

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matters of:

Docket Nos. 05-2022-OSPI-01598
05-2022-OSPI-01604
01-2023-OSPI-01771

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

Seattle School District

Agency: Office of Superintendent of
Public Instruction
Program: Special Education
Cause Nos. 2022-SE-0069
2022-SE-0072
2023-SE-0001

A due process hearing in this matter was held by videoconference before Administrative Law Judge (ALJ) Pamela Meotti on March 13, April 3-7, May 2, 3, 12, 30, 31, June 1, 9, 27, July 6, August 21, and September 27, 2023 (17 days). The Parents of the Student whose education is at issue¹ were represented by Shannon McMinimee, attorney at law.² The Seattle School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District were Rachel Disario, Senior General Counsel, and Michael Bylsma, Director of Special Education.³

STATEMENT OF THE CASE

Procedural History

The Parents filed a due process hearing request (Complaint) in Cause No. 2022-SE-0069 on May 13, 2022. The District filed a due process hearing request in Cause No. 2022-SE-0072 on May 25, 2022. The matters were assigned to Administrative Law Judge (ALJ) Pamela Meotti and consolidated for a due process hearing. The

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

² The Mother was present for most of the hearing, with the exception of June 9, 2023. The Father was present on June 27 and August 21, 2023.

³ Devin Gurley, Interim Executive Director of Special Education, and Inclusion, served as District representative in place of Mr. Bylsma at times during the hearing.

Parents filed a second due process hearing request in Cause No. 2023-SE-0001 on January 3, 2023, which was consolidated with Cause Nos. 2022-SE-0069 and -0072.

A complete procedural history is contained subsequently in this order, in Appendix 1.

Due Date for a Written Decision

The deadline for a written decision in these consolidated matters was extended at the Parents' request to thirty (30) days after the record of the hearing closes. See *First Consolidated Prehearing Order, January 27, 2023*. The record of the hearing closed on January 16, 2024, at 5:00 p.m., the due date for the parties' post-hearing reply briefs. The due date for a written decision is February 15, 2024.

EVIDENCE RELIED UPON

Exhibits

Exhibits Admitted:

District Exhibits: D1 through D10pp4 to7; D11 through D14A; D15 through D28; D31 through D37.

Parent Exhibits: P1 through P3; P6 through P9pp1-138; P10 through P18; P20 through P28; P30 through P32p1; P33; P34A; P35 through P41A; P42; P44 through P50A; P53A; P55 through P59; P61 through P68Ap2 and top half of p3; P69 through P74pp1-4 and 15; P76 through P79; P82A; P83 through P84; P87 through P90.⁴

Witnesses (in order of appearance)

William Deskin, District Special Education Teacher
Jennifer Paris, District Distinct Special Education Teacher
Lynn Reuter, District Special Education Teacher
Caitlin O'Shea, District Student Support Supervisor
Martha Beard, District Social Studies Teacher

⁴ Citations to the exhibits of record are by party (P for the Parents; D for the District) and page number. For example, a citation to P68Ap1, refers to page 1 of Parents' Exhibit 68A. Citations to the transcript of record are to "T" followed by the page number. For example, a citation to T214, refers to page 214 of the transcript.

The Mother sometimes used a written document when testifying as a memory aid. The document was provided to the District and the ALJ but was not entered into the record as an exhibit. T2285.

Margaret Blair, District English Language Arts Teacher
Balika Haakanson, District Science Teacher
Rachel Connelly, District Speech Language Pathologist (SLP)
Chad Barnes, District Special Education Supervisor
Michael Bylsma, District Special Education Director
Kristen Rose, District Principal
Daniel Goodwin, District Special Education Teacher
Patricia Whitmore, District Speech Language Pathologist
Joanna Mensher, District Math Teacher
Jolene Anderson, District Vice Principal
Michelle Bammert, District Special Education Program Specialist
Heather Schwindt, Parent Advocate
Barbara de Normandie, District Assistant Principal
The Mother
Laura Snow, PhD; Speech and Language Pathologist
Bryan Manzo, District School Counselor
Ricky Ohashi, District Math Teacher
Margaret Kulkin, Private Tutor
River Barrett, former District Special Education Teacher
Rebecca Kloberdanz, District Occupational Therapist
The Father
Lionel Enns, PhD, Clinical Psychologist

ISSUES

The issue for the due process hearing in Cause No. 2022-SE-0072 is:

Whether the District's evaluation of the Student conducted in May 2022 was appropriate and, if not, whether the Parents are entitled to an IEE (independent educational evaluation) at public expense?

Prehearing Order, June 24, 2022.

The issues in Cause Nos. 2022-SE-0069 and 2023-SE-0001 are:

Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) as follows:

I. Whether the District failed to provide the Student with FAPE by failing to initiate a special education eligibility reevaluation:

- a. after receipt of the University of Washington Speech and Hearing Clinic report on May 11, 2020;
- b. after learning of concerns related to the Student's anxiety starting in the spring of 2021;
- c. instead of conducting an "Assessment Revision" in the spring of 2021;
- d. in the fall of 2021 when the Student ceased attending at least one class each day because of anxiety;
- e. in the fall of 2021 when the Parents provided the District with Dr. Snow's report;
- f. in the fall of 2021 when the Parents provided the District with Dr. Hungelmann's report;
- g. any time before March 3, 2022, given known concerns about the Student's Anxiety and OCD diagnoses and disagreement between District staff and the Parents as to whether the Student's math grades, and progress reports were accurate; and
- h. since June 28, 2022, after staff:
 - i. received assessments, evaluations, and reports reflecting that the Student is not at grade level in academic areas impacted by her disabilities and the gap between the Student and non-disabled same-age peers in these areas is expanding;
 - ii. determined the Student continued to need a Safety Plan to address mental health concerns at school for the 2022-2023 school year;
 - iii. learned the Student was unable to complete assignments in her general education classes because of her disabilities;
 - iv. learned the Student was failing two classes and receiving a D in another;
 - v. learned the Student was engaging in school phobia behaviors;
 - vi. learned the Student had been diagnosed with ADHD;

- vii. received notice that if it did not hold an IEP team meeting to discuss the above, the Parents would increase the Student's receipt of private instruction;
 - viii. received additional information from the Student's therapist related to her mental health needs;
 - ix. received the Student's report card from Yellow Wood Academy (Yellow Wood) reflecting a significant difference in the Student's progress there as opposed to in District classes; and
 - x. when the school psychologist who conducted the most recent special education eligibility evaluation separated from the District.
- II. Whether the District failed to provide the Student with FAPE by failing to have the Student's Individualized Education Program (IEP) team timely consider the following in creating and amending her annual IEPs:

Since May 11, 2020:

- a. the University of Washington Speech and Hearing Clinic report;
- b. Dr. Snow's report;
- c. Dr. Hungelmann's report;
- d. letters from the Student's medical and mental health providers;

Since June 28, 2022:

- e. reports and evaluation results from Morningside Academy and Lindamood Bell Learning Center;
- f. the results of Curriculum Based Measurements by Northwest K-8 Learning Support;
- g. the results of the Student's participation in statewide assessments (SBAC) in the spring of 2022;
- h. the results of the Student's participation in the District's administration of the Measures of Academic Progress (MAP) assessment in the fall of 2022;
- i. notice that the Student had been diagnosed with ADHD;

- j. information from the Student's therapist related to her mental health needs; and
 - k. the Student's report card from Yellow Wood reflecting a significant difference in the Student's progress there as opposed to in District classes.
- III. Whether the District failed to provide the Student with FAPE since May 11, 2020, by failing to provide her with an annual IEP that included all of the specially designed instruction, accommodations, modifications, supports to staff, and supplementary aids and services that she needs.
 - IV. Whether the District failed to provide the Student with FAPE since May 11, 2020, by failing to provide her with Extended School Year (ESY) services despite knowing that she has long struggled with issues of retention and recoupment.
 - V. Whether the District failed to provide the Student with FAPE since May 11, 2020, by failing to implement the Student's February and December 2020 IEPs, May, and June 2021 IEP amendments, by failing to provide the Student with all of the specially designed instruction, accommodations, and modifications called for in these documents, and in the settings they identified, and since June 28, 2022, by failing to provide her with all of the accommodations and modifications in her IEP.
 - VI. Whether the District failed to provide the Student with FAPE since May 11, 2020, by failing to provide copies of the Student's February and December 2020 IEPs, and May and June 2021 IEP amendments, to the Student's sixth and seventh grade general education teachers, and to persons identified in these IEPs as "shared program instructional assistant."
 - VII. Whether the District failed to provide the Student with FAPE since May 11, 2020, by failing to timely provide "IEP at a Glance" documents to the Student's sixth and seventh grade general education teachers, or to persons identified in her IEPs as "shared program instructional assistant" during her seventh-grade year.
 - VIII. Whether the District failed to provide the Student with FAPE by failing to conduct a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) to address her behavioral, social emotional, and mental health concerns since the spring of 2021.
 - IX. Whether the District failed to provide the Student with FAPE since the start of the 2021-2022 school year by allowing its staff to provide modifications to the

Student's grades not called for in her IEP, and then relying on inflated and inaccurate grades to justify denying the Student special education services.

- X. Whether the District failed to provide the Student with FAPE since December 11, 2021, by having no current annual IEP in place for her in order to ensure that she was receiving the services she required to meet her unique needs.
- XI. Whether the District failed to provide the Student with FAPE since April 4, 2022, by having no current special education eligibility reevaluation completed upon which the Student's IEP team could make decisions.
- XII. Whether the implementation of District's May 10, 2022, reevaluation will result in a denial of FAPE to the Student because it failed to determine whether the Student has a disability and the nature and extent of the special education and related services that the student needs.
- XIII. Whether the District failed to provide the Student with FAPE since September 28, 2022, by failing to hold an annual IEP team meeting for the Student and by failing to hold an IEP team meeting during the 2022-2023 school year;⁵
- XIV. Whether the District failed to provide the Student with FAPE since June 28, 2022, by failing to provide her with a schedule that was aligned with her IEP and designed to meet her unique educational needs.
- XV. Whether the District failed to meet the procedural requirements of the IDEA and in turn denied the Student FAPE by:
 - a. failing to timely schedule IEP team and evaluation team meetings upon the Parents' request during the 2021-2022 school year;

⁵ The Parents allege that the District should have held an IEP meeting after: the District received notice the Student had not been consistently receiving the accommodations and modifications called for in her IEP; general education teachers expressed concern about their ability to implement the Student's IEP; the Student was unable to complete assignments in her general education classes; the Student began failing assessments and classes and engaging in school phobia behaviors; District staff received the results of assessments and evaluations indicating the Student is not at grade level in academic areas impacted by her disabilities; District administrators determined the Student continued to need a Safety Plan to address mental health concerns; school administrators learned the Student's schedule was negatively impacting her academically and socially; District staff learned the Student had been diagnosed with ADHD; the passage of the due date for the Student's annual IEP; the Parents stated that if the District did not hold an IEP team meeting, the Parents would increase the Student's receipt of private instruction; receiving additional information from the Student's therapist related to her mental health needs; and after the Student's report card from Yellow Wood reflected a significant difference in the Student's progress there as opposed to her classes within the District.

- b. failing to timely schedule IEP team and evaluation team meetings when the same were required by law during the 2021-2022 school year;
- c. failing to ever have the Student's IEP team discuss if she was eligible for ESY services since May 11, 2020;
- d. failing to ever take data to allow for the Student's IEP team to appropriately discuss if she was eligible for ESY services since May 11, 2020;
- e. failing to provide the Parents with the District's criteria for determining ESY eligibility since May 11, 2020;
- f. failing to take data to allow for the Student's IEP team to appropriately discuss if she was eligible for ESY services consistent with a June 18, 2021, Prior Written Notice identifying that the District would do the same;
- g. denying the Student related services and supplemental aids and services based upon her disability category since May 11, 2020;
- h. failing to ensure that the Student had a new annual IEP in place by December 11, 2021, when her prior annual IEP had expired;
- i. since the fall of 2021, failing to have a special education teacher of the Student's present at any IEP team meetings that occurred after the District eliminated the Student's special education class;
- j. since the fall of 2021, failing to hold an IEP team meeting to discuss where the Student should receive specially designed instruction in math after the District eliminated the Student's special education class;
- k. since the fall of 2021, failing to hold an IEP team meeting to discuss moving the Student to a Homeroom class that was not aligned with her IEP before doing the same;
- l. since the fall of 2021, failing to hold an IEP team meeting to discuss moving the Student into a Basic Skills Math class despite it not being the class called for in her IEP before doing the same;
- m. providing the Parents with false and misleading IEP Progress reports since the fall of 2021 and failing to provide the Parents with IEP progress reports during the 2022-2023 school year;

- n. providing the Parents with false and misleading prior written notice documents since the fall of 2021;
- o. since the fall of 2021, failing to comply with the requirements associated with the Parents' challenges to false and misleading educational records, including challenges related to IEP progress reports and prior written notice documents, and failing to timely and properly respond to the Parents' request to amend false and misleading educational records;
- p. failing to provide the Parents with prior written notice of decisions made by the District and proposals of the Parents rejected by the District since May 11, 2020;
- q. denying the Mother the ability to communicate with the Student's teachers regarding her educational progress and needs since the spring of 2022;
- r. denying the Mother the ability to communicate with the providers who were conducting the District's 2022 reevaluation;
- s. failing to provide the Parents with educational records they had requested prior to IEP team meetings since the fall of 2021, and failing to provide such records not later than 45 days after the request was made;
- t. since April 2022, failing to complete a reevaluation of the Student within three years of her last special education eligibility evaluation;
- u. since April 2022, failing to complete a special education eligibility reevaluation of the Student within 35 school days of receiving consent for the same;
- v. failing to comply with the procedures set forth WAC 392-172A-03005 through 392-172A-03080 in completing the February 2021 and May 2022 evaluations.
- w. inappropriately making eligibility determinations following the February 2021 and May 2022 evaluations based upon the administration of a single assessment tool;
- x. failing to ensure that the 2022 Reevaluation of the Student was aligned with the scope of the reevaluation determined by the Student's IEP team;
- y. failing to allow for meaningful parental input before the District determined that the Student was no longer eligible for special education in May of 2022;

- z. making eligibility decisions related to the May 2022 reevaluation outside of the multidisciplinary team process or in the alternative holding a multidisciplinary team meeting to make eligibility decisions related to the May 2022 reevaluation without inviting the Parents or Student to the same;
- aa. failing to comply with the obligations of WAC 392-172A-05005(1)(b) with respect to the Parents' request for Independent Educational Evaluations (IEEs) related to the 2021 and 2022 evaluations;
- bb. failing to comply with the obligations of WAC 392-172A-05005(2)(c) with respect to the Parents' request for an IEE related to the 2021 evaluation;
- cc. proposing to limit the Student's ability to participate in her own IEP team meeting to participation in writing since May 2022;
- dd. not holding IEP meetings during the 2022-2023 school year and not explaining to the Parents why the District determined it would not do so, who made the decision, or what information the District relied on in making that decision; and
- ee. substituting decision-making by unnamed and unidentified individuals that should be determined by the Student's IEP team.

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

- I. Declaratory relief finding that the District violated the IDEA and denied the Student FAPE;
- II. 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, specifically specially designed instruction in math and executive functioning, related services in counseling, parent training and counseling; occupational therapy, and supplementary aids and services from a speech language pathologist, a counselor/psychologist, an occupational therapist, and paraeducators/instructional assistants;
- III. Reimbursement to the Parents for all costs incurred associated with obtaining services from Yellow Wood for the Student since January 1, 2022;

- IV. Reimbursement to the Parents for all costs incurred associated with obtaining tutoring services for the Student in math from Margaret Kulkin Learning Support since May 11, 2020;
- V. An Order directing the District to hold an IEP team meeting and implement an IEP for the Student that includes:
 - a. scientifically supported, targeted, and evidence-based specially designed instruction in math and executive functioning in an individual or small group setting;
 - b. related services in communication, counseling/psychological services, and parent counseling and training;
 - c. supplementary aids and services from a speech language pathologist, a counselor/psychologist, an occupational therapist, and paraeducators/instructional assistants;
 - d. staff training related to serving the Student from individuals who have expertise in her disabilities as well as collaboration time among the service providers who work with the Student;
 - e. the accommodations and modifications that the Student needs to make educational progress and a plan to ensure the timely and complete implementation of the same by school staff;
 - f. an educational placement that is able to meet the Student's unique needs, including placement at a nonpublic agency (NPA) or a hybrid placement that includes provision of services from an NPA in addition to provision of services by the District; and
 - g. includes ESY services based upon existing data reflecting the Student's challenges with regression and recoupment.
- VI. An Order directing the District to ensure that the IEE requested by the Parents related to the 2021 evaluation be provided at public expense without any further unnecessary delay.
- VII. An Order directing the District to conduct an FBA of the Student and to implement a BIP to address the impacts of anxiety and OCD in the educational setting, including her non-attendance of classes because of the

same and her inability to attend and focus when she is feeling anxiety as well as experiencing compulsive and intrusive thoughts.

- VIII. An Order directing the District to conduct a proper, complete, and timely special education eligibility reevaluation that includes all components that were to have been included in the District's 2022 reevaluation and takes into consideration existing information to include information from the Student's medical and mental health providers, private providers, Yellow Wood, and the Parents.
- IX. An Order directing the District to lift its communication ban on the Mother.
- X. Or other equitable remedies, as appropriate.

Order Setting Amended Issue Statement, February 23, 2023; Readiness Prehearing Order, February 28, 2023.

FINDINGS OF FACT

In making these findings of fact, the logical consistency, persuasiveness, and plausibility of the evidence has been considered and weighed. To the extent a finding of fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

Background⁶

1. The Student resides in the Seattle School District (District) with her Parents. She is currently in ninth grade and attends a private school. T3012-13.
2. The Student first qualified for special education services when she was in preschool under the disability category of Speech and Language Impairment to address an articulation disorder. P2p2; D9p6.
3. Starting in first grade (2015-2016 school year), the Student attended a private school, Assumption St. Bridget School (ASB), and received special education services at Bryant Elementary School in the District. T1801.

⁶ Events that occurred before May 11, 2020, or after February 23, 2023, are outside the scope of this hearing and are discussed to provide background and context only. See *Order Setting Amended Issue Statement, February 23, 2023*.

4. The Student's disability category changed to Specific Learning Disability (SLD) in 2016. D23p7; P2p3.
5. On April 4, 2019, the District reevaluated the Student, who was then ten years old and in fourth grade at ASB. D23p6.
6. The reevaluation included review of evaluations the Parents had obtained in 2017 and 2019 by Dr. Christine Mielenz, a licensed psychologist. D23pp7, 11-16, 21-24; P2; P3. The reevaluation reflected that Dr. Mielenz had diagnosed the Student with Language Disorder, Mild, and Dyslexia/Specific Learning Disorder with Impairment in Reading, Mild. D23pp7.
7. The reevaluation team determined the Student remained eligible for special education services in the category of SLD and recommended specially designed instruction (SDI) in math, along with assistive technology services. D23pp6, 9. The team determined that the Student did not require SDI in reading or writing and did not require related services from a speech language pathologist (SLP) or occupational therapist (OT). D23p26.

