8. Regarding the KTEA-3 math testing done by the District, Dr. Dupuy noted in her dissenting opinion:

The data is so complex and the number of errors made were so significant, the current data should be invalidated. This is further supported by the iReady data. When asked about the I-Ready [sic] scores, the school psychologist reported that [the Student's] weaker performance was a result of her working too quickly, completing the assessment in a relatively short period of time. While data regarding her time to complete the assessment was provided orally, there was not a document provided to the team to confirm her conclusion.

P38p11.

195. In her dissenting opinion, Dr. Dupuy noted that the District should have used aged-based norms rather than grade-based norms for calculating the Student's math, reading and written expression scores on the KTEA-3. She presented tables showing the recalculation using grade and age-based norms with the criterion discrepancy score for the Student's FSIQ and GAI. P38p10.

196. Whether using grade or age-based norms and whether using the Student's FSIQ or GAI, the Student's achievement scores in reading and written expression fall within the criterion discrepancy score cut off to make the Student eligible for special education in reading and written expression using the severe discrepancy model. P38p11-13. This is consistent with the conclusion of the District's reevaluation that the Student needed SDI in reading and written expression and continued to meet eligibility criteria under the category of Specific Learn Disability. See D9p3.

197. In addition to preparing a dissenting opinion, Dr. Dupuy also observed the Student at school during her SDI. The Parents wanted Dr. Dupuy to observe the Student receiving her SDI because the Parents felt that they never received answers about what the District was offering the Student for her reading SDI. T85-86.

198. Before conducting her observation of the Student, Dr. Dupuy reviewed the HOLS and Dr. Turner reports, the June 2022 IEP, and the District's October 2022 reevaluation. On November 2, 2022, Dr. Dupuy met with Dr. McCutcheon before observing the Student. Dr. Dupuy and Dr. McCutcheon discussed the District's choice of Lindamood Bell products as a reading methodology. P37p1. Dr. Dupuy observed the Student in the resource room during a progress monitoring session and her general education classroom. After the observation, the District provided Dr. Dupuy with copies of the Student's progress monitoring worksheets and her work samples from the general education classroom. P37p3.

199. Dr. Dupuy also met with the Student on Zoom on November 6, 2022, and administered the Wilson Assessment of Deciding and Encoding (WADE). P37p8.

200. Based on Dr. Dupuy's observation and review of the Student's work samples, Dr. Dupuy summarized:

Of particular concern is that the District reports using Lindamood Bell Curriculum for their decoding instruction in Special Education. There was no information regarding the application of this program. There were no progress monitoring reports based on the program (which are included as part of the curriculum). I saw no evidence of the Seeing Stars materials being regularly used in the classroom.

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[T]his particular curriculum would be especially helpful to [the Student] given the Orthographic Processing issues that are clearly evident in both her reading and spelling.

\*\*\*

There is enough overlap in structured literacy curriculum that [with] minimal effort the core instruction at school could be re-enforced [sic] at home where the mother is using Barton...There could be an easily agreed upon list of sight words to pull from for [the Student] to drill on throughout the week. The team could simply work down the list, pulling words that have been observed in the curriculum to pick next from the next set of 10 words.

P37p12-13.

201. Dr. Dupuy opined: "Whatever is being used by the district does not appear to be adequate as [the Student] is still missing fundamental concepts." P37p14.

202. Dr. Dupuy opined that the Student would need to work with a highly trained clinician one hour per day, five days per week, for nine months, in order to remediate her weaknesses in reading and written expression. The prevailing hourly rate for an appropriately trained person would be approximately \$200.00. T221-23.

203. The Parents paid Dr. Dupuy \$6,925.00 for her involvement in the case, including records review, writing the dissenting opinion, school observation, testing with the Student, and participating in IEP meeting. P27p4-5. This amount was not covered by the Parents' insurance. T702.

***Dr. David Breiger***

204. The District called Dr. David Breiger to provide an opinion about Dr. Dupuy's review of the Student's October reevaluation and dissenting opinion. Dr. Breiger holds a Ph.D. in developmental and clinical neuropsychology. He has worked as a professor at the University of Washington since 2001 in the Department of Psychiatry and Behavioral Sciences. Prior to that he was an assistant professor at the University of Texas Medical Branch, Division of Child Psychiatry, Division of Pediatric Neurology. P23p1-2.

205. At the University of Washington, he taught courses in Basic Introduction to Assessment and Advanced Assessment for 15 years. T858.

206. Dr. Breiger has experience administering the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V). T860-61.

207. According to Dr. Breiger, in 2019, the developers of the GAI wrote that they do not believe it should be used as a substitute for the FSIQ due to people misusing the GAI. The GAI developers noted that using it could result in overestimating an individual's performance by completely removing one of their subtest scores. T862.

208. Approximately 30 to 40 percent of individuals in the normative sample for the WISC-V have one score that might be below 7, or below the 18th percentile. T862-83. According to Dr. Breiger:

[If there are] several subtests [on the WISC-V] that are...in the impaired range, I would want to know: do I have an explanation that might not be because of what it's measuring? [Someone] can't see well, hear well, [has] motor difficulties. And I might think that maybe the GAI might be another way of...looking at that. But I would not just look for a single low score and use that as a reason to not look at the Full Scale [IQ] as valid because the most reliable measure is the one that has the most data.

T863.

209. Dr. Breiger agreed with Dr. Dupuy that age-based norms should be used in scoring achievement tests used in special education evaluations. T890.

210. Although the undersigned respects Dr. Breiger's opinions based on his significant training and experience, the undersigned gives more weight to Dr. Dupuy's analysis of the District's October 2022 reevaluation due to the fact that Dr. Dupuy, who also has significant training and experience, reviewed the actual testing protocols and communicated with Ms. Ewing regarding her testing methods and Dr. Breiger did not. T881-82. However, the undersigned finds Dr. Breiger's testimony regarding use of the FSIQ rather than the GAI more persuasive because it is based on the most current views of the WISC-V creators.

211. With regard to Dr. Turner's report, Dr. Breiger reviewed that report prior to his testimony. He agreed with Dr. Turner in terms of the domains that are necessary for an effective reading program and also noted that Dr. Turner's recommendations were supported by the National Reading Panel. T901. Dr. Breiger did not dispute Dr. Turner's recommendation that the Student would need an evidence-based intervention designed for individuals with dyslexia in order to learn to read and access her education. T899-900.