2019-2020 School Year - Fifth Grade

8. During fifth grade, the Student continued to attend ASB and to receive her math SDI at Bryant. D1p7. On December 17, 2019, the Student's Individualized Education Program (IEP) team developed an annual IEP that provided 45 minutes of SDI in math, two times weekly, in a special education setting. D1p24.
9. During the six-week period between May 11 and June 18, 2020, the Student's SDI was delivered remotely due to the COVID-19 pandemic. D2; D31p1. The Student received 40 minutes of SDI each week during one-to-one Zoom meetings with her special education teacher. D2p3; D14Ap4. Zoom meetings occurred on May 13, (D14Ap9); May 20 (D14Ap15); May 27 (D14Ap17); June 3 (D14Ap20); June 8 (D14Ap26); June 10 (D14Ap27); and June 17 (D14Ap31).
10. The Student's special education teacher also provided weekly math review and worksheets aligned with the Student's IEP goals. D2p3; D14Ap1,13. An instructional assistant was available to all students six hours each week and was available for individual check-ins upon request. D2p3; D14Ap18. The record does not establish the extent to which the Student met with the instructional assistant.

11. The Student had been receiving private SLP services from the University of Washington Speech and Hearing Clinic (UW Speech and Hearing Clinic) since 2015. P1p102. At some point during the Spring of 2020, the Parents asked the District to reconsider the Student's eligibility for SLP services during the fall of 2020 based on data from the UW Speech and Hearing Clinic. D2p6. Amy Rodda, Ph.D., CCC-SLP,⁷ a Clinical Instructor at UW Speech and Hearing Clinic, issued reports regarding the Student's language skills on March 20 and June 9, 2020. P1pp13, 33. The Parents provided the March report to the District on May 10, 2020, and provided the June report to the District on June 11, 2020. D2pp6, 10, 12. Both reports recommended continued treatment at UW Speech and Hearing Clinic. P1pp24-25, 40-41. The June report recommended continued treatment at ASB, but it does not state what type of treatment was being provided at that time. The March report did not contain any school-based recommendations. *Id.*

12. There is no evidence in the record that District staff had concerns that the Student required extended school year (ESY) services during the summer of 2020. Additionally, the Parents pointed to no evidence that they requested such services.

2020-2021 School Year–Sixth Grade

13. The Student was enrolled at ASB for the first half of her sixth-grade year (2020-2021 school year). She received her math SDI at Eckstein Middle School (Eckstein) in the District. D24p11; T142. William Deskin was the Student's special education teacher and case manager at Eckstein.⁸ D24p3; T142-43, 153. Holly Irvin served as Mr. Deskin's student teacher and as an instructional assistant for Eckstein.⁹ T156-57.

14. Between September and December 2020, Mr. Deskin provided the Student with the SDI and accommodations and modifications set out in the December 2019 IEP. T244-46; D1p24. At the time, all students were receiving educational services remotely. The Student's SDI was delivered online two times per week through synchronous learning (2 sessions per week lasting 1 to 1.5 hours each) and asynchronous learning, for a total of 5 hours per week. T164-65, 244-46.

⁷ CCC refers to a certificate of clinical competence issued by the American Speech Language-Hearing Association. T955-56.

⁸ Mr. Deskin has a bachelor's degree in history and a master's degree in teaching. He is a certificated special education teacher and has been employed by the District as a special education teacher for six years. T133-34.

⁹ Instructional assistants (IAs) at Eckstein are assigned to classes based on the level of support needed in the classes. IAs provide support within classes for all students with special needs; they are not assigned to support individual students. P53Ap2.

15. The Student's math class began with direct instruction followed by break-out sessions in which Mr. Deskin and Ms. Irvin supported small groups of three or four students. Support included accommodations and strategies to help the Student, such as showing visuals, repeating directions, and providing additional practice. T182.

16. Because a special education math class is typically 255 minutes per week, Mr. Deskin delivered more SDI minutes to the Student than the 90 minutes per week provided by the December 2019 IEP. Mr. Deskin told the Parents how much SDI the Student was receiving, and they never disagreed with this amount. T300.

Consent for Assessment Revision

17. On November 3, 2020, the District issued a prior written notice (PWN) proposing to initiate an assessment revision in the area of Communication, based on evaluative data from the UW Speech and Hearing Clinic, which raised concerns about narrative expressive language, meta-linguistics, and level lexical issues. D3p3.

18. An "assessment revision" is an evaluation in a single area rather than a full reevaluation. T644, 959.

19. The District received the Parents' written consent for the assessment revision on December 1, 2020.¹⁰ D4p4. The Parents discussed numerous concerns related to communication on the consent form. They did not request an assessment in any area other than communication. D4p5. At hearing, the Mother acknowledged that she did not request assessment in other areas but thought "listening comprehension might be connected to communication in some way." T2764. However, the consent form separately listed "Communication" and "Listening Comprehension" as potential areas to be evaluated, and the box for "Listening Comprehension" was not checked. T2764. D4p3. It is found that the Parents did not ask the District to assess the Student in any area besides communication.

December 2020 Annual IEP

20. On December 10, 2020, the Student's IEP team met to develop an annual IEP. D24p1. The meeting was attended by the Parents and their advocate, Heather

¹⁰ The form was dated November 12, 2020, but a note under the signature line indicates it was received by the District on December 1, 2020. D4p4.

Schwindt;¹¹ the Student's Grandparent; Mr. Deskin; Ms. Irvin; a general education teacher from ASB; Marika Wong, from the District's assistive technology department; and Jolene Anderson, a Vice Principal at Eckstein.¹² D24p3; T247-48. Margaret Kulkin,¹³ who had been providing private tutoring services to the Student since third grade, also attended. Ms. Kulkin initially worked with the Student on writing, spelling, and reading comprehension, and switched to math in 2021. T2071-72.

21. In drafting the December 2020 IEP, Mr. Deskin incorporated the Parents' input and information from outside providers including Dr. Mielenz, Dr. Rodda, and Stacie Frank, the Student's counselor. D24pp7-8; 8-12. Mr. Deskin included all of the information the Parents provided to him because it was important to them and did not impact the Student's services. T197; 250.

22. The December 2020 IEP provided 27 accommodations and 7 modifications. D24pp16-18. It also provided 255 minutes per week of SDI in math in a special education setting. D24p20; T252. Mr. Deskin believed this amount of SDI was appropriate for the Student and did not believe she required any related services or supplementary aids and services. Neither the Parents nor any other team members voiced disagreement with the special education services provided by the December 2020 IEP. T253-54.

23. The December 2020 IEP also provided the Student "may participate in nonacademic and extracurricular activities (elective classes, lunch, recess, passing periods, and field trips) with access to the shared program instructional assistant." D24p21. Mr. Deskin did not believe the Student required assistance from a shared program instructional assistant to participate in her classes at school. T256-57.

24. The December 2020 IEP stated the Student "does not require assistive technology at this time. An assistive technology consultation has begun. [The Student] has the ability to use word prediction software, speech-text, and the Bookshare reading

¹¹ Ms. Schwindt is a parent advocate and reading specialist. She was hired by the Parents when the Student was in first grade and worked with the family until October 2021, when the Parents retained their current legal counsel. T1537, 1589. Ms. Schwindt is not a certificated teacher. T1576.

¹² Ms. Anderson has been an Assistant Principal at Eckstein since 2013. She has a principal certificate from OSPI and is also certificated to teach Kindergarten through 8th grade and English language arts up to 12th grade. T1153-54.

¹³ Ms. Kulkin has been a certificated general education teacher in Washington state, with a K-8 endorsement, since 2000. T2070, 2086. She is not a certificated special education teacher. T2086. For the past fifteen years, Ms. Kulkin has worked one-on-one with students who have language-based learning challenges. T2069. She previously taught fifth grade at a private school. T 2070. Ms. Kulkin's work with the Student ended when she retired in April 2023. T2074.

software” D24p6. At hearing, Mr. Deskin explained that the Student did not have or require an assistive technology device but did have access to assistive technology programs on her school laptop. T204, 225-26.

25. The team did not discuss whether the Student required ESY services at the December 2020 IEP meeting, but instead focused on recovery services. T257, 1553; D24p23. The District issued a PWN on December 11, 2020, proposing that the Student “receive Recovery Education for the missed instruction during the Covid-19 closure, the online instruction that was provided during the Spring of 2020, and regression in 3 out of 4 IEP goals from the last IEP cycle.” D24p23; see also D24p7.

26. After the December 2020 IEP was adopted, Mr. Deskin continued to provide the Student’s SDI through a combination of synchronous and asynchronous learning, as he had since the beginning of the year, until February or March of 2021. T254.

Assessment Revision

27. Elspeth Trejo Savani, a District SLP, conducted the assessment revision in January and February 2021, and prepared an assessment revision report. D4; D32; P9; P57. The District held a meeting on February 1, 2021, to discuss the assessment revision. D4pp1, 16.

28. Reports typically go through multiple revisions during the evaluation process as they are shared, revised, shared again, revised again. T1493. Consistent with the typical revision process, there are several versions of the assessment revision report in the record. Parent exhibits P9 and P57 contain a version of the assessment revision report updated after the February 1 meeting to include Parent input dated March 2, 2021. P9p62; P57p23. District exhibits D4 and D32 contain a version of the assessment revision report updated to include Parent input dated March 4, 2021. D4p25; D32p26.

29. On March 5, 2021, the Mother sent Ms. Trejo Savani an email that stated:

I attended the evaluation feedback meeting for [the Student] on February 1st, 2021, via video conference. I consent to the report with the condition that clarifications and other information in the full Parent Input Document are included in the report (Parent Input Paragraph in the body of the report with a statement that the attached full Parent Input Document is crucial to review for a comprehensive, accurate representation of [the Student] in Communication without impact from an artificial word count limit).

D4p24. The PWN was updated to include this language, as reflected in both D4p16 and D32p25.

30. Via email on March 15, 2021, Ms. Trejo Savani sent the Mother an assessment revision report that had been updated to include input from the Parents, with the documents requested by the Parents attached. D32p1; T2769-70, 2774.

31. At hearing, the Mother testified she did not know why there were multiple versions of the assessment revision with different PWNs. T2986. She acknowledged, however, that she received Ms. Trejo Savani's March 15, 2021, email with the updated assessment revision report and PWN. T2774. Although Ms. Trejo Savani's email did not specifically state she was sending a final version of the report, the updated assessment revision report contained the Parents' input, which was a condition for their consent to the report.¹⁴ Moreover, there is no evidence in the record that the Parents ever responded to Ms. Trejo Savani that the input included in the updated version of the assessment revision report was inaccurate or incomplete. Therefore, it is found that on March 15, 2021, the Parents received a final version of the assessment revision that had been updated to include the information referenced in the Mother's March 5, 2021, email.

32. The Mother testified that it was confusing and difficult to participate in IEP team meetings when she did not have complete information regarding the assessment revision and other team members did. T2986. However, the Mother did not specify which IEP meeting or meetings she was referring to, and the record does not support a finding that the Parents or anyone else were confused or unable to participate in any IEP team meetings because they did not have a complete or accurate version of the assessment revision report or because they had a different version than others.

33. In conducting the assessment revision, Ms. Trejo Savani considered input from the Parents, Mr. Deskin, Ms. Irvin, teachers at ASB, and Ms. Kulkin. D32pp2-5, 16-17, 25-28; 187-89. She also reviewed past evaluations by the District and private providers, including the UW Speech and Hearing Clinic and Dr. Mielenz, which discussed both expressive and receptive language. D32pp6-10; 15-16.

34. Ms. Trejo Savani administered two formal assessments – the Comprehensive Assessment of Spoken Language 2 (CASL-2) and the Test of Narrative Language – 2nd

¹⁴ The attachments to Ms. Trejo Savani's email included information prepared by the Mother. See D32pp 2-10; T2769-70. Additionally, both D32 and D4 reflect changes to the body of the assessment report as compared to P9 and P57, with most changes concentrated in the sections titled "Current Concerns/Parent Input" and "Formal Testing." Compare D4pp8-9; D32pp17-18; P9pp47-48; P57pp8-9.

Edition (TNL-2). D32pp17-18. The CASL-2 assesses “expressive language and higher-level language processing” and the TNL-2 measures “a student’s ability to understand stories, retell stories, and to create their own stories with visual support.” D32pp17-18.

35. Testing indicated that the Student’s “expressive language skills are in the solidly average range with the exception of the Grammatical Morphemes subtest of the CASL-2, which was in the below average range.” D32pp17-18. The Student’s Expressive Language Index Score of 96 placed her in the 39th percentile, which was in the average range. Her Supralinguistic Index Score of 89 placed her in the 23rd percentile, also in the average range. D32p18.

36. The Student’s scores on the TNL-2 ranged from average to high average:

Narrative comprehension (75th percentile – average range)

Narrative Production (84th percentile – high average range)

Narrative Language Ability Index (81st percentile – high average range).

D32p18. The Student performed well on both comprehension and production tasks. She answered both concrete questions and questions that required inferences, had good recall of details, had only one grammatical error across three stories, and created complex stories that went beyond what was pictured. D32p18.

37. The report noted that “[p]revious testing has shown that receptive language skills are a relative strength, generally falling in the high average range with some variability.” D32p18; P9p48.

38. The assessment revision meeting was held on February 1, 2021, via Teams. Participants included: the Mother; Ms. Schwindt; the Grandparent; Ms. Trejo Savani; Patricia Whitmore,¹⁵ District SLP Team Lead; and Michelle Bammert, a District administrator. D32p25.

39. The Mother provided significant input during the meeting and afterwards. T1543. The Parents were concerned that Mr. Deskin was not at the meeting and because they believed the District’s assessment revision was not as in-depth as private provider evaluations. T1545.

¹⁵ Ms. Whitmore has a master’s degree in speech language pathology. T957. She holds a certificate of clinical competence (CCC) issued by the American Speech Language-Hearing Association in 1990 and has been employed by the District as an SLP for twenty-seven years. T955-56.

40. The team determined the Student did not require SDI in the area of communication but that a District SLP would be available to assist in recommending how to implement accommodations as necessary. As discussed in the assessment revision report:

Although she has some skills that are in the low average range and some functional struggles as reported by parent, general education teachers are expected to be able to provide differentiated instruction to diverse learners, within reason. Educator report corroborates test results indicating that [the Student's] language skills are within the expected range for general education students. Adding communication as an area of specially designed instruction would therefore not be [the Student's] least restrictive environment.

[The Student] is scheduled to complete neuro-psychological testing in October 2021. This could provide more information as to the degree that working memory is contributing to her challenges and may shed more light on cognitive linguistic processing. In addition, [the Student] will be attending public school full time at Eckstein beginning [second semester] 2021, which will allow for streamlined provision of IEP services and classroom accommodations and modifications. Although [the Student] does not meet eligibility criteria in communication, the building-based SLP at Eckstein is available to teaching staff to assist with recommendations regarding implementation of accommodations if needed.

D32p18.

41. On June 16, 2021, the Parents requested an Independent Educational Evaluation (IEE) because they disagreed with the assessment revision. D26p34. In response, the District filed a due process hearing request to defend the assessment revision. T2777, 2988. After the Parents withdrew the request for an IEE in July 2021, the hearing request was dismissed.¹⁶ T2778, 2988.

¹⁶ The Parents also challenged the assessment revision in a Special Education Citizen Complaint filed July 19, 2021. P9pp4-5. OSPI issued a report on September 13, 2021, that found "no violation with respect to the 2021 communication assessment." P9pp32, 39.

Full-Time Enrollment and Recovery Services

42. On or about February 8, 2021, the Student enrolled in the District full-time. D13p12. Mr. Deskin sent the Student's general education teachers an email containing the Student's IEP and a document called "IEP at a Glance."¹⁷ Teachers also received a hard copy of IEP at a Glance. T255.

43. On February 25, 2021, the District issued a PWN proposing to initiate a recovery services plan because the Student had demonstrated regression on three of four math IEP goals during the COVID closure. D5p3; T168, 258.

44. Between March 3 and June 11, 2021, the Student received recovery services online during weekly thirty-minute one-on-one sessions with Mr. Deskin and Ms. Irvin. T163-64, 168, 183, 273; D6pp1-2. During this fourteen-week period, excluding the District's spring break, the Student received seven hours of instruction focused on the three IEP goals at issue. T164; D31p2. Additionally, Mr. Deskin collected data to assess the Student's progress and to support her in meeting these goals. T164.

Return to In Person Services

45. The Student returned to school in person on April 6, 2021. D6p1. Between April and the end of the school year, all students continued to receive their lessons online. The Student attended two classes in-person per week and attended two classes online. T184-85. When she was attending school in person, the Student worked on lessons that others were doing at home and received additional SDI support from Mr. Deskin or Ms. Irvin. T265.

46. At some point, the Student's sixth grade general education teachers told Mr. Deskin they did not believe the Student needed some of the accommodations in her IEP. They also raised concerns that the number of accommodations and modifications made implementation difficult. T255-56, 302. However, none of these teachers testified at the hearing and there is no evidence in the record that any of them declined to provide the Student with the accommodations and modifications in her IEP during the 2020-2021 school year.

May 18, 2021, IEP Amendment

47. On May 18, 2021, the Student's IEP team met to discuss goal progress and review instructional needs. D25p1. Meeting participants included the Mother; the Student; the Grandparent; Ms. Schwindt; Mr. Deskin; Ms. Irvin; Mary Williams, the

¹⁷ IEP at a Glance is an abbreviated version of an IEP that sets out the Student's goals, services, accommodations, modifications, and testing accommodations. T255, 347.

Student's general education math teacher; and Brian Manzo, a counselor at Eckstein.¹⁸ D25p3.

48. The team considered input from the Student and the Parent. The Mother raised concerns about self-advocacy, anxiety, recovery services, the Student's math placement for the following year, and the Parents' continued belief that the Student required communication services. D25pp5, 12; T1554.

49. Ms. Williams discussed that the Student was performing at or above standard range in math class, compared to peers in her class. D25p13; T263. The Mother requested a self-advocacy goal, but the team did not believe it was necessary because teachers and staff viewed the Student as one of the best in the class in asking for help. T266; D25p27.

50. The team considered anxiety concerns with input from the Student's mental health counselor, Stacie Frank, and Mr. Manzo. D24p14. Mr. Manzo had met the Student's Mother at some point during the Student's sixth grade year and had numerous conversations with her. T1896-97. Mr. Manzo also spoke with Ms. Frank, who had diagnosed the Student with anxiety. T1927-28, 2809.

51. Although the Mother advised Mr. Manzo that the Student was experiencing anxiety, he never saw the Student exhibit signs of anxiety at school and never received reports from teachers that the Student was showing signs of anxiety. T1957. Mr. Deskin also did not see the Student demonstrating signs of anxiety and the Student's teachers never expressed concerns to him about the Student exhibiting anxiety at school. T199, 274. Additionally, neither the Parents nor any of the Student's teachers expressed concern that the Student required a Functional Behavior Assessment (FBA). T275-76.

52. The Parents and Ms. Frank were concerned the Student's math placement for the 2021-2022 year could be a source of anxiety. They believed that if the Student received her SDI in her general education class using a "push-in" model,¹⁹ she could feel anxious from being singled out to receive support in that way. T216, 1606; D25p14. The Parents also believed the Student should be in a "grade-level" special education class because her skills had exceeded those of other students in her sixth grade Basic Math class. T1581; 1599.

¹⁸ Mr. Manzo has a bachelor's degree in music composition and a master's degree in education and counseling. He is credentialed as a school counselor and as a licensed mental health counselor in the state of Washington. T1891.

¹⁹ "Push in" refers to services provided in the general education setting. T150.

53. At hearing, the Mother explained, “grade level – that doesn’t mean like all the kids in the same grade, but actually instruction that is truly individualized to her needs but also helping her access grade-level material.” T2374.

54. The team determined the Student would be enrolled in both a general education math class and a special education math class for support. D25p15. The “present levels” section of the IEP explained:

We believe as an IEP team that [the Student] would be best served in her 7th grade year, enrolled in a general education class (not push-in) with support from a Grade-Level [special education] Math Support class where [sic] instruction designed/monitored by a [special education] teacher.”

D25pp 15; T220.

55. The team intended that the Student would be with peers accessing grade-level work. T1606-07. The team did not expressly decide that all students in the class had to be in the same grade; rather, the goal was for the Student’s instruction to be individualized to meet her needs and to help her access grade-level material. T2374.

56. The team did not change the amount of SDI, which remained at 255 minutes per week. D25p24.

57. The team discussed that the Student had access to certain assistive technology programs through her school laptop. Every student had a laptop but not all students had these programs. T204, 215; D25p6.

58. The team also considered the Parents’ concerns that the Student required ESY services and decided to take data after breaks to see if the Student experienced regression and required ESY in the future. D25pp27-28.

59. Mr. Deskin did not believe the Student required ESY at any time during his work with her. T302. At hearing, he explained that a statement in the May IEP amendment regarding the Student’s need for “frequent reteaching and reinforcement of skills learned” to retain math skills meant that the Student would have difficulty applying something several days after she learned it, which he distinguished from regression seen after breaks. T303; D25p15.

60. The team also considered the Parents’ continuing concerns about the Student’s communication skills and outside reports the Parents had obtained regarding the

Student's expressive and receptive language skills. D25pp14-15. Unlike the Parents, Mr. Deskin and teachers did not have concerns about the Student's communication skills. T217-18.

61. The District issued a PWN on May 21, 2021, stating that data would be collected related to the 2021-2022 School Year Winter Break to determine whether the Student required ESY services for the summer of 2022, and that the Student would continue to receive recovery services until she demonstrated she had met recovery goals in two consecutive quarters. D25p28.

June 15, 2021, IEP Amendment

62. On June 15, 2021, the District held another IEP amendment meeting. D26p3. Participants included the Mother, the Grandparent, the Student, Ms. Schwindt, three general education teachers from Eckstein, Mr. Deskin, Ms. Irvin, Ms. Bammert, and Ms. Anderson. D26p1. Dr. Laura Snow, a private SLP,²⁰ also attended. D26p18.

63. The Parents provided input for team consideration, including the Mother's belief that Mr. Deskin had gone "above and beyond" by working with the Student in ways that were not stated in her IEP and were not sustainable in the future. T1558; D26p12.

64. The Student's computer science and English language arts (ELA) teachers reported she was "doing great," and neither teacher reported concerns. D26p14. The Student's world history teacher reported the Student did a "great job of self-advocating in class," and discussed strategies to help the Student who "can sometimes have a disconnect when she reads a text and then tries to apply that information to answer a question." D26p14. The Student's science teacher had "no concerns about her abilities, skills, and performance of her learning as compared to her same age peers" and had "no concerns about her ability to self-advocate." D26p14. At the Mother's request, Mr. Deskin added a note to the June 15 IEP Amendment reflecting the Mother's disagreement with the science teacher's statements. D26pp15, 34; T268.

65. Mr. Deskin reported on multiple strategies that worked with the Student. D26p24. These recommendations are effective for the Student and many others her age. Mr. Deskin added them to the IEP at the Mother's request, consistent with his practice of adding information to IEPs that families want to include. T230-32.

²⁰ Dr. Snow has a PhD in speech and hearing sciences in the area of speech language pathology, and a master's degree in theoretical linguistics. T1823. She holds a certificate of clinical competence issued by the American Speech Language Hearing Association. T1824. Dr. Snow currently works in private practice but previously worked in public schools and for the University of Washington Medical Center. T1824. Dr. Snow had been providing the Student with language therapy via Zoom since January 2021. P7p3.

66. The team discussed that the Student had met one IEP goal and was making some progress toward four goals. D26p20. With respect to recovery services goals, the Student had met her place value identification goal, made significant progress toward her sixth-grade word problems goal, and some progress toward her fraction calculation goal. D26p20.

67. The June 15 IEP amendment provided 225 minutes per week of math SDI in a special education setting. D26p30. It retained the language from the present levels section of the May 18 IEP amendment stating the team's recommendation that the Student would be "best served . . . enrolled in a general education class (not push-in) with support from a Grade-Level [special education] Math Support class where [sic] instruction designed/monitored by a [special education] teacher." D26p20.

68. The team added 90 minutes per week of math SDI in a special education setting "to account for her special education homeroom" when she transitioned to 7th grade. D26pp30, 33. The team believed this would "be a good opportunity for some reteaching in math that might not be as accessible during classes." T270; see also T301.

69. The June 2015 IEP amendment provided 28 accommodations and 7 modifications. D26pp26-28. The June 15 IEP amendment also provided accommodations related to state and district wide assessments. D26p29.

70. The team provided recovery services until the Student met her goals. The team also offered a District summer educational program to allow the Student to access SDI to support current and recovery goals. At hearing, Ms. Schwindt explained that the team agreed the Student would receive recovery services instead of ESY. T1562.

71. At the June 15, 2021, meeting, the team also discussed the Student's communication needs, with input from Dr. Snow, and amended the IEP to incorporate communication strategies developed by Rachel Connelly, an SLP at Eckstein. T233-34; D26pp17-18, 33. Ms. Connelly developed these communication strategies at some point during the 2020-2021 school year to help teachers better understand the Student's accommodations and modifications as written in her IEP. P6; T681, 748.

72. Ms. Connelly's communication strategies, many of which had already been included in the Student's IEP, were listed in the June 15, 2021, IEP Amendment as follows:

- **Help [Student] to paraphrase both directions and information in her own words**
 - Strategy: (1) Read 1 paragraph; (2) Ask yourself – what were the main idea + 2 details?; (3) Put the main idea and 2 details into your own words
- **Understanding questions**
 - Work on interpreting questions based on type (e.g. *who* is asking for person but that could look like a name [e.g. Sarah, the teacher]; *when* is asking for time but that could look like a specific time [e.g. 4:30 pm] or a specific date [e.g. January 5th] or temporal words [e.g. before school, after the appointment]
 - Work on locating information in text that is also in the answer
- **Define key vocabulary**
 - [Student] can work on strategies to understand how to find out definitions for unfamiliar words (e.g. asking teacher, using online dictionary, reviewing class notes)
 - Provide [Student] with a list with key vocabulary and definitions to review prior to teaching/learning of content - *Listed under accommodations in current IEP*
- **Prompt for elaboration and understanding with “wh-” questions**
 - *Listed under accommodations in current IEP*
- **Provide [Student] with multimodal opportunities to demonstrate knowledge**
 - Can look like: oral response, assignments that employ her creativity, multiple choice
 - *Listed under accommodations in current IEP*
- **Check in with [Student] to ensure understanding of concepts and vocabulary**
 - *Listed under accommodations in current IEP*
- **Allow Student to use open books and notes for any assessments to support working memory**
- **Provide repetitive instruction to help [Student] understand key concepts**

D26pp17-18; see also P6p1.

73. There is conflicting evidence in the record as to whether the team agreed to another evaluation of the Student's communication skills during the May and June 2021 IEP amendment meetings. On one hand, the assessment revision had just been completed a few months earlier; moreover, both the June 15 IEP Amendment and the May 18 IEP Amendment contained an excerpt from the assessment revision, stating that the Student did not meet eligibility criteria for special education services in communication, that the team did not recommend SDI in communication, and that challenges could be managed with "classroom-based differentiation and IEP accommodations." D25p15; D26p17.

74. On the other hand, both documents also stated:

Brief Update From 5/18/21 Meeting: The IEP team has determined from historical data and observations and current present levels that [the Student] does demonstrate needs in Receptive and Expressive Language, to the point where accommodations/modifications, and classroom-based differentiation, alone, are not currently serving such needs. . .

D25p14; D25p28; D26p16; D26p34.

75. The PWN issued after the June 15 Amendment meeting also stated that the Parents had requested an IEE to evaluate the Student's communication needs. D26p34.

76. At hearing, Mr. Deskin recalled that District members of the IEP team did not have concerns about communication but agreed to evaluate the Student in this area based on the Parents' concerns. T217-18. However, neither the Parents nor any other witnesses testified that the team agreed that the District would conduct a second communication evaluation on the heels of the assessment revision. Rather, the Parents requested an IEE of the Student's communication skills in June 2021, and obtained a private speech language evaluation from Dr. Snow in August 2021. This meant that the Student's communication skills were assessed in February 2021 and August 2021. D26p34; P7p1. On balance, the evidence does not support a finding that the IEP team agreed during the May and June IEP Amendment meetings that the District would also conduct another assessment of the Student's communication skills.

End of the 2020-2021 School Year through Summer 2021

77. The Student earned the following grades during the second semester of the 2020-2021 school year: "A" in ELA, computer science, world history, and basic math; "B" in general education math and science. D37p2.

78. During the summer of 2021, the Student received recovery services from a special education teacher through the District's special education programming for approximately four weeks, from 9:00 a.m. to 1:00 p.m., four days per week (64 hours). D6p3; T2791-92.

Evaluation by Dr. Snow

79. On August 17 and 18, 2021, Dr. Snow evaluated the Student and issued a speech/language evaluation report. P7p1. It is unclear when the Parents first provided this report to the District.

80. Dr. Snow reviewed prior evaluations by Dr. Mielenz (2017 and 2019) and UW Speech and Hearing Clinic (2020), along with the District's 2021 assessment revision. P7p2. She also administered the following standardized tests:

Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5), Language Content Index

Clinical Evaluation of Language Fundamentals – Metalinguistics, Fifth Edition (CELF-5 Metalinguistics)

Listening Comprehension Test – Second Edition (LCT-2)

Test of Semantic Skills – Intermediate (TOSS-I)

P7pp4-10.

81. Based on her evaluation, Dr. Snow concluded the Student's language disorder was then manifesting "as gaps in the word knowledge expected for her age/grade, difficulty processing and retaining verbal information without visual supports, and misinterpretation of and/or challenge responding appropriately to higher-order questions about oral and written discourse." P7p11; T1825.

82. Dr. Snow's report contained the following recommendations for school:

Although [the Student's] language scores may not qualify her for specially designed instruction by a public school speech/language pathologist, her academic learning continues to be impacted by her language disorder. It is recommended that she receive the accommodations listed in her IEP, including the suggestions made by Eckstein speech/language pathologist last spring, to support her academic learning.

P7p13. Dr. Snow did not believe the Student required SLP support in the school setting if the curriculum was accessible. T1831. She believed implementation of the accommodations in the Student's IEP "would probably be sufficient" to meet the Student's language needs. T1846. In addition, she believed pulling the Student out of class to receive SLP services "might not be the best use of her time." T1831.

2021-2022 School Year–Seventh Grade

83. At the start of seventh grade (2021-2022 school year), River Barrett (they/them) was the Student's special education teacher and case manager.²¹ T2134.

84. The Student was assigned to Mx. Barrett's Homeroom. P10p1. She was also assigned to Mx. Barrett's Math Improvement class—a special education class with a total of two students. T1045; T2134-35, 2191. Students in Math Improvement worked on their individual IEP goals. P53A¶5; T2722.

85. The Student's general education math class was taught by Joanna Mensher.²² T1035. Mx. Barrett provided math services to all of the students who had IEPs in Ms. Mensher's class throughout the 2021-2022 school year. T1050-52.

86. Under Eckstein procedures, IEP case managers generally sent IEPs to general education teachers. T1685-86. Consistent with this policy, Ms. Mensher received a copy of the Student's IEP and IEP at a Glance, although she could not recall precisely when, or who provided these documents to her. T1036-37, 1093. Additionally, the Mother sent the Student's IEP to the Student's general education teachers at some point. T1794.

October 2021 Facilitated IEP Team Meeting

87. On October 18, 2021, the District held a three-hour IEP team meeting attended by two facilitators; the Parents and their advocate; the Parents' attorney; the Student's Grandparents; Michael Bylsma,²³ District Representative; Rachel Disario, District

²¹ Mx. Barrett has been a certificated general education teacher and special education teacher since 1990. They have been a teacher for more than twenty-five years and taught special education for approximately fourteen years. T2131. Mx. Barrett was employed by the District as a special education teacher at Eckstein during the 2020-2021 and 2021-2022 school years. T2133.

²² Ms. Mensher has undergraduate and graduate degrees in geography and a master's degree in teaching. She has been certificated to teach general education math at the middle school level since 2020. Ms. Mensher has been employed by the District as a math teacher at Eckstein for the past three years. T1033-35.

²³ Mr. Bylsma has a bachelor's degree in English and a master's degree in educational leadership. T780-81. He is certificated to teach language arts and also holds certification as a principal. T779-80. Mr.

Senior General Counsel; Barbara de Normandie, Assistant Principal at Eckstein;²⁴; Mr. Manzo; Mx. Barrett; the Student's general education history and science teachers; and Ms. Connelly. P10p1; D7p3; T795.

88. The parties exchanged information prior to the IEP team meeting, including a September 9, 2021, letter from Kathy Risse, M.D., noting that the Student's diagnoses included hypothyroidism. P9p3.

89. The parties agreed the minutes in exhibit P10 are an accurate representation of what happened at the facilitated IEP meeting. T801.

90. The team was not able to address all agenda items during the facilitated IEP meeting. T803. The Parents had ample opportunity to participate, with a facilitator noting that the Parents' counsel had provided more input than anyone else. P10p9.

91. The team agreed to the Parents' request to add the Student's hypothyroidism diagnosis to the IEP. P10p4. The team also discussed Dr. Snow's evaluation along with the Mother's concerns that teachers were not seeing the full extent of the Student's anxiety and communication difficulties. P10pp4-8; T704-705. Mr. Bylsma noted that Dr. Snow's evaluation indicated the Student likely would not qualify for SDI. P10pp3-4. He focused discussion on accommodations relative to communication, consistent with Dr. Snow's recommendations. P10p6. Teachers discussed accommodations that were helpful to the Student and also discussed the Student's self-advocacy skills. P10p6. Mr. Bylsma emphasized that the Student was receiving straight A grades at that time. P10p7.

92. The team discussed having Mr. Manzo, whom the Mother described as "in [the Student's] circle of trust," provide additional counseling support for the Student. P10p9; T1574-75. The team reached an impasse, however, because the Parents sought to add access to counseling and consultive SLP support to the IEP, whereas District staff believed this support could be provided outside of the IEP process. P10pp8-10. District staff also did not see the need for a self-advocacy goal, as

Bylsma has been employed by the District as the Director of Special Education since January 2022. T778. Prior to January 2022, he served as a District Special Education Supervisor for four and one-half years. T778. Mr. Bylsma worked for several other school districts prior to his employment with the District in the role of Assistant Director of Special Education for two years, Assistant Principal for three years, and as a general education teacher for four years. T779-80.

²⁴ Ms. de Normandie has a bachelor's degree in business and marketing and two master's degrees, including one in education. She holds a principal certificate and is also certificated as a special education teacher in Washington state. T1669-70. Ms. de Normandie has been on leave since July 1, 2022, due to a family crisis that is still ongoing. T1669, 1707-08. As a result, her recall of specific events that occurred prior to her leave was limited.

requested by the Parents, because teachers had discussed the Student's strong self-advocacy skills in the classroom. P10pp8-10.

93. On October 22, 2021, the District issued a PWN refusing to add counseling or SLP as supplementary aids and services. D7. The PWN stated that District staff had not observed the Student's anxiety interfering with her ability to access her education and that the Student would have access to counseling support but did not require counseling as a supplementary aid and service. The PWN further stated that Dr. Snow's recommendations were consistent with observations by District staff and previous evaluations indicating SLP as a supplementary aid and service was unnecessary for the Student to access her education. The PWN further noted that District staff uniformly reported that the Student communicated well with peers and teachers, which included asking for help. D7pp3-4.

94. It appears that the Parents challenged the accuracy of this PWN at some point, but they did not provide any evidence to establish when the challenge was made or the nature of the challenge. T1468; 1474; P50Ap4.

Progress Fall 2021

95. Via email in late October, Mx. Barrett informed the Parents the Student had met two of her three recovery services goals. D15p5. In response, the Mother asked Mx. Barrett to provide raw data and analysis, questioned what assessments were used to measure the Student's progress, and asked Mx. Barrett to explain why certain work was being assigned and how it aligned with the Student's IEP goals. D15pp4-5.

96. Via emails on October 29 and November 10, 2021, Mx. Barrett discussed the Student's work toward her IEP goals and recovery goals and how the Student's progress had been assessed. D15pp1-4. Mx. Barrett explained that Ms. Drafal, who had provided recovery services, and Ms. Mensher had been consulted. D15pp1-4; T1071.

97. Mx. Barrett's email discussed that the Student had met three IEP goals and was making progress on the remaining two goals. D15pp1-4. Similarly, the Student's progress report indicated that as of November 11, 2021, she had met the following goals:

Fraction Calculation & Number Sense. D10pp4-5

Equivalent Values. D10p5 (goal met in June 2021 but practice continued)

6th Grade Word Problems. D10p6 (see comments for 11/11/21 – Student “recently met this goal with 90% accuracy. . .”).

Additionally, the Student had made some progress toward her 6th Grade Pre-Algebra goal and significant progress toward her 6th Grade Numbers, Operations, and Ratios goal. D10pp6-7.