### ***December 2022 IEP***

212. After the October reevaluation, the IEP team met on November 3, 2022, and December 8, 2022, to discuss the Student's progress toward previous IEP goals and develop new goals that met the Student's educational needs and were in alignment with the recent evaluation. D10p12.

213. Dr. Dupuy attended the November 3, 2022 meeting to assist with goal writing. Prior to the meeting, she drafted goals based on the Student's work samples and information provided to her by the Parents. T184.

214. The start date for the new IEP was December 13, 2022. D10p3.

215. The Team Considerations section of the IEP noted that the Student was feeling more confident in reading due to the work that she was doing with her Mother using Barton. D10p3.

216. Under Areas of Weakness/Concern, there is a list that appears to be a list of parent concerns:

Areas of Weakness/Concerns:

- Encoding - [REDACTED] needs a written expression goal, but we won't have feedback from Sami Ewing until mid-October.
- We request that [REDACTED] to be allowed to use all assistive technology detailed in her neuropsychologist's report, including the C-Pen.
- We request that all goals to be written for 3rd grade level.
- Quarterly "Report of Student Progress" as initially provided in the IEP draft of 5/31/2022 but was reduced to "Semester" In the revised IEP of 6/20/2022. We request more frequent progress reports.
- "Smarter Balance" in IEP draft provided "Text-to-speech" but it was removed from the updated IEP. Will she be allowed to use text-to-speech for Smarter Balance?
- Unclear what reading support [REDACTED] is receiving. Is she receiving instruction using Reading Mastery? ECRI? Specially Designed Instruction?
- We have concerns regarding reading interventions that are not evidence-based as effective for students with dyslexia particularly considering all of the work she has done in the Barton R&S program. We request to know which reading interventions will be used for [REDACTED] this academic year. We also request to be informed if her reading intervention is changed.
- We know 3rd grade math will be extremely difficult, as memorization of multiplication facts are hard for students with dyslexia.
- Have not received any of the detailed results of 2022 Spring testing - i-Ready, Dibels or otherwise.
- We never received the "Report of Student Progress" for the third trimester of 2021-22 that was to have been provided per the June 2021 IEP.
- Have not been able to obtain information detailing dates, times, staff, programs, and such to establish if [REDACTED] was provided the services were entitled to, per her IEP in the 2021-22 school year, and are concerned this problem could continue into 2022-23.

D10p4.<sup>4</sup>

217. The December 2022 IEP also takes note of the Student's assistive technology devices and services needs. D10p4.

218. The December 2022 IEP makes note of the previous IEP goals and the Student's progress as follows:

**Reading Goal 1:** By 06/19/2023, when given 20 vowel digraphs [REDACTED] will be able to state the sounds of the digraphs improving decoding skills from 4/20 or 20% of the digraphs. to 20/20 or 100% as measured by data collection and teacher made assessments

**Progress:** [REDACTED] was a core phonics assessment on September 22, 2023 [REDACTED] scored as follows:

11/20 on Consonant blends and short vowels missed words: street, trap, slip, blink, trip, drink, post, must, flag

2/20 on Sight words with common suffixes (ing, ed,er, s). She was able to correctly read rats and bigger

4/16 on Silent e and long vowel sounds. She was able to correctly read like, role, hope, home, mole

0/24 on Vowel Diphthongs (ai, ay, ou, ow, oy, oi).

2/16 on R-controlled vowels. In this section she was able to correctly sound out surf, burp, hurt, curb but had trouble blending them together and accurately read girl and perm

6/28 on vowel teams (ea, oa, ee, ee, au, ue oo, aw). She was able to correctly read tree, cook, wood, hoof, pool and hawk

**Reading Goal 2:** By 06/19/2023, when given the DIBELS 1st grade reading fluency assessment [REDACTED] will [REDACTED] will be able to read 100 correct words per minute with 90% accuracy improving ability to read fluently from [REDACTED] is able to read 36 correct words per minute with 82% accuracy. to 100 correct words per minute with 90% accuracy. as measured by data collection

**Progress:** On 9/19/2022 [REDACTED] was given the DIBELS reading fluency assessment at the first grade level. [REDACTED] read 38 correct words with with a 4% accuracy. Errors were as follows:

Missed words: I, empty, then, I, scrub, everything, until, then, done, tell

Substituted words: sweeping for sweep, the for and, every for everybody

**Reading Goal 3:** By 06/19/2023, when given The second grade Dibels MAZE [REDACTED] will be able to answer comprehension questions improving her ability to understand what she reads from 16% accuracy to 80% accuracy as measured by Dibels Maze assessment.

**Progress:** On September 22, 2022 [REDACTED] was given the DIBELS MAZE assessment. at the 3rd grade level. [REDACTED] score was 21/51. She was able to correctly identify the 21 correct words to complete the sentence.

D10p7-8.

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<sup>4</sup> The blacked out areas from D10 are redactions of the Student's name.

219. The December 2022 IEP also notes the Student's present levels of performance on her most recent iReady reading and DIBELS assessments.

**I-Ready**

Reading (9/12/22)  
Overall: 425, Grade 1  
Percentile: 12th  
Phonological Awareness: Tested Out  
Phonics: Grade 1  
High-Frequency Words: Tested Out  
Vocabulary: Grade 1  
Comprehension: Literature: Grade K  
Comprehension: Informational Text: Grade K

█ also took this measure three times in 2nd grade where she earned overall scores of 412 (Grade K), 411 (Grade K), and 414 (Grade K).

**DIBELS**

█ was given the DIBELS one minute fluency assessment at the fall benchmarking period. On this assessment student scores reflect words read correctly in one minute (cwpm), as well as accuracy. In the fall of 3rd grade █ read 26 cwpm with 79% accuracy. This is below the 3rd grade fall benchmark score of 73 cwpm with 96+% accuracy.

D10p8.

220. Dr. Dupuy engaged in discussions about how to write goals that would follow the tenets of Structured Literacy, regardless of the curriculum being used. T184.

221. Dr. Dupuy "felt like the team agreed to the goals because the outside consultant came in and said, 'These are the goals you should write.' But I didn't see clear evidence that they knew how to implement the goals that were suggested." T185.