98. At some point during 2021, Ms. Kulkin gave the Student a survey-level math test she had obtained through coursework at Western Washington University to determine the Student's skill level. P14; T2074-75. The test was not based on the Student's IEP goals. T2087, 2089-90. At some point, however, when the Mother and Ms. Kulkin discussed the Student's IEP goals, Ms. Kulkin referred to some of the test problems to demonstrate that the Student had not mastered certain IEP goals. T2094. The weight given to the test results in Exhibit P14 as an assessment of the Student's progress toward her IEP goals is limited because the test was not administered for that purpose, and it is unclear when the test was administered, what IEP goals the Student was working on at that time, and whether test questions measured the skills that were the focus of the IEP goals.

Private Documents Obtained by the Parents in the Fall of 2021.

99. On or about November 9, 2021, Dr. Risse issued a letter stating it would be helpful for the Student to be able to access her sixth period class remotely instead of in person. P11p1. Ms. de Normandie granted the Parents' request for the Student to attend Mx. Barrett's sixth period class remotely. T2810-11; 2925. On November 15, 2021, however, the Student stopped attending her sixth period class altogether. P53A; D12p11; 1-11.

100. In October and November 2021, Angela Hungelmann, Ph.D., a licensed psychologist, conducted a psychoeducational evaluation of the Student at the Parents' request. P12p1. Dr. Hungelmann administered the following assessments:

- Wechsler Intelligence Scale for Children- Fifth Ed. (WISC-V)
- Wechsler Individual Achievement Test- Fourth Edition (WIAT-4)
- Gray Oral Reading Tests- Fifth Edition (GORT-5)
- Comprehensive Test of Phonological Processing- Second Edition (CTOPP-2)
- Test of Orthographic Competence (TOC)
- Wide Range Assessment of Memory and Learning-Second Edition (WRAML2)
- Delis-Kaplan Executive Function System (D-KEFS)
- Behavior Assessment System for Children, Third Edition (BASC3)
- Screen for Child Anxiety Related Disorders (SCARED)
- Multidimensional Anxiety Scale for Children-2nd Edition (MASC2).

P12p2. Dr. Hungelmann also met with the Student and the Mother, and collaborated with Ms. Frank, Ms. Kulkin, and Dr. Snow. P12p2.

101. A summary in Dr. Hungelmann's report stated:

[The Student] has numerous strengths which exceed her areas of challenge. She has well-developed reasoning and processing abilities, reading, writing, math fact fluency, and verbal memory. Her Dyslexia is largely remediated due to the exceptional intervention she has received. [The Student's] language disorder, mathematics disorder, and some areas of executive functioning weakness impact the ease of learning. The "big picture," however, is extremely encouraging and [the Student] should be thought of as a capable student who is able to learn and achieve with appropriate supports. Her profile is described in more detail throughout this report.

P12p1. The report included the following diagnoses: Specific Reading Disorder (Dyslexia); Mathematics Disorder (Dyscalculia); Language Disorder. P12p1.

102. Dr. Hungelmann did not testify at the hearing. Her report stated the results of the evaluation "indicate a need for ongoing support, accommodations, and modifications"; it did not refer to SDI. P12pp4-5. Recommendations related to math included teaching strategies for language based problems, pre-teaching math concepts, using multimodal learning, introducing new math concepts in connection with concepts already mastered, teaching the Student to ask "Does this make sense" and "how can I prove it" before moving on to the next step in a math problem; addressing math skill gaps, providing access to tools such as a 4-function calculator, and helping the Student to choose slower-paced math courses in high school. P12p4.

103. The report also recommended the following supports for accessing the curriculum in subjects that relied heavily on language: pairing verbal information with visual supports; providing written instructions; frequent repetition of new concepts; support for understanding vocabulary; and frequently assessing understanding by asking questions such as, "Tell me what you understand about this?" P12pp4-5. Dr. Hungelmann's report referred to Dr. Snow's report regarding accommodations and modifications to support the Student at school. P12p8. The report also recommended: "*When possible, [the Student] is likely to benefit from being in classrooms in which a shared instructional aide is present.*" P12p5. (Emphasis in original.)

104. Regarding executive functioning, the report recommended that the Student learn to use a planner, to break projects and assignments into smaller pieces, and to

develop strategies for homework tracking. P12p5. The report noted self-advocacy skills would be a critical part of helping the Student become ready for high school. P12p6. The report further recommended continued psychotherapy to address anxiety and noted consistent check-ins with the school counselor seemed helpful. P12p6. It also recommended continued speech/language therapy consistent with Dr. Snow's August 2021 evaluation report. P12p6.

105. Finally, the report stated:

Parents are encouraged to continue to focus on [the Student's] strengths. [The Student's] overall picture as a learner is extremely encouraging. She has made tremendous growth due to all of the intervention she has received and is showing that she is a capable learner. As such, parents should continue to gradually allow [the Student] increased independence with her academic work while conveying confidence in her ability to be successful and develop autonomy as a student. This will be critical to not only help build [the Student's] identity as a capable learner but also to reduce her anxiety about her abilities.

P12p6. The report recommended a reevaluation of the Student at age 16 to "assess progress and identify any additional supports or instructional strategies she might need for the remainder of high school" ²⁵ P12p7.

106. On or about November 29, 2021, Robert Murray, M.D., issued a letter indicating the Student had been diagnosed with hypothyroidism in March 2017. P13p1. The Mother provided this letter to the District, but it is unclear when. T1855-56.

107. On or about December 7, 2021, Ms. Frank issued a letter confirming that she was providing therapeutic support to the Student, who met criteria for Obsessive Compulsive Disorder. P15p1.

108. The Parents were aware that the Student had an upcoming triennial reevaluation in the spring of 2022 and did not ask the District to reevaluate the Student before then. T2809-10. There is no evidence that District teachers or staff requested a reevaluation prior to that time, or believed the Student should have been reevaluated prior to the spring of 2022.

²⁵ Dr. Hungelmann's evaluation was completed shortly before the Student turned 13. P12p1.

Change in Homeroom and Math Class

109. On or about November 3, 2021, the Student was moved from Mx. Barrett's homeroom to Ms. Mensher's homeroom, or advisory, at the Parents' request. P53A¶4.

110. As of mid-November, 2021, the Student was the only person left in Mx. Barrett's sixth period Math Improvement class. T2675; P53A¶5. In early December, 2021, Mx. Barrett's class was consolidated with a Basic Skills Math class (Basic Skills) taught by Dina Vesmanova, who is also a certificated special education teacher.²⁶ P53A¶5; D12pp9-11. Both Math Improvement and Basic Skills are special education classes that provide instruction to students based on their individual needs. T2722. There are no general education students in either class. T2722.

111. The Mother learned that Math Improvement had been discontinued in early December; she did not ask for an IEP team meeting to discuss the issue because an IEP team meeting was already scheduled. T2870.

Annual IEP Meeting – December 9 and 10, 2021

112. The Student's IEP team met on December 9 and 10, 2021, to develop an annual IEP and to discuss the Student's upcoming triennial reevaluation. D16p4; P16p1; P17p1. Mx. Barrett attended both meetings. P16p3; P17p1.

113. During the December 9 IEP meeting, the Parents discussed concerns that the Student's anxiety was escalating. P16p1. In contrast, the Student's general education teachers described her as doing great work, emailing teachers if she missed work, curious, on task, going above and beyond with respect to effort, asking questions and asking for help and feedback, and friendly and outgoing. P16pp2-3.

114. Ms. Mensher noted the Student was doing well in general education math until a unit on percentages, which was difficult for all students. Ms. Mensher already had a plan to support the Student. P16p2. Mx. Barrett discussed that the Student enjoyed the work but found some of it challenging. Mx. Barrett observed that the Student needed help reviewing previous material to make it stick, consistent with 7th grade general education students who showed the same difficulties remembering and retaining. P16p3.

115. The Mother raised concerns that the Student was stressed and anxious because Mx. Barrett did not respond to three emails from the Student. Mx. Barrett explained

²⁶ Attendance records contain entries for Math Improvement on November 19, 2021, and Basic Math on December 6, 2022, indicating that the change took place between those two dates. D12pp9-11.

that the Student's concerns had been addressed in class, rather than via email. Both the Mother and the Parents' counsel discussed why they felt Mx. Barrett should have responded by email. P16p4.

116. The Parents asked to make changes to the "Team Considerations" section of the draft IEP, and the team agreed to do so. This included adding the Parents' full input, replacing a paragraph with the Parents' wording, amending the discussion regarding State and District assessment data, communication, and assistive technology, and adding the Parents' suggested language pertaining to the Student's anxiety and OCD. P16pp4-5.

117. The Parents also asked to amend the adverse impact statement to add the Student's mental health and hypothyroidism diagnoses; the Mother discussed how the Student's diagnoses impacted her education. P16p5. The team also considered the Parents' request to include information from Dr. Snow and Dr. Hungelmann in the present levels of performance section. P16p6.

118. When the IEP team reconvened on December 10, 2021, the Student's counselor, Ms. Frank, attended. P17p1.

119. Early in the meeting on December 10, the Mother stated she was waiting for responses to various emails she had sent to District staff. Mr. Bylsma discussed that teachers and administrators could not keep up with the length and volume of emails from the Mother. P17p1.

120. The Parents questioned how data was being collected regarding the Student's progress toward IEP goals and whether the last set of goals had actually been met. The Parents also wanted "the return of prior goals and proper measurement moving forward." P17p1. The Parents wanted District staff to use data collected by Ms. Kulkin to assess the Student's progress toward IEP goals and to compare it to Mx. Barrett's data to determine if the Student had actually met her goals. P17p2.

121. The meeting notes indicate that Mx. Barrett discussed how the Student's progress was assessed, but the notes regarding this discussion are difficult to understand. P17pp1-2.

122. The IEP team also discussed the Parents' request to add certain IEP goals, but District staff did not understand what the Parents were requesting. P17pp3-4. The Parents' counsel suggested holding off, which the team did. P17p3.

123. The team then discussed the Student's accommodations and modifications at length, with a focus on the Parents' concern that the Student was not being provided with the accommodations and modifications in her IEP. P17pp3-6. The Parents and their counsel did not identify what accommodations and modifications they thought teachers were not providing and did not identify the teachers who they believed were not providing them.

124. Mr. Bylsma discussed concerns that because the IEP contained so many accommodations, teachers might not be able to keep them straight and the Student might not understand them, and some accommodations might be enabling, rather than skill-building, as the Student advanced to high school. P17p3.

125. The Mother discussed her view that if the Student "received more individualized instruction, it would be less difficult for teachers." P17p3. She also discussed the need for a class with an instructional assistant and Dr. Snow's report indicating the need for accommodations. P17p4.

126. One teacher discussed doing her best to provide accommodations and the difficulty of reconciling that with the fact that the Parents viewed things differently. For example, she noted she was using a graphic organizer, "but apparently the wrong one." P17p4. Several teachers discussed that a proposed accommodation to allow open book/open notes would draw attention to the Student in a general education class and make her uncomfortable. P17pp4-5. Mr. Bylsma noted that teachers were working hard and did not feel recognized. P17p5.

127. The Parents' counsel stated that the Parents could make a complaint against Mx. Barrett for harassing and bullying the Student if they wanted to. P17pp5-6. There is no credible evidence in the record that Mx. Barrett was harassing or bullying the Student. During the hearing, the Mother testified that the Student was refusing to go to Mx. Barrett's class and was hiding from Mx. Barrett in the halls. T2059. This testimony is not supported by other credible evidence in the record and is given little weight.

128. The December 9 and 10 IEP meetings were contentious, which meant the IEP team could not complete all agenda items. T1635. Much of the conversation in the meeting minutes is attributed to the Parents' counsel and the Mother and it is abundantly clear that they had ample opportunity to voice their concerns and opinions. D16; D17.

129. The minutes from the December 9 or 10, 2021, IEP team meetings do not reflect that the Parents raised any concerns regarding the Student's math placement for the

remainder of the 2021-2022 school year. Another IEP team meeting was scheduled for January 6, 2022. P18p1.

Accommodations and Modifications

130. At hearing, the Parents testified they did not believe the Student's seventh grade teachers were consistently providing the Student with the accommodations and modifications in her IEP. This belief was largely based on conversations with the Student, along with the Parents' review of work samples, the Mother's work with the Student during remote instruction in sixth grade, teacher requests for support, and questions about the number of accommodations. T2431.2953-57, 2959. The weight afforded to this testimony is limited by the fact that the Parents did not have personal knowledge of whether accommodations and modifications were being provided; provided little detail about what the Student actually told them; and statements by the Student, who did not testify at hearing, were not subject to cross-examination. Moreover, the Parents did not identify specific concerns when given an opportunity at the December 9 and 10, 2021 IEP team meetings. Additionally, it is unclear how the Mother's experience in working with the Student led her to believe teachers were not providing accommodations and modifications. Similarly, in the absence of context in which to view work samples, they are of little value in determining whether the Student was receiving accommodations and modifications. Finally, to the extent that teachers sought support in implementing accommodations or questioned the number of accommodations, these concerns do not lead to the reasonable inference that teachers were not providing the Student with the accommodations and modifications in her IEP.

131. The Mother also did not believe Ms. Mensher was providing the Student with the accommodations listed in her IEP because she wasn't seeing "evidence" to that effect. T2321. At hearing, however, Ms. Mensher credibly testified that she provided the Student with the accommodations and modifications in her IEP, with the exception of a few that were not related, such as noise-cancelling headphones. T1081. Ms. Mensher reviewed the accommodations listed in the Student's IEP "all the time" because the Student had so many and because the Mother sent numerous emails regarding the need to provide the accommodations. T1081. Additionally, Ms. Mensher described providing math support including "reading through the word problem, pulling out the information and then making sure that she either understands what she needs to do or that she has gone back and checked that she has answered the question." T1083.

Anxiety and Safety Plan

132. Mr. Manzo started meeting with the Student during the fall of the 2021-2022 school year for weekly check-ins of ten to fifteen minutes. T1955; D19p2. The Parents asked Mr. Manzo not to discuss the Student's anxiety, however, for fear that it would make her anxious. T1931, 1956-57. As a result, Mr. Manzo was unable to address concerns related to anxiety with the Student, and he instead used the check-ins to build trust with her. T1957.

133. The Parents sent Mr. Manzo emails describing anxiety and emotional distress they observed at home, but Mr. Manzo never observed or experienced the Student exhibiting any anxiety or emotional distress in the school setting; he also never received a report from a teacher that the Student was experiencing anxiety or distress. T1957, 1959.

134. On December 13, 2021, the District adopted a safety plan to address concerns related to the Student's anxiety. D27.

January 2022

135. On January 4, 2022, Mx. Barrett sent the Parents an email with a revised draft IEP attached and asked the Parents to send notice if anything had been overlooked. The email stated the PWN "is still in progress, dependent upon the discussion" at the next meeting. D17p2; P8p27.

136. The revised draft IEP indicated the Student's grades ranged from 91% to 97%. It noted the Student was not attending her special education class in order to attend counseling sessions and was receiving coursework electronically until the IEP team decided how she would receive her SDI for the remainder of the year. D8p9. Consistent with the team's discussion during the IEP meetings on December 9 and 10, 2021, the revised draft included substantial input from the Parents (D8p7), along with evaluative data and information from private providers, including Ms. Frank, Dr. Hungelmann, Dr. Snow, and Dr. Murray. It also included the Student's hypothyroidism and OCD diagnoses. D8pp9-10, 11-12.

137. Mx. Barrett's January 4, 2022, email also discussed scheduling for the remainder of the first semester and for the second semester. For period 5 of both semesters, the scheduled stated "student will be in Math Empowerment." D17p3.

138. Via email on January 5, 2022, the Parents' counsel responded that the Student required her math SDI in a special education setting and that her math placement and

schedule had been predetermined. The Parents' counsel stated, "Another option is that the [District] have Yellow Wood Academy or another third party provide [the Student] with SDI in Math," and noted the Parents had already asked the IEP team to consider Yellow Wood Academy (Yellow Wood). D17p2.

139. The Parents' counsel emphasized:

this IEP cannot be implemented without appropriate prior written notice being given to the family. We absolutely disagree with the claim that [the Student's] prior IEP expired because of concern with the draft IEP.

D17p2.

140. The District responded that scheduling options had merely been proposed and would be discussed by the IEP team, and that the PWN would be modified as necessary. D17pp1-2.

141. On January 6, 2022, at 2:21 p.m., the Parents' counsel sent IEP team members an updated agenda and more than 100 pages of documents for consideration at the meeting later that day, including:

notes from the December 9 and 10 IEP meetings;
updated input from the Student to be included in the IEP;
the Parents' comments on the second draft IEP;
the Parents' proposed additions to the present levels of performance;
the Parents' proposed revised accommodations and modifications;
the Parents' copy of the draft IEP with handwritten notes.

P18pp1-2. The documents contained extensive changes and additions to the IEP and included some duplicative pages. P18pp11-26, 35-42, 57-82, 83-107.

142. The Student made a statement at the start of the January 6, 2022, IEP meeting. P20p16. The Mother provided an update about the Student's health. P20p17. The Parents asked the team to approve the meeting notes from December 9 and 10, 2022, which had been taken by the Grandparent. The District expressed concern that the notes were twelve pages in length and had been circulated shortly before the meeting. P20p17.

143. The Parents wanted the District to review the Parents' draft feedback, sent hours before the meeting, before finalizing the IEP. P20p17.

144. The team discussed the Student's goals and the Parents' request for the District to consider data from Ms. Kulkin in establishing the Student's baseline for her goals. However, the team did not make a decision regarding these issues, largely because Mx. Barrett and team members were confused as to what the Parents were requesting. P20pp18-20.

145. The Parents' counsel emphasized that the District was required to implement the Student's prior IEP until the team finalized the new annual IEP, with PWN notice to the Parents within a reasonable time prior to implementation. P20p19. The Parents' counsel stated she wanted to be:

explicitly clear that there's no agreement that any of the drafts constitutes [sic] final draft. . . If there's [sic] disputes that still result once we finish this process, the stay-put IEP from 2020 as amended will be the one [the District] implements.

P20p29.

146. The team discussed the Parents' proposed accommodations and modifications at length, with team members agreeing that the Student did not require modified grades. P20pp20-22.

147. The team also discussed the Mother's request for the Student to have access to a shared instructional assistant in her classes but did not come to a consensus on whether the Student needed such support. P20pp23-24.

148. The team next considered the amount of SDI the Student required and discussed various settings for her to receive her SDI. P20-pp25-28. The Mother emphasized that the Student's prior IEP team did not believe it was appropriate for the Student to receive SDI in the general education setting with push in services. P20pp25. She also did not believe that a basic skills class, sometimes referred to as "sheltered math," was appropriate. P20pp25-27. The Mother stated:

We have asked [the District] for her to receive SDI one-on-one at [Yellow Wood]. We understand she has unique needs, and the sheltered basic math class is not [an] appropriate place for her to learn math. Yellow Wood is reasonable and appropriate for her to receive her SDI.

P20p25.

149. Mr. Bylsma encouraged a conversation about what was best for the Student, noting the Student had made progress the past few years and was excelling in math as far as grades were concerned. He did not believe Yellow Wood would be an appropriate placement for the Student. P20p25.

150. The Parents' counsel disputed that the Student was successful in math, noting that she was experiencing anxiety and did not want to attend her special education math class. P20p26. The Mother also discussed her belief that the Student was struggling and had significant anxiety. P20pp26-27.

151. The IEP team did not complete its discussion regarding the Student's annual IEP on January 6, 2022.

Attendance at Yellow Wood

152. In early January 2022, the Student started receiving her math SDI from Yellow Wood from 8:00 a.m. to 8:50 a.m. every day except Wednesday. T2859; 3015; P20p2; P65p2.

153. There is no documentary evidence in the record that the Parents gave the District 10-days notice before they sent the Student to Yellow Wood to receive her SDI. Additionally, at the January 6, 2022, IEP team meeting, the Mother stated that the Parents had asked the District to provide the Student's SDI through Yellow Wood, and made no mention of having notified the District that the Parents had already decided to send the Student to Yellow Wood. P20p25. It is found that the Parents did not provide 10-day notice to the District before they enrolled the Student in Yellow Wood.

154. The Parents felt they had to enroll the Student at Yellow Wood for her to receive appropriate math instruction aligned with her IEP. T2373-74; 2859. The Student's instruction at Yellow Wood is one-on-one. T2357.

155. After the Student started receiving her SDI at Yellow Wood, Mx. Barrett and Ms. Mensher continued to collaborate with each other regarding the Student's math services at Eckstein. Mx. Barrett continued to provide math services to all students who had IEPs in Ms. Mensher's first period math class, including the Student. T1050-51.

156. On January 25, 2022, two days before the first semester ended, the Parents asked the District to confirm that it had assigned the Student to Ms. Vesmanova's

Basic Skills Math class, “as a placeholder because [the District] collapsed [Mx.] Barrett’s class, not because it believes that [the Student] needs to be in the actual Basic Skills math class taught by Ms. Vesmanova?” D18p2; D11p2. Ms. de Normandie responded:

[The Student] is assigned to Ms. Vesmanova’s class because [the Student’s] current IEP requires her to be in a [special education] classroom to receive Math SDI. Ms. Vesmanova’s Period 6 Basic Math class is the [special education] class available for delivery of SDI by a [special education] teacher at [Eckstein] during Period 6. This class does not require changes to [the Student’s] schedule as per the family’s request.

The family also informed me that the GenEd equivalent Math Empowerment class taught by [the Student’s] current math teacher for continuity and to reduce any anxiety related to being in a sheltered [special education] classroom is not acceptable.

D18p1.

157. The Student never attended Ms. Vesmanova’s Basic Skills class. T2063; D11p4.

158. The Student received grades of A or A- in all of her first semester classes of seventh grade with the exception of her special education math class. D11p2. In Math Improvement, the Student earned an A during the first quarter. During the second quarter of the first semester, she received a P, for pass, in Basic Skills, which she never attended. D11p2. The P grade was intended to show that “there wasn’t necessarily progress made but there wasn’t a letter grade.” T1313.

Recovery Services – Offer to Provide Private Tutoring

159. During the fall of 2021, a paraeducator provided additional recovery services to the Student approximately 3 or 4 times, for approximately 1 hour per session (3-4 hours). T2155, 2217.

160. On January 13, 2022, the District offered to contract with a private tutoring service to provide additional recovery services or to reimburse the Parents if they obtained such services. D20p11; T1757. After the Parents requested tutoring services with Yellow Wood, Mr. Bylsma contacted Yellow Wood to set up a tutoring contract for 22.5 hours of tutoring service. D20pp1-3.

161. However, Yellow Wood would not contract with the District to deliver the recovery services to the Student. T1504. Accordingly, on March 25, 2022, Mr. Bylsma notified the Parents that Yellow Wood was “unable to provide the agreed upon services,” and discussed proceeding with other providers. D20p11.

162. The Parents’ attorney questioned Mr. Bylsma as to why the District’s offer of services from Yellow Wood had been rescinded, stating that Yellow Wood said “that you specifically are the hold up. Can you explain?” D20pp8, 10. When Mr. Bylsma brought this to Yellow Wood’s attention, however, Yellow Wood stated unequivocally that they had not made such a statement to the Parents’ counsel and had, in fact, told the family they did not have availability. D20p7. Mr. Bylsma’s hearing testimony is consistent with emails indicating that Yellow Wood did not have the availability to provide recovery services and is found to be credible.

163. During the hearing, Mr. Bylsma stated the District “stands by its offer of recovery services to be provided to the Student and has never wavered from that.” T1503. The District has “proposed multiple tutoring agencies at the suggestion of the Parent[s] and at some point, conversation around identifying providers stalled and the conversation was never resumed.” T1503, 1506.

March 2022

164. The IEP team met for a fourth time on March 3, 2022, to continue discussing the Student’s annual IEP. P24p2. Via email on February 27, 2022, the Parents’ counsel sent a lengthy proposed agenda and documents for consideration. She also informed the team that the Student had started receiving general education math support from Yellow Wood in the afternoons, in addition to receiving SDI at Yellow Wood in the mornings. P20p2.

165. At the start of the meeting, Ms. DeNormandie discussed the District’s intent to finish the Student’s IEP. The Parents’ counsel stressed the need to also address the upcoming triennial reevaluation, in addition to multiple components of the IEP. When Ms. DeNormandie proposed starting the meeting with a discussion of accommodations and modifications, the Parents’ counsel sought to start by reviewing notes from the prior IEP meetings. P24pp2-3.

166. When Ms. DeNormandie asked how to best share the updated draft IEP, the Parents’ counsel stated that the Parents and others had not received the draft in advance of the meeting. P24p3. Mx. Barrett promptly sent the updated draft to IEP team members. P21p1; P24p4. However, the Parents objected to further discussion of the IEP. P24pp3-4. At the suggestion of the Parents’ counsel, the team postponed

discussion of the IEP until after all team members had a chance to review the updated draft and instead discussed the Student's upcoming triennial reevaluation. P24pp2-4.

167. Ultimately, the Student's IEP Team met for more than 10 hours to discuss developing an annual IEP between December 2021 and March 2022. T1463.

168. Following the March 3, 2022, meeting, the Parents' counsel sent an email to School Psychologist Lisa Woodle memorializing the Parents' understanding regarding the reevaluation.²⁷ The Parents understood that the District would incorporate existing evaluative data including Dr. Hungelmann's evaluation, Dr. Snow's speech/language evaluation, and the assessment revision. P22p1. The Parents did not think it was necessary to administer another cognitive measure or another complete academic battery. P22p1. The Parents believed new assessments were necessary in the areas of Behavior/Social Emotional, Executive Functioning, Math, Communication, and OT. P22pp1-2. With respect to math, the Parents asked the District to consider the WIAT-4 results from Dr. Hungelmann's report and to administer a norm-based standardized assessment, in addition to gathering collateral information. P22pp1-2.

169. On March 3, 2022, Ms. Woodle asked the Parents to provide a "Mutual Exchange of Information Consent" for the providers whose information would be considered in the reevaluation. P22p51. The Parents provided a release for Ms. Frank only and declined to provide releases for other providers, stating that if the District "was concerned about the letters shared by [the Student's] medical providers," it could contract them to participate in the reevaluation as a related service. P22p50.

170. On March 7, 2022, the District received the Parents' consent to reevaluate the Student in the following areas: general background, math, motor, review of existing data, study/organizational skills, written language, cognitive, communication, fine motor, listening comprehension, medical-physical, oral expression, reading, and social/behavior. D9p4; P23pp1-3. The Parents also asked that an OT and SLP review recommendations by the District assistive technology team and provide updated thoughts. P23p3.

Counseling Services

171. In March 2022, Mr. Manzo advised all students he worked with that March was the busiest month for counseling referrals and high need, meaning a meeting might need to be rescheduled. T1946. During the 2021-2022 school year, the need for

²⁷ Ms. Woodle did not testify at the hearing regarding her qualifications; however, there is no dispute that she was employed by the District as a school psychologist at the time of the May 2022 reevaluation of the Student.

counseling services at Eckstein in the wake of the COVID-19 pandemic was unprecedented. T1961. The only reason Mr. Manzo would miss a scheduled meeting was if a student from a prior meeting was experiencing a crisis, such as self-harm, and could not be left alone. T1965.

172. During March, Mr. Manzo needed to reschedule check-ins with the Student due to crisis situations; he was able to reschedule all but one check-in with the Student. T1967-68.

173. On March 16, 2022, the Parents' counsel sent an email to Ms. de Normandie and others stating Mr. Manzo had not been able to meet with the Student and that Mr. Manzo had said District "counselors do not believe that they can or should provide [SDI] or related services. . ." D19p4. Ms. de Normandie forwarded the email to Mr. Manzo because she believed he *had* been meeting with the Student. D19p4.

174. In a responsive email, Mr. Manzo clarified that he had been meeting with the Student consistently since the Fall of 2021. D19p2. At hearing, Mr. Manzo explained that he felt harassed by the communication from the Parents' counsel; he does not have experience dealing with attorneys and was very upset when an attorney misrepresented that he had not met with the Student, which is part of his job duties. T1973.

175. Mr. Manzo's email also discussed that the Student was not showing signs of anxiety at school:

I only have emails from the family telling me that [the Student] is struggling but I have no direct knowledge, experience, or presentation of any distress from [the Student].

D19p3. Mr. Manzo's email stated that he would continue to meet with the Student and was "always open and available for any need that [the Student] presents." D19p3.

176. Later during March 2022, Mr. Manzo received an email indicating that the Student no longer wanted to work with him. T1949. Mr. Manzo advised the family that other counselors, and a school social worker were available to work with the Student, but he did not receive any response to these offers. T1909, 1949, 1960. There is no evidence in the record that the Parents accepted the offer for the Student to receive counseling services from anyone else at the District.

Reevaluation

177. As part of the District's reevaluation, Rachel Connelly,²⁸ a District SLP, assessed the Student's communication skills; Rebecca Kloberdanz, a District OT,²⁹ assessed the Student's motor skills; and Ms. Woodle conducted the remainder of the reevaluation. D9.

178. On April 1, 2022, Ms. Connelly sent the Parents draft reports of the Communication assessment and the OT assessment. D21p18; D28; T2241. The remainder of the reevaluation was not complete at this time; Ms. Woodle did not send the Parents a reevaluation report with all component parts until May 10, 2022. P30p1; T2251.

Communication Assessment

179. Via email on March 9, 2022, Ms. Connelly informed the Parents that she would assess the Student's communication skills using the Test of Integrated Language and Literacy Skills (TILLS), as they had requested. D21p13; T661, 723. Ms. Connelly also asked the Parents to provide input. D21p13.

180. The Parents responded that in addition to the TILLS, they wanted Ms. Connelly to readminister the Oral and Written Language Scales, Second Edition (OWLS-II), and to administer the Test of Adolescent/Adult Word Finding-Second Edition (TAWF-2) and the Language Processing Skills Assessment-Fourth Edition (TAPS-4). D21pp11-13. Ms. Connelly informed the Parents she would rely on her professional judgment, expertise, and experience in conducting the assessment, and explained that the TILLS is "an extremely comprehensive language assessment [that] covers all aspects of language" raised as areas of concern for the Student. D21pp1, 10-11. The TILLS is "a test of curriculum-relevant oral and written language skills that can be used for diagnosing disorders of language and literacy in school-age children aged 6-18 years." D9p15.

²⁸ Rachel Connelly has a bachelor's degree in communication sciences and disorders and a master's degree in speech language pathology. She is certificated as a speech language pathologist in the state of Washington and also obtained her certificate of clinical competence. T627. Between 2012 and 2013, Ms. Connelly worked as an SLP in a skilled nursing facility. Between 2013 and 2015, she worked as an SLP for a school district in Pennsylvania. Since 2015, she has been employed by the District as an SLP. T626-27. Since the 2020-2021 school year, she has worked at Eckstein full time. T629.

²⁹ Rebecca Kloberdanz has a bachelor's degree in occupational therapy and a master's degree in maternal and child public health. She has a specialized certification in neurodevelopmental therapy for children. She is a licensed OT and has educational staff associate certification in the state of Washington. T2229. Ms. Kloberdanz has been employed by the District as an OT since 2014. T2230.

181. Via email on March 13, 2022, the Parents' counsel asked whether the District had finalized the assessment revision, requested a copy of that document, and stated the Parents wanted the assessment revision, complete with their edits and clarifications, to be considered as part of the reevaluation. P25p1. On March 14, 2022, however, the Parents and their counsel voiced disagreement with the assessment revision. D21p10. On March 24, 2022, Ms. Connelly sent the Parents an email with the assessment revision attached, prompting the Parents' counsel to respond: "Great, thank you! Rachel Disario, please let Amy Carter know that we have this and do not need her to provide it." D21p3.

182. Ms. Connelly conducted the assessment during three in-person sessions on March 14, 15, and 21, 2022. D9p7.

183. Ms. Connelly administered the TILLS in accordance with examiner instructions. T740. In scoring the Student, Ms. Connelly read through and consulted the TILLS manual. T3025-26. TILLS has a scoring process called "easy score," which is contained on the TILLS website. Consistent with this process, Ms. Connelly input the Student's raw score into the TILLS website, and the website then calculated a standard score and percentile rank based on the Student's chronological age and birth date. T3022-23.

184. In determining a student's eligibility for speech and language services, Ms. Connelly does not look to a single subtest, which "gives a snapshot of how a student is doing on that very, very specific task," but instead considers the student's composite or index scores. T739-40.

185. The Student scored in the average range in all four TILLS composite areas: sound/word composite; sentence/discourse composite; oral composite; written composite. D9p16; T757. Her oral composite score was in the lower end of the average range. T739. Additionally, the Student's TILLS Identification Composite score was in the average range and was not consistent with the presence of a language or literacy disorder. T757; D9pp16-17. The Student's TILLS subtest scores were in the average range as well, with the exception of below average scores for vocabulary awareness, nonword spelling, digit span forward, and digit span backward. T756-57; D9pp15-16.

186. The Student's TILLS scores indicated that phonemic awareness and written expression were areas of strength, whereas vocabulary and spelling were areas of weakness. Additionally, the Student showed variability in tasks designed to measure short-term and verbal working memory. D9pp16-17.

187. The Student provided input by completing the TILLS Student Language Scale (SLS). Her responses indicated that she considered herself capable and on the same level as her peers. T741; D19pp17-18.

188. Ms. Connelly also considered 13 pages of written input provided by the Parents and included excerpts in the reevaluation report. D9p9; T724, 735. At Ms. Connelly's request, the Parents completed a questionnaire from the Clinical Evaluation of Language Fundamentals, Fifth Edition (CELF-5) Observational Rating Scale (ORS). D9p11; T671, 722, 724. The CELF-5 ORS gathers information in four areas: listening; speaking; reading; and writing. D9pp11-14. Three of the Student's teachers (science, math, and social studies) also completed the CELF-5 ORS. T736-37. The results indicated that the Parents generally rated the Student lower than the teachers. T738; D9p14. One teacher indicated the Student had relative weakness (as indicated by the answer "sometimes") in understanding new ideas, following written directions, writing down thoughts, and expanding an answer or providing details when writing. D9p14.

189. In addition to the TILLS and CELF-5 ORS, Ms. Connelly reviewed past SLP evaluations conducted by the District and private providers, with a thorough review of all of the Student's testing from the previous fourteen months. D9pp7-9; T735. During that time, the Student had been assessed by Dr. Hungelmann, Dr. Snow, and Ms. Elspeth Trejo Savani. T650-51; D9pp7-9. Ms. Connelly also considered the UW Speech and Hearing Clinic Report, although she did not include information from it in her report because she had more recent data. T654; T734.

190. Ms. Connelly also considered written input from the Student's math, science, and social studies teachers. None of the Student's teachers had noticed the Student's speech and language skills adversely impacting her ability to communicate with teachers or peers. The science teacher noted that the Student "always participates in class discussions, her classmates and myself can always understand her. She has lots of friends and I have never noticed communication being an issue in social situations." D9pp6-7, 14-15.

191. Ms. Connelly observed the Student during her general education ELA class. The Student was able to pay attention, follow written and verbal directions, and use pragmatic language (such as responding appropriately to teasing from friends, joking with tablemates, using a respectful tone of voice with the teacher) at the same level as her peers. D9p18; T742.

192. Ms. Connelly also reviewed the Student's work samples, provided by the Parents. T672 736. The Student's work samples indicated some variability; for example, she sometimes went beyond basic requirements by providing more details than required

but sometimes used vague, imprecise vocabulary or used background knowledge to answer a question rather than finding textual evidence. D9p11. Ms. Connelly concluded that the Student's work samples "generally show an understanding of curriculum, as demonstrated by her ability to take notes, summarize main idea, and complete a personal reflection." Additionally, the Student's satisfactory grades on these assignments indicated an ability to participate in classroom instruction and meet objectives. D9p11.

193. Ms. Connelly prepared a draft summary of her findings and recommendations for discussion by the reevaluation team. D21p17. Based on her assessment, she concluded that the Student did not demonstrate eligibility for speech and language services. T744; D9p19.

OT Assessment

194. Ms. Kloberdanz conducted an OT assessment of the Student. T2231; D9pp26-29. The assessment included a review of existing data, skilled observation, a functional skills assessment, input from the Parents, the Student, and teachers, and standardized testing. D9p26.

195. Ms. Kloberdanz conducted her assessment in two one-hour individual sessions and during observations of ELA and ceramics class. Based on skilled observations and teacher report, she concluded the Student's ability to participate was not restricted due to challenges in functional fine motor/visual motor skills.

196. To assess the Student's writing skills, Ms. Kloberdanz administered the Integrated Writing Test (IWT), which is a 15-minute writing test normed by age and grade level. T2233; D9p27. The Student's scores in the areas measured by the IWT placed her in the following seventh grade percentiles: productivity (99th); legibility (84th); vocabulary (25th); spelling (99.9th); punctuation (98th); and clarity (75th). D9p27; T2234. The Student's scores in spelling and punctuation had improved since she was tested in fourth grade whereas scores in legibility and vocabulary had declined. D9p27.

197. Ms. Kloberdanz also administered the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2) to assess fine motor precision, fine motor integration, manual dexterity, bilateral coordination, and upper-limb coordination. D9p28. The Students' scores fell into the following ranges:

Above Average: Fine Motor Integration; Upper-Limb Coordination

Average: Fine Manual Control Composite; Manual Coordination Composite; Bilateral Coordination.

Below Average: Fine Motor Precision; Manual Dexterity.

D9p28.

198. Based on her assessment of the Student, Ms. Kloberdanz concluded that the Student did not need OT services. D9pp29, 34; T2238.