222. The December IEP contained five reading goals and five written expression goals. See D10p9-12

223. Reading SDI remained the same, 45 minutes five times per week. D10p17. The Student's December 2022 IEP also required her to receive 75 minutes per week of writing SDI in the special education setting, to be provided by a special education teacher, and 75 minutes per week of writing SDI to be provided in the general education setting by a special education teacher. D10p17.

224. During the November 3, 2022 IEP meeting, the Parent again requested that the District use Barton or another Orton-Gillingham influenced curriculum across all settings with the Student. T830.

225. Janna Rush, the Director of Special Education, responded that the District had Seeing Stars and that her understanding was that Ms. Kamke's paraeducator was using Seeing Stars with the Student. T830. As of November 3, 2022, Ms. Rush knew that Ms. Kamke was not trained to implement Seeing Stars. T846.

226. The Parents asked Ms. Rush to look into the process for using Seeing Stars with the Student. T830.

227. Ms. Rush did not find out that Ms. Kamke or her paraeducator had not been using Seeing Stars until Ms. Kamke was deposed on March 9, 2023. P60p1; T844.

228. The Parents' requests for Barton and additional information regarding Seeing Stars is not documented in the PWN for the December 2022 IEP. D10p20.

229. After the December 8, 2022 IEP meeting, the Parents understood the IEP to be a draft IEP because they had told the District they would be submitting a dissenting opinion to the October 2022 reevaluation. P20p2. The District's understanding was that the IEP was finalized and gave a copy to the Parents with a PWN and an implementation date of December 16, 2022. P20p2.

230. The Parents filed their Complaint on December 9, 2022. Complaint; P20p2.

### ***January 2023 IEP Amendment***

231. On January 5, 2023, the Parents emailed Ms. Kamke and asked her to add language to what they believed to be a draft IEP. Because, in the District's view, the December 2022 IEP had been finalized, Ms. Kamke opened an IEP Amendment to make the changes requested by the Parent. The IEP Online system shows that there was a meeting on January 12, 2023. This is how the IEP Online system shows the changes made to the IEP. P20p2.

232. The only language that was added in the January 12, 2023 IEP Amendment was a paragraph in the PWN stating:

On January 5, 2023, parents sent an email asking that this wording replace what was included in the December 8, 2022 IEP: Parents have expressed numerous concerns with the district's provision of special education services to [Student] during IEP meetings and as outlined in their Community Complaint to OSPI and in their most recently filed Request for Due Process. Parents are also in the process of finalizing a dissenting opinion with respect to [Student's] most recent evaluation completed by Sami Ewing. These concerns remain outstanding and include whether the district has appropriately evaluated [Student] for special education services, whether the district is providing appropriate evidence-based interventions for [Student], whether [Student] has made meaningful progress, and whether the district has appropriately addressed [Student's] lack of meaningful progress. Parents, however, continue to work with the IEP Team in the hopes of creating an IEP that will provide [Student] with meaningful educational progress as their concerns are concurrently adjudicated through due process.

D12p21.



233. Nothing else in the December 8, 2022 IEP was changed by way of the January 12, 2023 IEP Amendment. D10; D12.

234. After some back and forth emails with the Parents, Ms. Kamke asked Ms. Rush to explain what was happening in the IEP Amendment process, as the Parents believed a meeting took place without them and they were not sure what Ms. Kamke was asking them to sign when she sent them the IEP Amendment. D12p25.

235. After Ms. Rush explained the process to the Parents, the Parents agreed to proceed with the District implementing the January 12, 2023 IEP Amendment. P20p1.

### ***Seeing Stars***

236. The first time Ms. Kamke heard about Seeing Stars was in January 2023 by way of discussion with Dr. McCutcheon. T492.

237. Ms. Kamke was eventually trained to administer the Seeing Stars curriculum to the Student from February 28, 2023 to March 3, 2023. She began implementing the Seeing Stars curriculum on March 6, 2023. T484-85.

238. Ms. Kamke noted that using Seeing Stars with the Student was going well and that she wished she had had access to the program earlier to use with the Student. T493.

### ***Third Grade Academic Data (2022-2023 School Year)***

239. In the third grade, the emphasis changes from learning to read to reading to learn. If a student is having difficulty decoding text, they will not be able to access more challenging curricula. T140-41.

240. The Student continued to take iReady reading and math assessments and DIBELS assessments in the third grade. P36.

241. On the September 19, 2022, iReady math assessment, the Student's overall score was 368, indicating a kindergarten level (two grade levels below). On the January 20, 2023 iReady math assessment, the Student's overall score was 419, indicating a second grade level (one grade level below). P36p1.

242. On the September 12, 2022 iReady reading assessment, the Student's overall reading score was 425, which placed her at a first grade reading level. All of her subtest scores were either two or three grade levels below third grade as follows:

1. Phonological awareness - “tested out”
2. Phonics – 447 (first grade)
3. High frequency words – “tested out”
4. Vocabulary – 458 (first grade)
5. Comprehension: Literature – 401 (kindergarten)
6. Comprehension: Informational Text – 401 (kindergarten)
7. Comprehension Overall – 401 (kindergarten)

P36p2; D8p1.

243. Starting in third grade, the iReady assessment uses the language “tested out” for certain areas, such as phonological awareness and high frequency words. This does not mean that the Student mastered the skill. It means that she was not tested in these areas. T192-93; T852.

244. Although Ms. Rush is aware of this area of confusion regarding the iReady assessment, she has not trained her staff on this issue. T853. Dr. McCutcheon, the Elementary Special Education Coordinator, believed that “tested out” meant that the Student “had made nice progress” and mastered the phonological processing and high frequency word domains. T461; T470-71.

245. On the January 12, 2023 iReady reading assessment, the Student’s overall reading score was 452, which placed her at a first grade reading level. All of her subtest scores were two grade levels below third grade, halfway through the year, as follows:

1. Phonics – 463 (first grade)
2. Vocabulary – 459 (first grade)
3. Comprehension: Literature – 438 (first grade)
4. Comprehension: Informational Text – 453 (first grade)
5. Comprehension Overall – 446 (first grade)

P36p2.

246. Spring 2023 iReady results were not available at the time of the hearing. However, on June 7, 2023, the parties agreed to supplement the record with exhibit D25, the Student’s iReady reading results from April 18, 2023, and iReady math results from April 21, 2023. See Order Extending Due Date for Post-Hearing Briefs.