Request for IEE

199. Via email on April 13, 2022, the Parents requested an IEE at public expense, noting their disagreement with the attached reevaluation report, which contained only the communication assessment and the OT assessment. P59pp2, 4-21. The full reevaluation was not complete at that time.

Communication Plan

200. On April 22, 2022, Jon Halfaker, District Director of Schools P-12/Secondary, sent the Mother a communication plan setting out a protocol for future communications from her. P28p2.

201. The communication plan, which was included in a letter addressed solely to the Mother, stated in relevant part:

As a result of the continued pattern of unproductive communications and the burden these communications have placed on staff, the following will apply to future communications regarding your student:

1. All communications, including emails, regarding your student should be directed and sent only to Barb de Normandie, Assistant Principal of Eckstein Middle School.
2. Email communications should be consolidated into one email per week, to assist with tracking and addressing questions or concerns, as appropriate.
3. Communications should not be directed or sent to any of your student's teachers, providers, or other staff at Eckstein Middle School.
4. Staff have been directed to forward any communications they receive about your student to Ms. de Normandie. They have further been directed not to respond to the communications.
5. Ms. de Normandie will review your communications on a weekly basis and respond to your inquiries, as appropriate.

P28p2.

202. On April 26, 2022, the District's counsel sent the Parents' counsel an email stating:

the communication protocols do not apply to IEP team meetings, evaluation review meetings, or other meetings related to the [S]tudent's education program. The [S]tudent's IEP team will continue to request and welcome [the Mother's] input during meetings. [The Mother] may contact the attendance office directly regarding the student's attendance or absences.

D22pp1-2.

203. At hearing, the Father acknowledged that the communication plan did not apply to him. T2441-42.

Reevaluation Report

204. On May 10, 2022, Ms. Woodle sent the Parents a draft reevaluation report and procedural safeguards in preparation for the upcoming reevaluation meeting. However, the report mistakenly indicated the reevaluation meeting was scheduled for April 28, 2022. P30p2. The report was then corrected to reflect that a reevaluation meeting was set for May 12, 2022. D9p1; P39p1.

205. In conducting her portion of the reevaluation, Ms. Woodle reviewed the Student's special education records, including the 2019 reevaluation and the assessment revision. Ms. Woodle also observed the Student in her ELA class and considered teacher feedback. D9p4.

206. The Student's history, ELA, science, math, and art teachers consistently reported she was performing at or above grade level and that work/study habits were at or above grade level. They also reported that she participated in class and had a good rapport with friends. D9p5.

207. Ms. Mensher's feedback discussed that the Student, who was at or above grade level for math and work/study skills, worked hard and seemed dedicated to learning. Her feedback also reflected that the Student "struggles with math word problems sometimes (not always) – knowing the context really helps. Ms. Mensher scaffolds word problems and provides steps for procedures." D9p5.

208. In the areas of cognitive and listening comprehension, Ms. Woodle reviewed Dr. Hungelmann's report, and noted that the results of the WISC-V indicated the Student's overall cognitive skills were within the average range. D9p6. The results of the WIAT-4 indicated that the Student's listening comprehension skills were also within the average range, with some variability. D9p20.

209. In the area of math, Ms. Woodle reviewed Dr. Hungelmann's math assessment from the fall of 2021. The Student's math scores on the WIAT-IV were as follows:

Mathematics (WIAT-4):

Standard Score = 88; 21st percentile (Low Average)

Dr. Hungelmann noted [the Student's] overall math skills were low average with some variability:

- low average math problem solving (SS = 82; 12th percentile)
- average math operations (SS = 98; 45th percentile).

Math Fluency (WIAT-4):

Standard Score= 100; 50th percentile (Average)

Dr. Hungelmann reported that [the Student's] automatic knowledge for math facts in addition, subtraction, and multiplication are average across all areas:

- addition (SS= 98; 45th percentile)
- subtraction (SS = 97; 42nd percentile)
- multiplication (SS = 105; 63rd percentile).

D9p22; see also P12p13.

210. Ms. Woodle also administered the Woodcock-Johnson IV Test of Achievement (JW-IV) to assess the Student's math skills. She was unable to complete the JW-IV, however, because the Student "ask[ed] to leave in the middle of the Math Applied Problems assessment (when she had begun incorrectly answering questions) and did not return to complete the assessment." D9p21.

211. The reevaluation report indicates that the Student's scores on the JW-IV placed her in the 51ST percentile, or average range, with respect to overall math calculation skills (which includes calculation and math facts fluency). D9p21. There is no score for the Math Applied Problems assessment.

212. As part of the math assessment, Ms. Woodle also considered information and progress reports from Yellow Wood, along with the Student's grade of "A" in Ms. Mensher's general education math class, as of May 9, 2022. D9p22-24.

213. Ms. Woodle concluded the Student no longer needed SDI in math to be successful; she recommended a 504 Plan with accommodations. D9p22.

214. In the Medical-Physical area, Ms. Woodle considered the Student's health and developmental history as reported by the Mother and in Dr. Hungelmann's report, as well as the Student's diagnoses of hypothyroidism, OCD, dyslexia, dyscalculia, and language disorder. D9p25.

215. In the area of oral expression, Ms. Woodle reviewed Dr. Hungelmann's report, which placed her in the low average range with variability (WIAT-4). She also considered input from teachers, who did not report concerns, and the Student's grades (all As and one B+ as of April 22, 2022). D9p29.

216. To assess the Student in reading, Ms. Woodle reviewed Dr. Hungelmann's report, which placed her in the average to above average range (WIAT-4; Grey Oral Reading Tests- Fifth Edition). She also considered that the Student had good grades and that teachers did not report concerns. D9p30.

217. Ms. Woodle assessed the Student's social/behavior skills through teacher feedback, Parent input, a review of Dr. Hungelmann's report, and by administering the BASC-3. D9p31.

218. Both Parents completed the BASC-3, as did the Student's former special education teacher (Teacher 1), current special education teacher (Teacher 2), ELA teacher (Teacher 3), and history teacher (Teacher 4). D9p31. The Father and Teachers 2, 3, and 4 reported no clinically significant concerns. Teacher 1 reported clinically significant concern about anxiety. The Mother reported clinically significant concerns about hyperactivity, emotional self-control, and executive function. D9p31.

219. Both Parents expressed concern about anxiety. Teacher 1 noted concerns about stress/expectations to be a high achieving student. Teacher 3 noted concern regarding anxiety about class performance. Teachers 2 and 4 reported no concerns. D9p31.

220. As part of Dr. Hungelmann's assessment, the Student completed two self-report assessment scales: Screen for Child Anxiety Related Disorders (SCARED) and Multidimensional Anxiety Scale for Children – Second Edition (MASC-2). The Student denied experiencing symptoms of anxiety on the SCARED. Her scores on the MASC-2 were within normal limits. Dr. Hungelmann's report recommended that the Student continue psychotherapy, check in with a trusted teacher, and that the school safety plan be updated. D9p31.

221. In the area of Study/Organizational skills, the Mother and five of the Student's general education teachers completed the Executive Control Skills Checklist. D9p32. The Mother reported concerns with planning and working memory. However, none of

the Student's teachers reported concerns, and all teachers indicated the Student's study/organizational skills were at or above grade level norms. Additionally, teachers did not report any concerns about study/organizational skills at school, the Student was receiving good grades, and there was no evidence of adverse impact on the Student's educational programming. The report noted that overall results indicated the Student "is successful with initiating action, flexible thinking, sustaining attention, organization, planning, and managing emotions." D9p32.

222. In the area of Written Language, Ms. Woodle reviewed Dr. Hungelmann's report. The Student's scores on the WIAT-4 indicated that her written language skills fell within the average range. D9p33.

223. Based on the reevaluation, Ms. Woodle concluded that the Student no longer needed SDI in math and did not need SDI in any other area. D9p34.

Request for IEE and Reevaluation Meeting

224. After the Parents received the draft reevaluation report on May 10, 2022, the Parents' counsel sent an email to the District stating that the Parents did not agree with the reevaluation and were requesting an IEE. P31

225. On May 11, 2022, the Parents sent a due process hearing request to the District. P32p1. The Office of Administrative Hearings received the Parents' due process hearing request in Cause No. 2022-SE-0069 on May 13, 2022. OAH File.

226. The Parents did not attend the reevaluation meeting on May 12, 2022. P33p1; D9p34. At the start of the meeting, the Parents' counsel stated the Parents would not be attending because they were uncertain whether the District's communication protocol precluded them from speaking with other team members. The Parents further asserted there was no purpose for the meeting because the draft reevaluation report contained a PWN with an implementation date of May 12, 2022. P33p1.

227. Prior to the May 12, 2022, reevaluation meeting, the District's counsel, Susan Winkelman, had expressly informed the Parents the communication plan did not apply to the reevaluation meeting or other meetings related to the Student's educational program. D22p1. At hearing, the Mother conceded she was aware of Ms. Winkelman's email clarifying that the communication plan did not apply to IEP, reevaluation, and other meetings, but she contended she did not trust Ms. Winkelman's statement because "the District would have revised its letter and it had time to do that and did not." T2880, 2879, 2882, 2886. At hearing, the Father acknowledged that he was aware the communication plan did not pertain to him at that time. T2441-44. It is

therefore found that the Parents were aware that the communication plan did not preclude them from attending the reevaluation meeting.

228. The reevaluation meeting on May 12, 2022, ended after the team was informed that the Parents would not attend. T633, 638. Team members did not discuss the reevaluation and “there wasn’t really an opportunity for anybody to disagree or agree” with the reevaluation. T1787.

229. Via email on May 12, 2022, email, the Parents’s counsel reiterated the Parents’ request for an IEE based on disagreement with the reevaluation. The email asserted the Parents’ belief that the reevaluation had been completed. P33p1.

230. In a second email to the District on May 12, 2022, the Parents’ counsel stated:

If the [District] wants to continue to take the position that the attached is not in fact a completed evaluation despite the plain language of the Prior Written Notice on page 35, on behalf of the Parents, I am hereby requesting a comprehensive IEE at public expense because they do not agree with the District’s 2021 evaluation.³⁰

P61p1. The Mother asserted at hearing that the Parents had requested IEEs related to both the assessment revision and the District’s 2022 reevaluation as part of the current due process hearing. T2988-90.

231. The District sent the Mother an updated communication plan on May 13, 2022, which stated it did not apply to any evaluation meetings, IEP team meetings, or other meetings involving the Student. P34App1,3.

232. On May 17, 2022, the Parents requested an IEP meeting the week of June 6 or June 13, 2022, to discuss ESY services for the Student. P36; P38p2. The Parents asked the District to provide data collected during the winter break of the 2021-2022 school year and a copy of the District’s ESY criteria. P36p1. The Parents attached information prepared by the Mother which the Parents believed demonstrated regression. At hearing, the Mother explained that she asked the Student to re-take tests given by Mr. Deskin when the Student was in sixth grade. The Mother believed these test results demonstrated regression. T2341. The weight afforded to this

³⁰ The reference to the District’s 2021 evaluation was to the assessment revision.

information is limited by the lack of context for understanding it and the fact that the Mother has no education, training, or experience as a math teacher.³¹

233. On May 18, 2022, Ms. de Normandie invited the Parents to a reevaluation meeting on May 26, 2022. P37pp1-2; P39p34. The Parents responded there was

no need to hold this meeting because May 12, 2022 (the date that the [District] identified in a prior written notice would be the date of implementation of the reevaluation), has passed and . . . Parents filed a due process hearing invoking for stay put [sic] on May 11, 2022. That stopped the [District] from implementing its plan to exit [the Student] from special education on May 12, 2022.

P37p1. Additionally, the Parents' counsel stated she would be out of the country for two weeks, starting on May 21, 2022. P37p1.

234. Via email on May 19, 2022, the Parents clarified that if the District wanted "to have a `review' of the reevaluation report as part of the IEP team meeting that the [District] needs to have to discuss ESY . . . we are fine with that." P38p2.

235. On May 24, 2022, Ms. de Normandie again invited the Parents to a reevaluation meeting, but the meeting was cancelled for reasons that are unclear. P40. Ultimately, the reevaluation team did not meet again after May 12, 2022. T152-21, 2344, 2256.

236. During the hearing, the Mother emphasized the Parents' belief there was no reason to hold a reevaluation meeting because the PWN in the District's reevaluation report had an implementation date of May 12, 2022, meaning it had already been implemented. T2902-03. According to the Mother, the Parents would not have refused to go over the reevaluation if the District wanted to do so, but they believed it was clear the reevaluation, including the decision that the Student was no longer eligible for special education, had already been enacted. T2904.

237. Considering the evidence as a whole, it is found that the Parents were unwilling to engage in meaningful discussion of the reevaluation at a reevaluation team meeting.

238. On May 24, 2023, the District issued a PWN proposing to discontinue the Student's eligibility for special education services under the category of Specific

³¹ The Mother has bachelor's and master's degrees in English and a master's degree in pastoral studies. She taught English at a private high school between 2000 and 2004 and taught at a private middle school for one year. T1791-92.

Learning Disability, with an action initiation date of May 31, 2022. D9p34. The PWN stated:

The team scheduled a meeting for 5/12/22 to review a draft of the reevaluation report that was sent to the family on 5/10/22. At the beginning of the meeting, the family's attorney advised the team that parents would not be participating because of a communication plan that was in place. The family's attorney was informed that the communication plan did not apply to evaluation or IEP team meetings, but the parents chose not to join the meeting. On 5/13/22, the communication plan was revised to clarify that it did not apply to evaluation meetings, IEP team meetings, or other meetings involving the student. On 5/18/22, the team offered to meet with the family on 5/25/22 to review the draft reevaluation report. On 5/19/22, the team was informed that parents did not want to participate in a reevaluation meeting. The team then finalized the report.

D9p34. It is found that the reevaluation was complete as of May 19, 2022, and that Exhibit D9 is the final reevaluation report.

239. The PWN further stated:

results of the present reevaluation indicated the student no longer needs specially designed instruction in the area of math; and does not need specially designed instruction in the areas of study-organizational skills, social/behavior skills, reading, writing, communication, motor, fine motor, listening comprehension, or oral expression.

D9p34.

240. On May 25, 2022, the District filed a due process hearing request (Cause No. 2022-SE-0072) to defend the appropriateness of the May 2022 reevaluation. OAH FILE.

241. On June 3, 2022, Ms. de Normandie sent the Parents and members of the IEP team an email indicating that an IEP meeting had been cancelled and was being rescheduled. P40p3. On June 13, 2023, Ms. de Normandie sent IEP team members another meeting invitation, but the date is unclear. P40pp5-6. There is no evidence in the record that the IEP team met at this time; moreover, the record is unclear as to why the meetings were cancelled.

242. Via email on May 17, 2022, the Parents requested a meeting to discuss the communication plan. P35p1. The Parents' email included three attachments including a twelve-page log of emails the Parents had sent to teachers during the 2021-2022 school year. P35pp4-15. The emails were categorized by teacher, with summaries of the email content and color-coding or symbols to reflect emails on which administrators had been copied, emails sent in response to a teacher email with questions, follow-ups to previous email that had never been responded to, and emails to which no response was received. P35pp4-15.

243. The Parents prepared a thirty-three-page document titled Parents' Statement of Dissent and Request to Amend False and Misleading Statements in Seattle Public Schools' May 2022 Reevaluation Reports. P73. The statement indicated the Parents' disagreement with the reevaluation and the assessment revision. It also asked the District to amend statements the Parents considered to be false and misleading. P73p1. The statement is undated, and it is unclear whether it was provided to the District. Additionally, although the statement disputed the accuracy of numerous statements in the reevaluation report, and provided extensive information related to those statements, it did not specify what corrections the Parents were requesting in place of the disputed statements. P73.

244. On June 1, 2022, the Parents requested records related to the assessment revision and the reevaluation, in addition to the Student's educational records. P41App1-2. The Parents wanted to ensure timely receipt of materials related to the assessment revision so that a private provider, Marilea Brock, could begin an IEE of the Student at public expense. They contended that the District had not provided IEE criteria and stated, "[r]egardless, the [P]arents will be using providers that [the District] has agreed to in previously [sic], knowing that they meet [District] criteria." P41Ap1. The Parents' noted that Ms. Brock's IEE would initially be done at the Parents' expense rather than at public expense. P41A.

Attendance; Progress

245. An attendance chart for the 2021-2022 school year shows a decrease in the Student's attendance from 100% to approximately 90%. D12p1. A review of attendance details makes clear that the decrease resulted from the fact that the Student never attended Basic Math and was receiving her math SDI at Yellow Wood. D12pp1-9; D11pp1-4.

246. The Student did not attend Basic Math from early December 2021 through the end of the 2021-2022 school year. D11pp2-4. Additionally, the Student was frequently

late to homeroom, or advisory, because she received her SDI from Yellow Wood from 8:00 a.m. to 8:50 a.m., and homeroom started at 8:55 a.m. T2694; D11pp2-4.

247. Aside from Basic Math, during the first half of the 2021-2022 school year, the Student was absent five times from Math Improvement, three times from Ms. Mensher's math class, and between zero and four times from her remaining classes. D12pp9-12; D11p2. During the second half of the year, absences in all classes besides Basic Math ranged from 0 to 2. D11pp3-4.

248. . By February 8, 2022, the Student had met her remaining IEP goals. (*sixth Grade Pre-Algebra; sixth Grade Numbers, Operations, and Ratios*). D10pp6-7.

249. During the second semester of seventh grade, the Student earned the following grades: math (B+); science (B+); history (A); ceramics (B+); ELA (B+); Basic Math (P). D11p4.

250. Ms. Mensher graded the Student in the same manner and using the same standards as other students. T1063, 1080. On a number of occasions, Ms. Mensher did not provide grades for students in her classes if a quiz or assignment did not reflect their abilities. T1064. On one occasion, Ms. Mensher did not provide the Student a grade on a quiz because she did not believe it reflected the Student's abilities. T1063. 251. During the hearing, the Mother opined that the Student was unable to complete her math homework, but it was still being marked as complete. T2321. The basis for this belief is unclear.

252. Additionally, Ms. Kulkin testified that the Student told her a teacher gave all students in the class a test but told the Student she did not have to take it. T2081, 2098. I give no weight to Ms. Kulkin's hearsay statement because it is unclear what class or teacher is at issue, Ms. Kulkin has no firsthand knowledge of the purported incident, and the Student was not available for cross-examination at the hearing.

253. There is no evidence that any teachers or staff suggested an FBA of the Student during the 2021-2022 school year. Nor is there evidence that the Parents requested an FBA. Additionally, there is no evidence that any teachers or staff reported concerns about the Student's behavior, aside from one teacher's statement that the Student could be chatty with a neighbor. T1763.

Summer 2022

254. The Student attended summer school at Morningside Academy for four weeks during the summer of 2022. T1863; P43. The Mother provided the District with math progress notes from this program. T1863.

255. The Parents also provided the District with a copy of a diagnostic Learning Ability Evaluation of the Student administered by Lindamood-Bell on July 28, 2022, which recommended “sensory-cognitive instruction researched and developed by Lindamood-Bell . . .” P42p23; T1861.

2022-2023 School Year–Eighth Grade

256. On or about the start of the 2022-2023 school year, the communication plan was removed and there was no restriction on the Mother’s ability to communicate with District staff or teachers. T2706, 2726, 2916.

257. During the 2022-2023 school year, the June 15, 2021, IEP amendment remained in place as the Student’s stay put IEP. *Order on Stay Put, August 26, 2022, COL ¶ 7.*

258. Daniel Goodwin was the Student’s case manager for the first semester of the school year.³² T869.

259. The Student was assigned to a special education math class, Basic Math 8, to receive 255 minutes per week of math SDI. D34p1. Lynn Reuter³³ taught Basic Math 8, which met during second period and was a self-contained class that did not have any general education students. T902-903, 1121.

260. On August 30, 2022, the Parents notified the District that the Student would not participate in Basic Math but would continue receiving her SDI from Yellow Wood with the family seeking reimbursement. The Parents asked the District to assign the Student to a sixth period Basic Math class because the Student needed to leave sixth period early to access her SDI at Yellow Wood. D34p2. The District did not make this change because Basic Math 8, which focused on the eighth-grade curriculum, was only offered during second period. T1170, 2674, 2684; D34p1. The sixth period class

³² Mr. Goodwin has been employed by the District as a special education teacher at Eckstein since 2018. T869.

³³ Lynn Reuter has a bachelor’s degree in English and a master’s degree in special education. She is a certificated special education teacher and also has general education endorsements in elementary education, ELA, and middle level humanities. T382.

requested by the Parents was focused on the seventh-grade curriculum and would not have been appropriate to support eighth grade math. T2674. The Parents also notified the District that the Student would be late to first period on Wednesdays because she was receiving private math tutoring. D34p2.

261. The Student never attended Basic Math 8 (second period) at any point during the 2022-2023 school year because she was receiving her math SDI from Yellow Wood. The Student's instruction at Yellow Wood was remote. T385, 390, 395, 2708, 2935-36.

262. The Student's eight grade general education teachers included Martha Beard (U.S. history – first semester)³⁴; Justin Matthews (U.S. history - second semester); Margaret Blair (ELA)³⁵; Balika Haakanson (science);³⁶ and Ricky Ohashi (math).³⁷ P76pp102.

263. At the beginning of the year, Ms. Anderson, Eckstein Vice Principal, met with the Student's teachers to review the Student's IEP with them, to provide an update on the due process proceedings, and to set the expectation that the Student's accommodations and modifications would be provided. T1234. Ms. Anderson credibly testified that teachers were given copies of the Student's complete IEP and IEP at a Glance at the start of the 2022-2023 school year. She had reason to recall this information because she and Mr. Goodwin had conferred with the District to confirm that they were giving teachers the correct version of the IEP and IEP at a Glance. T1235.³⁸

³⁴ Ms. Beard has a bachelor's degree from Sanoma College, a master's degree in international relations, a master's degree in Eurasian and Russian Studies, and a master's in teaching. She is endorsed to teach social studies, history, and ELA in the state of Washington. T462-63. Ms. Beard has been employed by the District for four years and teaches social studies at Eckstein Middle School. T462.

³⁵ Ms. Blair has a master's degree in education and is a certificated general education teacher in Washington state with an endorsement to teach ELA. T514. During the 2022-2023 school year, Ms. Blair was employed by the District as an ELA teacher at Eckstein. Prior to teaching at Eckstein, Ms. Blair taught ELA in other states for fifteen years. T515.

³⁶ Ms. Haakanson completed undergraduate and graduate degrees in education and special education in Alaska and has taught science to eighth graders for twenty-four years. Five years ago, Ms. Haakanson transferred to Washington state. She is a certificated general education teacher with endorsements in science, social studies, and language arts. During the past four years, Ms. Haakanson has been employed by the District as an eighth-grade science teacher at Eckstein. T533-34.

³⁷ Mr. Ohashi has a bachelor's degree from the University of Washington, with a major in math and a minor in physics, and a master's degree in secondary education. He is a certificated general education teacher and has taught math at Eckstein as a general education teacher for 22 years. T1987. Mr. Ohashi has also co-taught math classes with a special education teacher. T1987.

³⁸ Ms. Blair did not recall being given any information regarding the Student's need for accommodations and modifications during the meeting. T516-18. The weight of this testimony is tempered by Ms. Blair's

264. The Student was assigned to Ms. Haakanson's homeroom. Ms. Reuter was assigned to provide "pull-out" math SDI (90 minutes weekly) to the Student during homeroom. The Parents objected to pull-out delivery of SDI. D34p1. Ultimately, the Student only attended three or four homeroom pull-out sessions. T388-90, 396. The Student informed Ms. Reuter the pull-out work was too easy for her. Ms. Reuter responded that she could provide more difficult work but never had an opportunity to do so because the Student stopped attending. T396-97. The Student attended homeroom five times at most during her eighth-grade year. T2935.

265. On September 12, 2022, the District updated the Student's safety plan. P63. No District staff were aware of the Student ever using the original safety plan (December 2021) or the updated safety plan. T1083, 1278, 1299, 2696.

Emails from Parents and Request for IEP team meeting

266. Starting early in the 2022-2033 school year, the Parents sent emails to Ms. Haakanson every two weeks or so, approximately 8 to 10 pages in length, indicating she was not following the Student's IEP. T539, 597, 596. The emails raised numerous questions and made multiple comments, and when Ms. Haakanson responded, the Parents would send a four-to-five-page response with additional questions and comments. T592, 587-98.

267. Ms. Haakanson was responsive when the Parents raised specific concerns. For example, when the Parents told Ms. Haakanson the Student was struggling because Power Point presentations included too many colors, Ms. Haakanson reduced the number of colors and tried, in general, to simplify the materials. T565-66. After the Parents advised Ms. Haakanson that the Student was having difficulty scrolling back and forth through certain electronic materials, she made a point of giving the Student a hard copy. Ms. Haakanson had already been making a hard copy available before then, but the Student did not take it. T584-85. Similarly, after the Parents advised Ms. Haakanson that certain materials were not helpful to the Student, she created a "concept one-pager, shortened with pictures," which she called a visual study guide. T573.

268. The Parents' emails to Ms. Haakanson made her feel anxious and uncomfortable because no matter what modifications she made in response to the Parents' concerns, it was the wrong thing. T594-95. Eventually, Ms. Haakanson stopped responding to

acknowledgement that she had been absent from school at times due to personal circumstances and because her testimony is inconsistent with testimony from the Student's other eighth grade teachers and administrators. T520.

the emails and focused on meeting the needs of the Student and the 150 other students in her classes. T548, 595-97.

269. Mr. Goodwin found it impossible to keep up with the “very, very, very large amount” of communication and information he received from the Student’s family. T929-930. Ms. Anderson received more emails from the Student’s family than from any other family. T1172, 1304. Emails were lengthy and repeated questions staff had already answered. T1304. Many of the Parents’ emails were complex and teachers often brought them to Ms. Anderson’s attention because a response might take longer than the ideal response time of 24 to 48 hours. T1321.

270. Mr. Ohashi received emails from the Parents that were longer than emails from other parents, but he did not find them exceptionally difficult. T1990.

271. In late September and early October 2022, the Mother sent emails to Mr. Goodwin, general education teachers, Ms. Reuter, and District administrators raising concerns that teachers were not implementing the accommodations and modifications in the Student’s IEP. The email did not state what accommodations and modifications were not being implemented. P82App1-4. Attached to the email was a copy of Ms. Connelly’s communication strategies and strategies Mr. Deskin had listed in the June 15, 2021, IEP amendment. P82App1-4.

272. Also attached to the email was an annotated copy of the Student’s IEP at a Glance. P82App1-2.³⁹ The annotated copy stated: “please provide my accommodations so I can learn and participate,” and used two colors of highlighting to mark many accommodations and modifications as “really need this” or “sometimes need this.” P70p9. It also included handwritten comments next to some accommodations. For example, next to the accommodation “Repeat/clarify directions and frequent checks for understanding” was the comment “oral and written let me verbalize my understanding out loud, not yes and no.” P70p10. The annotated copy did not identify specific accommodations and modifications as not being provided. P70pp9-10.

273. Mr. Goodwin met with Ms. Anderson to discuss the Parents’ concerns regarding accommodations and modifications. T879. Ms. Anderson also offered to meet with the Student one-on-one to discuss the Student’s concerns. T1244-45, 1250, 1308. In addition, Ms. Anderson regularly emailed and checked in with Ms. Haakanson, Ms. Blair, Ms. Beard, and Mr. Ohashi regarding appropriate provision of the Student’s accommodations and modifications. T1238, 1259. She reviewed materials with Ms.

³⁹ Exhibit P82A does not include a copy of the annotated IEP at a Glance. However, the annotated document is contained in Exhibit P70.

Haakanson, Ms. Beard, and Ms. Blair to ensure they were in an accessible format and in keeping with the IEP. T1255-60.

274. On or about October 26, 2022, Mr. Goodwin responded to a request from the Parents for an IEP team meeting to address multiple concerns. D35pp1-3. Mr. Goodwin addressed the concerns as follows:

- He asked for clarification of concerns related to communication about changes to the Eckstein schedule and explained how the Parents could obtain information about scheduling changes on the school website. D35p1.

- He asked for clarification of concerns related to a conversation with Ms. Wong and noted that the conversation should be addressed by Ms. Wong and her supervisor. He explained that such concerns were addressed by making a record of the incident so staff could address them in their official capacity. He did not believe this warranted an IEP team meeting. D35p2.

- He asked for specific examples of times the Student felt ignored when she advocated for her IEP accommodations and modifications so that her concerns could be addressed directly with teachers and staff. He explained that school administrators, who had supervisory authority over the Student's general education teachers, should address the Parents' concerns that certain teachers were not providing the accommodations and modifications, rather than the IEP team. D35p2.

- He stated that if the Parents sent approval, he could refer the Student to the Wellness Center/Counseling Department to address any concerns about anxiety without the need for an IEP team meeting. D35p2.

- He provided instructions for the Student as to how to write an email to more than five recipients, noting this did not require an IEP team meeting. D35p2.

- He provided possible times for "a meeting for [the Student] to express her feelings and concerns about her classes. We want this meeting to be centered around her voice exclusively."

D35pp2-3; P70p7; T882; T1174. The Parents did not respond to the offer to hold a meeting with the Student. T1125.

275. Via email on November 3, 2022, the Parents reiterated their request for an IEP team meeting and raised concerns that the Student was not consistently receiving

accommodations and modifications, leading her to “experience heightened anxiety and to express school resistance.” P68Ap1. Again, the email did not identify which accommodations and modifications the Parents believed were not being provided.

276. The Parents also wanted to discuss information related to the Student’s present levels of performance, including Smarter Balanced Assessment (SBA) scores, Measures of Academic Progress (MAP) scores, and data provided by the Student’s math tutor, Ms. Kulkin.⁴⁰ P68pp1-2.

277. Ms. Kulkin used a website called “Easy CBM” to assess the Student’s math skills and track her progress. T2067, 2094; P67; P87. At hearing, she was uncertain which curriculum Easy CBM was based on, but thought it was based on common core goals. T2094. Exhibits P67 and P87 contain CBM Results from October 2022 and March 2023, respectively. Ms. Kulkin saw a slight increase in the Student’s scores, indicating the Student made progress in math in her work with Ms. Kulkin. T2076.

278. Via email on November 16, 2022, the District’s counsel responded to multiple emails from the Parents requesting an IEP team meeting. The District’s counsel clarified that in her role as attorney, she was communicating on behalf of her client and was not making decisions about whether the Student’s IEP team would meet. P70p6. The email explained that Mr. Goodwin had already responded to the Parents’ request for an IEP team meeting on October 26, 2022, and that District and school IEP team members did not believe an IEP meeting was the appropriate setting to address the Parents’ concerns, stating: “To be clear, that does not mean they will not address the family’s concerns; they just believe they should be addressed outside of an IEP meeting.” P70p6.

Parent Observations

279. At some point, the Mother observed Ms. Reuter’s basic math class (without the Student present), the Student’s ELA class, and the Student’s science class. T2289-90; 2938.

280. The Mother observed that Ms. Reuter spent a portion of the class providing instruction to all students; the Mother believed the instruction was below the Student’s skill level. Later, the Students worked on individualized packets. T2292. The Mother believed the packet prepared for the Student was much easier than work she had done in sixth grade. T2292. The students had time to raise their hands so that Ms. Reuter could come around to talk with them. T2296. The Mother did not believe placement in

⁴⁰ The Parents’ email refers to “Ms. Kulkin of Northwest K-8 Learning Support, Inc.” P68p2.

Ms. Reuter's class was in keeping with the IEP team's discussion about the Student's needs. TT2307.

281. The Mother did not observe Ms. Blair check in with the Student. The Student had preferential seating, but the Mother did not observe any other accommodations being provided. T2301.

282. In science class, the Mother believed the instruction had very complex vocabulary words. T2303. The Student asked what photosynthesis meant and her question was answered, but the Mother believed that had been taught "earlier, that most kids would have known. Like, this was building on that, so it just showed that, you know, she still needed that basic concept, you know, to be solidified so she could then apply it to what the class was talking about that day." T2303.

283. In the Mother's opinion, Ms. Haakanson's Power Point presentations were inaccessible to the Student. She believed the colors, images, and unfamiliar words were overwhelming. T2303.

IEE By Dr. Enns

284. At the Parents' request, Dr. Lionel Enns conducted an IEE of the Student in October and November 2022 and prepared an IEE report.⁴¹ P84. As part of the IEE, Dr. Enns interviewed the Parents and briefly interviewed Ms. Frank. T2500-01, 2543-44. P84p1.

285. Dr. Enns also observed the Student in class to gauge how "teachers were interacting with her and how she was responding to the teachers . . ." T2497.

286. On October 28, 2022, Dr. Enns observed the Student in Ms. Haakanson's general education science class while she and her peers were taking a test. The Student was "indistinguishable from peers," and seemed "generally comfortable." P84p17.

287. Dr. Enns then observed the Student in Mr. Ohashi's general education math class. P84pp17-18. The Student was seated in the front of the class, chatted with the student seated next to her, and "appeared at ease." Mr. Ohashi's "instruction was clear and paired visuals with verbal teaching." P84p17. The Student raised her hand to answer a question and then raised her hand to ask a question. The students worked

⁴¹ Dr. Enns, Ph.D., is a licensed clinical child psychologist, board certified behavior analyst, and nationally certified school psychologist. P55p1. He evaluates approximately 150 students each year. T2493.

on problems on their laptops. When the Student raised her hand, Mr. Ohashi walked over, and it appeared to Dr. Enns that he explained a problem to her. Mr. Ohashi later checked in on the Student and checked her work. P84p18.

288. In Dr. Enns's opinion, "if you could model a class after someone who would kind of meet the Student's needs, I think that would be Mr. Ohashi." T2498-99. He noted that Mr. Ohashi "is contributing to her growth in a way that is really hard to gauge . . . She is actually experiencing success within a gen-ed classroom, and that's what we want her to experience." T2567.

289. On November 18, 2022, Dr. Enns observed Ms. Reuter's special education class; the Student was not in attendance. P84p18. Dr. Enns had "only positive things to say" about Ms. Reuter. T2498. She was calm and engaged and students generally seemed comfortable. The level of instruction was lower than in Mr. Ohashi's general education class. T2498; P84p18. Ms. Reuter moved from student to student, providing individual instruction to students who were working on different things. P84p18; T2571.

290. Dr. Enns then observed the Student in Ms. Haakanson's class a second time. The Student asked a question, which drew a cogent response. Ms. Haakanson provided instructions to the class about an upcoming science project to be performed in class, after which the Student answered a question about the experiment and was praised. P84p18. Ms. Haakanson checked in with the Student regarding the science project. Dr. Enns's report twice notes that the Student seemed content during the class and appeared engaged in the experiment. P84p18. In Dr. Enns' opinion, Ms. Haakanson was kind to the Student and provided feedback that was "well done, but not quite the level of specificity with checking in with the Student that was occurring in Mr. Ohashi's class." T2499.

291. Subsequently, Dr. Enns observed the Student in Ms. Blair's ELA class. Again, the Student "appeared comfortable." She asked about an assignment and Ms. Blair clarified the assignment. Students in the class engaged in independent work and the Student moved to the back of the class to work. Ms. Blair checked in on the Student and provided clarification of highlighting expectations. P84p19.

292. Dr. Enns complimented staff at Eckstein Middle School and the District, noting they "clearly have [the Student's] best interests at heart. Mr. Ohashi's math class in particular should be considered a model for effective support for [the Student.]" P84p31.

293. In addition to school observations, Dr. Enns reviewed the District's April 2022 reevaluation of the Student and the June 15, 2021, IEP Amendment (D26). P84pp14-15; T2503. He also reviewed Dr. Mielenz's 2017 and 2019 evaluations, Dr. Hungelmann's November 2021 evaluation, and Dr. Snow's August 2021 evaluation. P84pp8-17.

294. During the hearing, Dr. Enns noted that a language disorder is a "difficult thing to quantify," and pointed to an explanation in Dr. Mielenz's 2019 Evaluation, which was set out in the June 15, 2021, IEP amendment:

Because she shows age appropriate skills in many areas and has key areas where she could continue to benefit from support, [the Student's] Language Disorder is best described as partially remediated. In the real world, [the Student's] Language Disorder may manifest as difficulty expressing herself verbally and/or in writing, difficulty rapidly processing complex verbal or written information (and a need to ask multiple clarifying questions), a need for extra time to process complex verbal or written information, use of limited word choices and simple sentence structure when communicating verbally or in writing, difficulty holding complex verbal or written information in her working memory, difficulty moving complex verbal or written information from her short term to long term memory, and difficulty remembering and then executing complex multi-step verbal or written instructions.

In school, these challenges may be most apparent when [the Student] struggles to recall key facts or details in nonfiction text, to define subject-specific vocabulary words, to identify key words in math story problems, and to use complex language when writing.

T2502-04; D26p10; P84p11.

295. Dr. Enns's IEE report also included excerpts from the reports prepared by Dr. Hungelmann and Dr. Snow, which were quoted previously in this order. P84pp13-14. Dr. Enns complimented the evaluative work performed by Dr. Meilenz, Dr. Snow, and Dr. Hungelmann, whom he described as very qualified evaluators. T2496, 2501.

296. Dr. Enns met with the Student at his office for approximately one hour. T2542. He limited direct testing of the Student to neuropsychology and math, noting at hearing that she had "been tested enough . . ." T2496. He assessed the Student in these areas by administering the Developmental Neuropsychological Assessment, Second Edition (NEPSY-II) and the WIAT-4. P84pp21-22; 37, 39-41.