247. On the April 18, 2023, iReady reading assessment, the Student’s overall reading score was 530, which placed her at an early third grade reading level. Her April 2023 iReady reading scores indicate significant progress from the January 2023 results as follows:

1. Phonics – “tested out”<sup>5</sup>
2. High frequency words – “tested out”
3. Phonological awareness – “tested out”
4. Vocabulary – 559 (mid third grade)
5. Comprehension: Literature – 495 (second grade)
6. Comprehension: Informational Text – 534 (early third grade)

D25p1-6.

248. On the April 21, 2023, iReady math assessment, the Student’s overall math score was 414, which placed her at a second-grade level. D25p8. The Student’s subtest scores were as follows:

1. Number and Operations – 417 (second grade)
2. Algebra and Algebraic Thinking – 432 (second grade)
3. Measurement Data – 422 (second grade)
4. Geometry – 370 (kindergarten)

D25p8-9.

## CONCLUSIONS OF LAW

### ***Jurisdiction and Burden of Proof***

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The Parent is seeking relief and bears the burden of proof in this case. The U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 102 (1981);

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<sup>5</sup> It is unclear if “tested out” for the phonics category means the Student was not tested in this area, or she actually showed significant growth in this area, since she was previously at a first grade level in phonics in January 2023. See Finding of Facts 235;238. Since D25 was submitted after the hearing, the undersigned was not able to ask questions about this, and therefore gives this measure little weight.

*Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep't of Social & Health Services*, 172 Wn.2d 1, 4 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

### ***The IDEA and FAPE***

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." *Rowley*, 458 U.S. at 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent's right to be involved in the development of their child's educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

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

6. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, "[a] focus on the particular child is at the core of the IDEA," and an

IEP must meet a child's unique needs. 580 U.S. at 400. The "essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Id.* at 399. Accordingly, an IEP team is charged with developing a comprehensive plan that is "tailored to the unique needs of a particular child." *Id.* at 401. Additionally, the Student's "educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom." *Id.* at 402.

7. In reviewing an IEP, "the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Id.* at 399 (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

***Whether the District violated the IDEA and denied the Student FAPE by failing to draft an IEP in June 2022 that was reasonably calculated to confer meaningful educational benefit to the Student.***

8. An IEP is a "written document that states the child's present levels of performance, creates measurable annual goals for the child, describes the child's progress toward meeting the annual goals, and explains the services that will be provided to the child to help him advance toward attaining his particular goals." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1111 (9th Cir. 2016).

9. The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry that must focus on the unique needs of the student at issue. "A focus on the particular child is at the core of the IDEA," and an IEP must meet a child's "*unique needs*." *Endrew F.*, 580 U.S. at 400 (emphasis in original). "Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Id.* at 399. (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

10. WAC 392-172A-03110(1) requires an IEP team, in developing an IEP, to consider the student's strengths; the student's most recent evaluation results; the academic, developmental, and functional needs of the student; and the parents' concerns for enhancing the student's education.

11. An IEP must contain "[a] statement of the student's present levels of academic achievement and functional performance," which includes how the student's disability affects their involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a).

12. Additionally, an IEP must contain a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from her disability to enable her to be involved in and make progress in the general education curriculum and meet each of a student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2). There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

13. An IEP must include a description of how the district will measure the student's progress toward meeting the annual goals set forth in the IEP as well as when the district will provide periodic reports on the progress the student is making toward meeting annual goals. WAC 392-172A-03090(1)(c).

14. The IEP must also contain a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d).

15. The educational benefits flowing from an IEP must be determined from the combination of offerings rather than the single components viewed apart from the whole. *See, e.g., Karl v. Bd. of Educ. of Geneseo Cent Sch. Dist.*, 736 F.2d 873, 877 (2<sup>nd</sup> Cir 1984); *Palo Alto Unified Sch. Dist.*, 118 LRP 21969 (CA SEA 2018) (citing *J.M. v. New York City Dep't of Education*, 171 F. Supp. 3d 236, 247-48 (S.D.N.Y. 2016) ("An IEP must be considered as a whole; its individual parts cannot be judged in isolation.")).

16. In the present case, at the core of the Parents' allegations that the District, on multiple occasions, failed to draft an appropriate IEP for the Student, is that the District did not consider or adopt Dr. Turner's undisputed recommendation that the Student required an evidence-based structured literacy program designed for students with dyslexia to access her education.

17. In *Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048 (9th Cir. 2022), the Court held that "a district is not required to use the methodology a parent prefers when providing special education services for a child. School districts are 'entitled to deference in deciding what programming is appropriate as a matter of educational policy.'" *Crofts*, 22 F. 4th at 1056 (citing *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 945 n.5 (9th Cir. 2010)). The Court in *Crofts* went on to state, however, that districts

“need not specify an instructional method *unless that method is necessary to enable a student to receive a FAPE.*” *Id.* at 1057 (emphasis added).

18. In *Rogich v. Clark County Sch. Dist.*, 2021 U.S. Dist. LEXIS 197135 (D.NV 2021) the primary dispute was whether the student’s IEP team was required to include the Orton-Gillingham methodology, or a similar program, in the Student’s IEP. In concluding that it was necessary for the IEP to specify an Orton-Gillingham or similar curriculum, the Court held:

Specifically, in light of the recommendations cited in the evaluations, Defendant failed to consider “the concerns of the parents” by refusing to discuss with them during development of the IEP the types of programming provided by the District that had the capacity to address O.R.’s unique needs. O.R.’s parents had presented compelling professional evidence that was unrefuted or challenged by the District which established that O.R. required a teaching methodology with particular facets.

*Id.* at 18-19.

19. The *Rogich* Court went on to hold: “thus, it is evident from the undisputed evaluations, which stress the importance of ‘methodology’ and the use of ‘research-based learning programs,’ that the IEP team failed to consider the evaluations in any meaningful way.” *Id.* at 21. The Court also noted that during the IEP development process, “the District failed to provide any response to the specific needs of O.R. except to essentially say to the parents – trust us to provide her with what she needs.” *Id.* at 19.

20. The facts in *Rogich* are similar to those in this case, and the undersigned finds the reasoning of the *Rogich* Court persuasive.

21. In this case, Dr. Turner’s undisputed evaluation of the Student indicated that she required an evidence-based intervention designed for individuals with dyslexia. Dr. Turner opined:

Given [Student’s] processing differences she will need an evidence-based intervention program designed for individuals with dyslexia. In determining the appropriateness for children with dyslexia, it is important that there is peer reviewed independent research showing its efficacy with children identified as dyslexic. Training and adherence to program components with fidelity is integral to achieving similar levels of efficacy as those evidenced in the research supporting each program. Evidence-based interventions rely heavily on a structured literacy learning approach. Examples include Orton-Gillingham,

Barton Reading and Spelling System, Read Naturally, and Wilson Reading System. Components of an effective structured literacy program include systematic and direct instruction in (1) phonology (developing phonemic awareness through segmenting, blending, and rhyming), (2) sound-symbol association (direct teaching on phonics explicitly and systematically), (3) syllable instruction (teaching the six basic syllable types), (4) morphology (teaching base words, roots, prefixes, and suffixes), (5) syntax (grammar and mechanics of language), and (6) semantics (to promote comprehension).

22. As in *Rogich*, the District failed to consider, in any meaningful way, the outside evaluation and the Parents' request to utilize the recommended curriculum by stating that the District's curriculum was evidence-based, without providing any further information to support this claim. Although the District ultimately provided some links with information about the District's reading curriculum almost five months after the Parents requested this information, it is clear from the information provided that the curriculum the District was using with the Student was not evidence-based for students with dyslexia.

23. In *Rogich*, the school district made conclusory, inaccurate statements about the student making progress, perhaps in an attempt to convince themselves that what they were doing was working. In this case, the District took an even more baffling position, acknowledging that the Student was not making progress and simply doing nothing to address the lack of progress except to lower the expectations placed on the Student and the rigor of her annual IEP goals. For example, in June 2021, the Student was able to identify initial, medial, and final phonemes with 69% accuracy. In June 2022, she was only able to do the same with 62% accuracy. Although the Student did not meet her goals and it was clear that she was not making progress, the District simply chose to ignore the lack of progress and change the Student's goals to "meet her at her level," rather than engage in a discussion with the IEP team about the curriculum or teaching methodologies and whether the District's methods were working for the Student.

24. The overwhelming weight of information before the District at the time the June 2022 IEP was drafted was that the Student was not making progress using the curriculum and methodologies that the District had employed for a full school year, and the Student needed an evidence-based, structured literacy curriculum designed for students with dyslexia. That the District did nothing to address the Student's lack of progress or the undisputed recommendation from Dr. Turner regarding what the Student needs in order to be able to read and access her education, resulted in an inappropriate IEP.



25. In summary, the District failed to consider that the Student was not making progress, and address this through meaningful discussion of what the Student needs to access her education. The District also failed to consider the undisputed evaluative data and recommendations from Dr. Turner in drafting the Student's goals and a statement of the special education and related services to be provided to the Student to enable her to advance appropriately toward attaining her annual goals and to be involved in and make progress in the general education curriculum.

26. Based on the foregoing, the June 2022 IEP, taken as a whole and reviewed at the time it was drafted, was not reasonably calculated to confer meaningful educational benefit to the Student and resulted in a denial of FAPE.

***Whether the District violated the IDEA and denied the Student FAPE by failing to draft an IEP in December 2022 that was reasonably calculated to confer meaningful educational benefit to the Student.***

27. Although the goals changed significantly from the June 2022 to December 2022 IEPs, due to the input from Dr. Dupuy, the issue discussed above remained the same: the District failed to consider or adopt the undisputed recommendations from Dr. Turner, and now Dr. Dupuy, that the Student needed evidence-based, structured literacy curriculum designed for students with dyslexia. Dr. Dupuy attempted to assist the IEP team by suggesting goals based on structured literacy curriculum, but it was clear to her that the District did not know how to implement or measure progress toward the goals.

28. Moreover, the District's failure to consider the undisputed evaluative data and recommendations from Dr. Turner and Dr. Dupuy meant the IEP team was unable to draft an appropriate statement of the special education and related services to be provided to the Student to enable her to advance appropriately toward attaining her annual goals and to be involved in and make progress in the general education curriculum.

29. Based on the foregoing, the December 2022 IEP, taken as a whole and reviewed at the time it was drafted, was not reasonably calculated to confer meaningful educational benefit to the Student and resulted in a denial of FAPE.

***Whether the District violated the IDEA and denied the Student FAPE by failing to draft an IEP in January 2023 that was reasonably calculated to confer meaningful educational benefit to the Student.***

30. The only change between the December 2022 IEP and the January 2023 IEP Amendment was that the District added one paragraph to the PWN, at the request of the Parents, which noted the Parents' concerns regarding the appropriateness of the

Student's October 2022 reevaluation, whether the District was providing appropriate evidence-based interventions for the Student, whether the Student had made meaningful progress, and whether the District had properly addressed the Student's lack of meaningful progress.

31. Given that the substantive portions of the IEP remained the same as the December 2022 IEP, the January 2023 IEP Amendment was not reasonably calculated to confer meaningful educational benefit to the Student and resulted in a denial of FAPE.

***Whether the District violated the IDEA and denied the Student FAPE by failing to conduct an appropriate evaluation of the Student in October 2022.***

32. School districts must ensure that assessments and evaluation materials used to assess a student are administered in accordance with any instructions provided by the producer of the assessments. WAC 392-172A-03020(3)(a)(v).

33. The IDEA mandates that additional evaluation procedures, beyond those specified in WAC 392-172A-03020, must be followed when determining whether a student has a specific learning disability (SLD). WAC 392-172A-03045. Districts must "develop procedures for the identification of students with specific learning disabilities which may include the use of: (1) a severe discrepancy between intellectual ability and achievement; or (2) a process based on the student's response to scientific, research-based intervention; or (3) a combination of both within a school district..." *Id.* The evaluation team may determine a student has an SLD if she does not achieve adequately for her age or meet grade level standards when provided with appropriate learning experiences and instruction. WAC 392-172A-03055. An SLD can be found in several areas, including written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving. *Id.* The evaluation team must also determine that the student's lack of progress is not primarily due to other factors, including lack of appropriate instruction in reading or math. *Id.*

34. If a District chooses to use a severe discrepancy model, it must use OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement. WAC 392-172A-03065.

35. The instructions for using OSPI's published discrepancy tables state that the District must first obtain the student's age-based, total, or full-scale IQ. The District is also required to use the chronological age of the student at the time of assessment and use age-based norms. See Identification of Student's With Specific Learning

Disabilities: State of Washington Severe Discrepancy Table, available at <https://www.k12.wa.us/file/sldguidepdf>.

36. Where the evaluation results do not appear to accurately represent a student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments, review of existing data, assessments of student progress, observation of the student, and information gathered from all other evaluation processes for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment. WAC 392-172A-03070.

37. Here, the District used the severe discrepancy model and found that the Student was eligible in the categories of reading (basic reading skill; reading fluency skills, and reading comprehension) and written expression. The Parents challenge the appropriateness of the District's evaluation in the areas of reading and written expression due to Dr. Dupuy not being able to determine if the KTEA-3 was properly administered and the District using grade-based norms, rather than age-based norms. However, whether age-based or grade-based norms were used, using the severe discrepancy model, the Student would have qualified either way as having an SLD in reading and written expression. The evaluation was not deficient in this regard.

38. The District did not find that the Student had an SLD in mathematics calculation or problem solving given that the Student's standard scores on the KTEA-3 were in the average range and did not meet the criterion discrepancy score to qualify under the severe discrepancy model.

39. The undersigned is not convinced that the District was required to use the Student's GAI based on her performance on the WISC-V and finds Dr. Breiger's opinion on this issue more persuasive.

40. However, given the significant errors that Dr. Dupuy discovered in the administration of the KTEA-3 math subtests, a preponderance of the evidence demonstrates that the District did not administer the KTEA-3 in accordance with any instructions provided by the producer of the assessments.

41. The Student's general education teachers in both second and third grades expressed concerns regarding the Student's math abilities. In addition, her iReady math results from the 2021-2022 school year indicated that she was one grade level behind in September 2021 and January 2022, and then two grade levels behind (kindergarten level) in April 2022. The Student's September 2022 iReady math results indicated that she was still at a kindergarten level when she started third grade. Given all of this information, pursuant to WAC 392-172A-03070, the District should have questioned whether the discrepancy between the student's intellectual ability and academic achievement was accurate upon application of the discrepancy tables.

42. This conclusion is further supported by the most recent iReady math assessment data from April 2023, in which the Student was assessed as being at a second-grade level in all domains except geometry, in which her scores indicate she is at a kindergarten level at the end of third grade.

43. Based on the above, the Parents have met their burden to show that the District failed to conduct an appropriate reevaluation of the Student in October 2022. Having concluded that the District failed to conduct an appropriate evaluation of the Student, and what appear to be ongoing concerns with the Student's math scores, it is appropriate to order an independent educational evaluation at public expense. WAC 392-172A-05005(6).

***Whether the District violated the IDEA and denied the Student FAPE by failing to consider the Parents' request for a specific intervention to address the Student's specific learning disability (dyslexia).***

***Whether the District violated the IDEA and denied the Student FAPE by significantly impeding the Parents' right to participate in the educational decision-making process, specifically by failing to consider the Parents' request for a specific intervention to address the Student's specific learning disability (dyslexia).***

44. The two issues noted above are related and will be addressed together.

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

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

*Amanda J. v. Clark County Sch. Dist.*, 267 F.3d at 882.

46. The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.” WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings, but must also have the opportunity for “meaningful participation in the formulation of IEPs.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

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

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

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

48. As discussed above, the District failed to draft appropriate IEPs in June and December 2022, and an appropriate IEP Amendment in January 2023, which resulted in a denial of FAPE. The crux of the District’s failure to provide FAPE was that it did not meaningfully consider or adopt the unrefuted expert opinion of Dr. Turner that the Student requires an evidence-based, structured literacy program designed for students with dyslexia in order to learn to read and to access her education. Although the District mentions Dr. Turner’s evaluation in the June 2022 IEP, there is no discussion of Dr. Turner’s assessments, findings, or recommendations.

49. Although the Parents participated in every IEP meeting and had ample opportunity to advocate for the Student, their multiple requests for the District to implement an evidence-based, structured literacy program designed for students with dyslexia were dismissed out of hand at every turn. The District never meaningfully considered the Parents’ request for structured literacy curriculum and never addressed it in an IEP or PWN. If there was discussion of Barton or other structured literacy programs at IEP meetings, the Parents were either told that Barton was not District-approved, without providing an alternative or documenting the Parents’ request and the reasons for denial, or the Parents were told “now is not the time to discuss this.” The repeated dismissal of the Parents’ concerns and request for a specific intervention impeded the Student’s right to a FAPE and caused a deprivation of educational benefits. The Parents have met their burden with respect to both issues.

50. The District's failure to consider the Parents' requests for a specific intervention to address the Student's specific learning disability, dyslexia, resulted in a violation of the IDEA and denial of FAPE. The District's failure to consider the Parents' requests also significantly impeded the Parents right to participate in the educational decision-making process, which resulted in a denial of FAPE and caused a deprivation of educational benefits to the Student.

***Whether the District violated the IDEA and denied the Student FAPE by failing to provide the Student with an evidence-based, multi-sensory, structured literacy program for students with dyslexia and implement it with fidelity.***

51. As discussed above, the District failed to draft appropriate IEPs in June and December 2022, and an appropriate IEP Amendment in January 2023, which resulted in a denial of FAPE. The crux of the District's failure was that it did not consider or adopt the unrefuted expert opinion of Dr. Turner, which was that the Student requires an evidence-based, structured literacy program designed for students with dyslexia in order to learn to read and to access her education.

52. It naturally follows that the District violated the IDEA and denied the Student FAPE by failing to provide the Student with an evidence-based, multi-sensory, structured-literacy program for students with dyslexia and implement it with fidelity. The Parents have met their burden with respect to this issue.

***Whether the Parents are entitled to their requested relief.***

Declaratory relief finding that the District violated the IDEA and denied the Student FAPE.

53. The Parents have requested multiple remedies, including declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE by the District's actions, compensatory education, and reimbursement for private evaluations and services.

54. As discussed above, the District violated the IDEA and denied the Student FAPE by:

- a. Failing to draft an appropriate IEP in June 2022;
- b. Failing to draft an appropriate IEP in December 2022;
- c. Failing to draft an appropriate IEP Amendment in January 2023;
- d. Failing to conduct an appropriate evaluation of the Student in October 2022;

- e. Failing to consider the Parents' requests for a specific intervention to address the Student's dyslexia;
- f. Significantly impeding parental participation by failing to consider the Parents' requests for a specific intervention to address the Student's dyslexia; and
- g. Failing to provide the Student with an evidence-based, structured literacy program for students with dyslexia and implement it with fidelity prior to March 6, 2023.

### Compensatory special education and related services

55. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), *cited with approval in R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9<sup>th</sup> Cir. 2011). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Id.* at 524. A hearing officer may fashion individualized relief for students seeking compensatory education. As noted in *R.P. v. Prescott*:

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4<sup>th</sup> Cir. 2009) (court can order that private school tuition be reimbursed); *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9<sup>th</sup> Cir. 2006) (court can order additional training for a child's teachers).

631 F.3d at 1126.

56. The Student has not had an appropriate IEP in place for two full school years, resulting in a denial of FAPE for two full school years. Accordingly, the evidence supports an award of compensatory education.

57. The Student received 45 minutes per day of SDI in reading (225 minutes or 3.75 hours per week) for the 2021-2022 school year. Starting in December 2022, the Student's IEP called for 45 minutes per day of SDI in reading and 150 minutes per week of SDI in writing. Since there is very little information in the record about the District's implementation of the Student's SDI in writing, the undersigned does not consider these hours as missed instruction.

58. Assuming a 36-week school year, the Student should have received 135 hours per school year of SDI in reading during the 2021-22 and 2022-23 school years. This is a total of 270 hours in reading SDI that the Student should have received using an evidence-based, structured literacy program designed for students with dyslexia.

59. As part of a compensatory education award, the Parents request the undersigned monetize the hours based on the prevailing hourly rate of \$200.00 and order monetary damages. See Parents' Closing Brief at p. 60-61. The undersigned declines to award monetary damages.

60. In the alternative, the Parents request that any hours of compensatory education be provided by the Parents' chosen provider and that the District reimburse the Parents. Given that the District did not provide an appropriate education to the Student for almost two full school years, it is appropriate to order tutoring to allow the Student to properly address her reading challenges. The undersigned is not confident in the District's ability to offer appropriate remediation services. As such, private tutoring is appropriate. Dr. Dupuy testified that the prevailing rate is \$200.00 per hour for a professional qualified to deliver the type of services the Student needs to catch up in reading.

61. Accordingly, the Parents are awarded 270 hours of private, academic tutoring for the Student, to be arranged with a provider chosen by the Parents. The hourly rate is capped at \$200.00 per hour, and the hours must be used by the end of the 2024-2025 school year. The Parents shall submit monthly or quarterly invoices and proof of payment, and the District shall reimburse the Parents within 30 calendar days of receiving proof of payment from the Parents.

62. Additionally, the District shall reimburse the Parents for the cost of Foundations in Sound (\$341.00) and the Barton Reading and Spelling Program. The Parents paid a total of \$2,819.60 for 8 books in the Barton System. Proof of payment is found at P27p6-13;19 The District shall reimburse the Parents \$3,160.60 within 30 calendar days of the date of this Order.

63. The requests for reimbursement for tutoring provided by the Mother, and reimbursement for other learning materials are denied. See Parents Closing Brief at p. 60.



### Independent Educational Evaluation

64. As discussed above in Conclusion of Law 43, the undersigned is ordering an independent educational evaluation (IEE). The IEE shall be conducted by a mutually agreed upon provider who meets the requirements set forth in WAC 392-172A-05005.

### Reimbursement for private evaluations for the Student from December 9, 2020, to present.

65. The Parents also request reimbursement for multiple private evaluations, including the HOLS assessment, Dr. Turner's evaluation, and Dr. Dupuy's review of the District's evaluation.

66. At the time the HOLS assessment was completed in November and December 2021, the District had evaluated the Student approximately five or six months prior and she had been found eligible for special education under the category of Specific Learning Disability in reading. The student had been back in school after the summer break for approximately two months, and while it was clear that she was significantly below grade level in reading, the District's failure to address the Student's lack of progress was not apparent at that time.

67. The Parents sought out the HOLS assessment to gather more information, which they are entitled to do, but the District should not be responsible for reimbursement of this assessment given the information the District had at the time. The Parent's request for reimbursement for the HOLS assessment is denied.

68. By contrast, when the Parents sought out the evaluation with Dr. Turner in April 2022, it should have been evident to the District that the Student was not making progress (as was also concluded by OSPI in the Community Complaint investigation and order) yet the District failed to take any meaningful and timely action. Lynne Truitt, the Director of Special Education, avoided the Parents' simple requests for information for months, and inexplicably delayed an IEP meeting and drafting of a new IEP to address the Student's lack of progress during the 2021-22 school year. Accordingly, the Parents felt they had no choice but to gather more information on their own and try to help the Student in whatever way they could. As such, the Parents' request for reimbursement of Dr. Turner's evaluation is granted.

69. The District shall reimburse the Parents \$2,000.00 for Dr. Turner's evaluation. Proof of payment is found at P27p2-3. The District shall reimburse the Parents within 30 calendar days of the date of this Order.

70. The Parents also request reimbursement for Dr. Dupuy's consultation in IEP meetings, assessment of the Student, and review of the District's October 2022 reevaluation of the Student. Had the District provided the Student FAPE and appropriately incorporated Dr. Turner's unrefuted recommendations into the June 2022 IEP, Dr. Dupuy's consultation, assessment, and review would have been unnecessary. Accordingly, the District shall reimburse the Parents for the cost of Dr. Dupuy's consultation, assessment, and evaluation review in the amount of \$6,925.00. Proof of payment is found at P27p4-5. The District shall reimburse the Parents within 30 calendar days of the date of this Order.

71. The District is not required to reimburse the Parents for any cost related to the time Dr. Dupuy spent testifying or preparing to testify at the hearing.

An IEP for the 2023-2024 school year that is reasonably calculated to facilitate meaningful educational progress.

72. Within 30 calendar days of the date of this Order, the District and the Parents shall work together to schedule an IEP team meeting such that the IEP meeting occurs no later than the fifth school day of the 2023-24 school year. If all members of the IEP team are available to meet prior to the beginning of the school year, the meeting shall occur before the first day of school.

73. In light of the undisputed recommendations by Dr. Turner and Dr. Dupuy, the IEP shall expressly require the District to implement, with fidelity, an evidence-based structured literacy program designed for students with dyslexia (program) for the Student's SDI in reading. The special education teacher or paraeducator delivering the program shall be qualified to deliver the program and be fully trained in its use. The program shall be delivered in the scope and sequence intended by its designers, including use of the program's assessments and progress monitoring tools.

74. The Student's annual goals in the IEP shall explicitly reflect the scope and sequence of the District's chosen program.

75. The IEP shall specify a mechanism by which goal progress is regularly communicated to all staff delivering instruction to the Student.

76. The IEP shall specify appropriate accommodations to ensure that the Student is not expected to read at a level that is contraindicated by her current level in the structured literacy program.

77. The IEP shall specify a mechanism for regular communication (at a minimum once every two weeks) between the Student's general education teacher(s), special

education teacher, and private tutor (if any) to ensure that, to the extent practicable, the Student's literacy education is delivered consistently with the elements of structured literacy.

### Other remedies

#### *Training on Compliance with RCW 28A.320.260*

78. It is apparent to the undersigned that the District lacks understanding of its obligations to comply with RCW 28A.320.260, which provides that when a student shows indications of below grade level literacy development or areas of weakness associated with dyslexia, school districts must provide evidence-based, multisensory, structured literacy interventions implemented by an educator trained in instructional methods that specifically target students' areas of weakness. RCW 28A.320.260(3).

79. No later than January 31, 2024, the District shall consult with OSPI and provide training on the requirement to comply with RCW 28A.320.260. The training shall be provided to the following District personnel: elementary-level general education teachers, special education administrators, elementary-level special education teachers, and elementary-level special education staff (with the exception of clerical staff), school psychologists, reading specialists, paraeducators, and any other District personnel, including members of the District's Curriculum Committee, involved in the student screening process and/or selection and delivery of interventions described in RCW 28A.320.260.

80. The training shall be provided by a person(s) of the District's choosing who possesses the necessary education, training and experience to conduct such training. The training may be provided by attorneys for the District if the District deems it appropriate. The trainer may not be an employee of the District (other than the District's attorneys). The District shall maintain a copy of the training materials provided to District staff and a record of the attendance of individuals who receive this training. The District shall provide that information to counsel for the Parents or Parents if they request it.

#### *iReady Training*

81. The current Director of Special Education is aware of District-wide confusion regarding the proper interpretation of iReady results and how it negatively impacts students' progress monitoring. Inexplicably, she has done nothing to train her staff regarding this issue. The iReady stops testing students in certain areas and records this as "tested out." It does not mean that a student has mastered that skill. High-level District special education staff, such as the Elementary Special Education Coordinator,

who is responsible for all special education staff at elementary schools within the District believed that “tested out” meant that the Student had mastered that particular skill and “made nice progress.” This misunderstanding of iReady results had a detrimental impact on the Student in this case because the District believed she was making progress when she was not. This lack of basic knowledge about the District’s chosen progress monitoring tool is unacceptable. Accordingly, the District shall provide appropriate training on a District-wide basis as outlined below.

82. No later than September 30, 2023, the District shall provide a minimum of one hour of training on the proper interpretation of iReady results for students in kindergarten through fifth grade, with particular emphasis on the meaning of “tested out.” The training shall be provided to the following District personnel: all general education teachers, all special education administrators, teachers, and staff (with the exception of clerical staff), school psychologists, reading specialists, paraeducators, and any other District personnel who are involved in administering and interpreting iReady results.

83. The training shall be provided by a person(s) of the District’s choosing who possesses the necessary education, training and experience to conduct such training, and such person may be an employee of the District. The training may be provided by attorneys for the District if the District deems it appropriate. The District shall maintain a copy of the training materials provided to District staff and a record of the attendance of individuals who receive this training. The District shall provide that information to counsel for the Parents or Parents if they request it.

#### *District-Approved Curriculum List*

84. The lack of communication between District special education administrators and the Student’s teachers and the lack of understanding regarding what curriculum was available to the Student’s teachers is unacceptable and caused harm to the Student. For example, Mr. Fukuji had Seeing Stars available to him and could have been using this with the Student as early as January 2022. However, he did not want to confuse the Student and, reasonably, felt the decision to change the curriculum should be made by the IEP team. However, District administrators present in the IEP meetings never suggested Seeing Stars as an alternative to Barton until October or November 2022. Although District administrators were aware that Seeing Stars was a structured literacy program that was District-approved, Ms. Kamke was not made aware that the District had the program until January 2023.

85. Once Ms. Kamke started using Seeing Stars with the Student in March 2023, she wished that she had it earlier in the school year. It is also apparent that it is working

for the Student and she is learning to read. Her April 2023 iReady scores show tremendous improvement and indicate that she is reading at grade level. Had the District special education administrators clearly communicated with Mr. Fukuji and had the IEP team seriously considered the Parents' request for an Orton Gillingham influenced curriculum for the Student, she could have started using Seeing Stars in January 2022.

86. Accordingly, to facilitate District-wide knowledge of approved curricula or programs that are available, by September 30, 2023, the District is ordered to create and regularly maintain a list of all District-approved reading curricula, including both core curricula and supplemental curricula approved for use with students receiving SDI. The District shall update this list at least once prior to the beginning of every school year, or whenever a new curriculum is approved. The District shall provide this list to all special education teachers and staff (with the exception of clerical staff) prior to the beginning of every school year. The District shall provide this list to counsel for the Parents or Parents if they request it.

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

### ORDER

Based on the above Findings of Fact and Conclusions of Law, it is ORDERED:

1. The District violated the IDEA and denied the Student FAPE as summarized in Conclusions of Law 1 – 52.
2. The Parents are awarded the remedies outlined in Conclusions of Law 53 – 86.
3. All other remedies requested by the Parents are denied.

SERVED on the date of mailing.



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Jenna Schuenemann  
Administrative Law Judge  
Office of Administrative Hearings

### **Right To Bring A Civil Action Under The IDEA**

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at [appeals@k12.wa.us](mailto:appeals@k12.wa.us).