297. NEPSY-II scores that fall within the 25 to 75 percentile range are considered average. T2570-71. Most of the Student's NEPSY-II subtest scores fell within the average range (auditory attention 75%; response set 37%; inhibition—naming 75%; inhibition—inhibition 63%; inhibition—switching 63%; comprehension of instructions 25%). P84p37. The Student's scores on the Narrative Memory Free Recall and Free & Cued Recall subtests were in the 16th percentile (borderline level). T2547; P84p21.

298. Dr. Enns concluded that the Student's performance declined when cognitive load increased and that her capacity to attend to verbal instructions appeared highly prone to fatigue. P84pp21, 28. He acknowledged at hearing, however, that the Student was tested in the afternoon after school, which could have contributed to her fatigue. T2546.

299. Dr. Enns also administered the Math Problem Solving subtest of the WIAT-4. The Student scored in the 8th percentile which is in the below average range. P84pp22, 40. Dr. Enns concluded that his evaluation showed impaired math problem solving skills, consistent with past assessments indicating scores in the low average range (Mielenz 2019 – low average math problem solving - 19th percentile P3p13) (Hungelmann – low average math problem solving – 12th percentile P12p13).

300. In the area of executive functioning, Dr. Enns used the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2), which is a questionnaire used for fine-grained analysis of executive functioning skills. P84p27. Dr. Enns asked Ms. Kulkin to complete the questionnaire because she had a close relationship with the Student. T2517. He did not ask any of the Student's teachers to complete the questionnaire, noting that it is difficult to gauge executive functioning in general and that he did not believe teachers would have an intimate knowledge of the Student's executive functioning. T2552, 2554. In Dr. Enns' opinion, having teachers complete the questionnaire would not have been a useful measure and was unnecessary. T2549; 2554. Dr. Enns concluded that Ms. Kulkin's responses "suggest challenges with cognitive, behavioral, and emotional regulation. Results reflect a broad range of impairment." P84p28.

301. Dr. Enns used the BASC-3 to assess the Student's social-emotional functioning. T2512. Each Parent completed the Parent Report – Adolescent (PRS-A); the Student completed the self report (SRP-A); and Mr. Ohashi and Ms. Kulkin completed the teacher report (TRS-A). P84p22.

302. The results of the BASC-3 showed "significant variance across the five reports." P84pp26. Mr. Ohashi's teacher report did not reflect any notable areas of concern.

P84pp25, 43-44. The Parents, Ms. Kulkin, and the Student each reported areas of clinically significant behavior and at-risk behavior, but with variance as to the reported areas. T2513-2516; P84pp26, 43-44, 53-54.

303. Scores regarding anxiety varied significantly. Ms. Kulkin's report fell within the clinically significant range (75), whereas the Father and the Student reported at-risk levels (64 and 62, respectively), and scores reported by the Mother (59) and Mr. Ohashi (51) did not reach the at-risk level. P84pp43, 53. With respect to the Student's school-related anxiety, most weight is given to scores reported by Mr. Ohashi, who regularly worked with the Student in the school environment, and the Student.

304. Aside from anxiety, Dr. Enns did not identify concerns in this area. T2514; P84pp22-26, 30-31. He did not have any behavioral concerns about the Student and did not recommend an FBA. T2514, 2571.

305. Based on his evaluation, Dr. Enns diagnosed the Student with:

Receptive Expressive Language Disorder F80.2

Obsessive Compulsive Disorder (OCD) F42.9

Anxiety Disorder, unspecified F41.9

Attention Deficit Hyperactivity Disorder, Predominantly Inattentive Type F90.0

Specific Learning Disorder with impairment in mathematics (problem solving) F81.2

Specific Learning Disorder with impairment in reading (Dyslexia) F81.0

P84p32.

306. Based on his evaluation, Dr. Enns recommended SDI in math and organizational support. P84pp33-34. He also recommended SLP services as a related service. P84p34. Dr. Enns further recommended counsel/social work support in the form of "a caring/supporting relationship with a key school-based adult to whom she can turn when she is feeling upset or self-conscious." P84p35.

307. In addition, Dr. Enns recommended an OT assessment based on his informal observations of Student work samples; he opined the Student likely "requires support of an OT as a supplemental aid and service." P84p36. Dr. Enns acknowledged at hearing that he is not licensed as an OT and has never served as an OT. T2570.

308. Dr. Enns also recommended the following supports, many of which were recommended by Dr. Snow and were listed as accommodations or modifications in the June 15 2021 IEP amendment: preferential seating; pair verbal information with visual supports; clarification of assignments; frequent check-ins; assess language load; extra practice and review of concepts; checklists and visual schedules; extra time; chunking assignments; alternate formats for tests/quizzes; alternate homework; audio books; front load materials; access to technology as needed; access to notes; proximal seating; and testing accommodations. P84pp34-36; T2591, 2535.

Accommodations and Modifications 2022-2023 School Year

309. At hearing, the Parents made clear that they believe Mr. Ohashi and Mr. Matthews⁴² consistently provided the Student with the accommodations and modifications in her IEP but they do not believe other teachers did so. T2306, 2431.

310. The Mother believes other teachers provided preferential seating and extra time only, and she does not believe extra time is helpful. T2306.

311. The Parents' belief that accommodations and modifications were not consistently provided was based on conversations with the Student and the Student's work samples. T2431, 2440, 2957-58. As discussed previously, to the extent that the Student made statements to the Parents, the Parents did not provide much detail regarding those statements and the statements were not subject to cross-examination; they are therefore given limited weight. Similarly, in the absence of context for reviewing work samples, they are of limited value in determining whether accommodations and modifications were provided. Greater weight is given to teacher testimony.

312. Ms. Haakanson made extensive efforts to ensure she was implementing the accommodations and modifications in the Student's IEP by:

- meeting with Mr. Goodwin to discuss the IEP and with Ms. Connelly for SLP support. T540, 574-75, 588, 683, 940.

- using Ms. Connelly's communication strategies in the classroom as much as possible, while being cognizant of not placing too much attention on the Student in the classroom. T552-53.

⁴² Mr. Matthews did not testify at the hearing.

-checking in with the Student, who sat in the front, at least once per class. T554. The Student was “usually spot on with where she needs to be and she understands, for the most part, the concepts at an above-average level.” T555, 569.

-breaking assignments into smaller parts. T576.

-altering the format of materials such as highlighting important terms and using consistent formatting. T569.

-asking students to find a partner and paraphrase directions, T553.

-going over the questions being asked. T553.

-posting vocabulary words on the classroom wall. T554.

-preparing Power Point presentations that were accessible to students and parents before materials were taught, displayed during teaching, and available after teaching for review. T562-63.

-including new vocabulary words and definitions in Power Point materials and in advance. T554

-providing paper copies, T584-85.

-allowing multimodal opportunities to demonstrate knowledge, such as looking for oral responses. T554.

313. Ms. Blair was unaware of the specific modifications and accommodations in the Student’s IEP until shortly before the due process hearing. T517-19. However, the accommodations and modifications she saw listed in the Student’s IEP were “basically what I do anyway with all of my students.” T519. Ms. Blair credibly testified that she gave all students up to a week extension to submit assignments; provided video visual supports through tutorial videos and printed materials; provided audio, video and paper copies, and repeated things in the classroom; posted materials on Schoology so students could access them when absent or at home and provided instructions with bulleted lists. T522; 527-28. Aside from asking Ms. Blair to clarify certain terms in order to complete an assignment, which Ms. Blair did, the Student has not had any academic difficulty in Ms. Blair’s class. T526.

314. In Ms. Beard’s class, when the Student had questions about certain definitions and vocabulary, Ms. Beard rewrote the course materials for the Student and had a conversation with her. T478. For one assessment, she developed support materials she believed would be helpful to the Student. T478.

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315. After the District's winter break, Mr. Goodwin was on paternity leave and Jennifer Paris became the Student's case manager.⁴³ T939, 327. Ms. Anderson met with Ms. Paris to review the Student's accommodations and checked in with teachers weekly to see if they had questions about accommodations. T1234.

Progress and Attendance During Eighth Grade

316. Neither party provided an official record of the Student's eighth grade grades and attendance as a hearing exhibit. The District introduced a printout from PowerSchool, which is a student information system used by the District, dated October 10, 2022. T1746; D13. The Parents submitted a page from "the Source," which is a website parents and students can access to obtain a "snapshot" view of grades and attendance, depending on what information has been uploaded. P76; T1188, 1306, 2051. The accuracy of the information on a page printed from the Source depends on when the page was printed. T1189. The Mother printed a page from the Source around the time the exhibits in this case were due in March 2023, but is unclear when. T2051.

317. Neither exhibit D13 nor exhibit P76 provides a complete or reliable picture of the Student's grades or attendance during the 2022-2023 school year. The PowerSchool records in D13 were printed on October 10, 2022, long before the first semester ended on February 8, 2023, and there is no indication of when the first quarter ended. D31p4. Accordingly, they do not provide a complete view of the Student's grades or attendance for the first quarter or the remainder of the school year.

318. Similarly, it is unclear whether the Student's first semester grades and attendance had been finalized when the Mother printed the page from the Source.⁴⁴ T2051. With respect to grades from the third and fourth quarters, there are multiple "i" entries, indicating no grade had been entered. T1307. Additionally, until the fourth quarter is completed, the Source program automatically enters the third quarter grade as the second semester grade. T1307. With respect to attendance, the page from the Source cannot be considered a complete or accurate accounting of the Student's attendance at school during the 2022-2023 school year because it is unclear when

⁴³ Jennifer Paris is a "distinct" special education teacher at Eckstein. T324. In that role, she helps students access the general education curriculum with accommodations and modifications. T325. Ms. Paris has a bachelor's degree and two master's degrees, including a master's degree in teaching. She is a certificated special education teacher and has been employed by the District as a special education teacher for eight years. T325-26.

⁴⁴ There are two "E" grades for the second quarter that are in light grey font, and it is unclear what these entries mean. P76pp1-2.

the document was printed or whether attendance data was up to date at the time of that snapshot view.

319. Given the lack of reliable records regarding the Student's grades, more weight is given to teacher testimony.

320. On June 1, 2023, when Mr. Ohashi testified, the Student had an A average on quizzes for the year. T1993. He stated she "does really well whatever we're learning." T2013. Mr. Ohashi simplified word problems on quizzes so that they were not overly wordy. T1992.

321. Aside from Mr. Ohashi's class, the record does not contain sufficient evidence to determine what letter grade the Student received in her eighth-grade classes during the first or second semester of the 2022-2023 school year.

322. On April 5, 2023, when Ms. Blair testified, the Student's grades in Ms. Blair's class were not current. T523. In Ms. Blair's opinion, the Student's academic performance was average. T524. Ms. Blair never modified the Student's grades or graded her on a modified scale. T525.

323. Academically, the Student did "really well" in Ms. Beard's class, although there is no testimony as to what letter grade she received. T496-97. The Student was very involved in class discussions and her written work demonstrated a solid understanding of the content. The Student did exemplary work on the first big assignment of the year. T497. The class was discussion-based, and the Student was able to ask questions and engage. T498. The Student did not formally submit her final assessment, however, so Ms. Beard graded her based on her partially completed work. T498. Based on her understanding that the Student's IEP did not permit modified grading, Ms. Beard did not otherwise modify the Student's grades. T478, 498.

324. In Ms. Haakanson's class, the Student was an above average student. She participated and raised her hand to ask questions. T589-90. Ms. Haakanson observed the Student to be confident, well-liked, responsive, and able to communicate well with peers and adults. T590-91, 600. Ms. Haakanson graded the Student in the same manner as other Students. T540-41, 593. At some point, the Mother questioned why Ms. Haakanson was not giving the Student shortened tests. T540. Subsequently, Ms. Haakanson gave the Student the option to take the regular version or the shortened version, but the Student always took the regular version. T593.

325. On at least one occasion, after the Student had answered questions correctly on an assignment in Ms. Haakanson's class, the Student returned the following day with

“adult writing” all over the assignment. Based on the writing, the Student was confused and thought she had actually gotten the answers wrong. Ms. Haakanson reassured her that she did understand the questions and had, in fact, answered them correctly. T592-93.

326. Since the Student did not attend Ms. Reuter’s Basic Math class or homeroom to receive SDI, Ms. Reuter was uncertain what grade to provide. Ultimately, the Student was given a grade of no credit, which is neither a passing grade nor a failing grade but indicates the Student did not receive any credit due to non-attendance. T395. The District uses discretion in grading students who are not present in class or have absences and the Student’s grade was consistent with other students. T1298-99.

327. The Student’s report card from Yellow Wood for the first semester of the 2022-2023 school year indicated she was absent only once. She received A grades in all of her classes (Math 8, Math 8 Support, Physical Science).⁴⁵ P77p1. Her math teacher commented that she was “amazing at advocating for herself.” Her science teacher described her as a stellar student. P77p1.

328. Late in 2022, Mr. Goodwin and Ms. Anderson received messages from the Parents that the Student was engaging school refusal. T915, 1242-43, 1310, 1243. At hearing, the Parents’ counsel sometimes referred to this as school phobia.

329. The record demonstrates that the Student missed a significant amount of school each day due to the Parents’ decision that she would attend Yellow Wood to receive math SDI, additional math instruction, and support in science. P65pp4-5. Based on the Yellow Wood schedule, the Student missed classes at Eckstein between 8:30 and 9:20 a.m. (Tuesday through Friday); between 9:25 and 10:15 a.m. (Friday); and from 3:35 p.m. to 4:25 p.m. (Monday, Tuesday, Thursday). P65pp4-5.

330. Because the Student was receiving instruction at Yellow Wood during these times, the Student:

- attended homeroom five times at most during the 2022-2023 school year. T2935.
- never attended second period Basic Math 8. T385, 390, 395, 2935.
- left midway through sixth period on Monday, Tuesday, and Thursday. T1146; D34p2.

⁴⁵ The report card also contains notations of P and IP for math support and physical science. It is unclear what these notations mean.

None of these absences can be attributed to anxiety or school refusal.

331. There was conflicting evidence regarding the Student's attendance in Ms. Beard's first period class. At one point, the Mother testified the Student was dropped off at Eckstein for first period, came home for second period, and returned for third period. T3015. At another point, the Mother testified the Student was dropped off for third period. T2936-37. The Parents had also notified the District at the start of the school year that the Student would be late to first period on Wednesdays because she was receiving private math tutoring. D34p2. According to Ms. Beard, the Student's attendance in her first period class was "spotty" from the beginning of the year. T491. Near the end of the first semester, the Parents informed Ms. Beard of their belief that the Student was anxious about coming to her class. T482, 489. Ms. Beard attempted to reassure the Student and to be supportive, but it was difficult because the Student's attendance had decreased. T482. On balance, it is found that the Student was not consistently dropped off at Eckstein in order for her to attend her first period class. The record does not establish how many classes she missed; nor does it establish the extent to which the Student was unwilling to attend first period due to anxiety.

332. In response to the Parents' concerns that the Student did not want to attend Ms. Beard's U.S. history class, the District placed the Student in a different U.S. history class taught by Mr. Matthews for the second semester. T2058.

333. There is no evidence in the record that the Student engaged in school refusal with regard to Mr. Ohashi's math class (period 3) or Ms. Blair's ELA class (5).

334. Ms. Haakanson credibly testified that the Student's attendance in her class (period 4) was good throughout the school year. T581. Although the Parents at some point informed Ms. Haakanson that the Student did not want to come to her class, Ms. Haakanson did not see any signs of avoidance or discomfort in class – the Student raised her hand, asked questions, and was kind and thoughtful. T586, 590. Ms. Haakanson responded to the Parents' concerns by making sure to be incredibly welcoming, rereading the IEP at a Glance, and making the Student feel comfortable. T586-87.

335. Kristen Rose, Eckstein Principal,⁴⁶ understood that the Parents made a plan for when the Student would attend classes at Eckstein and when she would be at Yellow

⁴⁶Ms. Rose has a bachelor's degree in political science and a master's degree in teaching. In addition to an endorsement to teach social studies and language arts, she also holds a Principal Certificate. Ms. Rose has been employed by the District as Principal of Eckstein Middle School for four years and previously served as an Assistant Principal at Eckstein for two years. Prior to her employment with the

Wood; therefore, she did not take action regarding lack of attendance at Eckstein. T2654.

336. Since the Student did not attend Ms. Reuter's Basic Math class or homeroom to receive SDI, there is no data regarding her progress toward her IEP goals.⁴⁷

Anxiety and Behavior

337. At some point, Ms. Frank drafted an undated letter opining that the Student's schedule, which required her to travel to and from her school multiple times within the day, was causing increased anxiety and making it more difficult for her to participate in her classes in a meaningful way. P83. The Parents provided this letter to the District, but it is unclear when. T2049.

338. Neither Ms. Anderson nor Ms. Rose were aware of the Student ever using her safety plan. T1278-80; T2696. There is no credible evidence in the record of the Student implementing the safety plan.

339. During the first semester of the 2022-23 school year, the only behavioral concerns reported to Mr. Goodwin by teachers were that the Student was not attending math class and was talkative in math class; no academic concerns were reported. T1122, 1124.

340. Mr. Ohashi never observed the Student exhibiting anxiety, social/emotional concerns, or difficulty communicating with peers or with him. T2016. Ms. Beard never saw signs of anxiety in class and believed the Student seemed very comfortable in class, but she was aware that the Student experienced anxiety and attempted to address it by reassuring her and offering support. T482, 500. Ms. Beard never observed behaviors that interfered with the Student's learning and never had concerns about the Student's ability to communicate during her class. T497-98.

341. During Ms. Haakanson's class, the Student was "smiley, she is giggling with her friends, she is not taking her work too seriously, which is good because I don't want

District, Ms. Rose worked for several other school districts as Assistant Principal and was a general education teacher for seven years. T835-37; 2693.

⁴⁷Shortly after he started paternity leave, Mr. Goodwin realized he had not sent the Parents a progress report regarding the Student's IEP goals. In a rush, he mistakenly believed Ms. Reuter had entered progress notes for November 2022 into IEP online, and he sent the Parents a progress report via email on January 17, 2023. P78p1; T935-37. Mr. Goodwin did not realize his error until after he returned from paternity leave (April 5, 2023), when Ms. Reuter reminded him that in December 2022, she had told him that the Student had not attended her Basic Math class and had not received sufficient SDI to make progress notes. T936-937, 939, 1126-27.

her to be highly stressed.” T600. Similarly, Ms. Blair described the Student as “one of the most happy children I have seen thus far.” T524. Although Ms. Blair was told that the Student was anxious about speaking up and communicating with her, that was not Ms. Blair’s experience. T523.

342. There is no evidence in the record that the Parents ever requested an FBA or behavior intervention plan (BIP) for the Student at any time during the 2021-2022 or 2022-2023 school years. T2922-24. Additionally, there is no evidence in the record that District teachers or staff requested an FBA or believed an FBA was necessary at any point.

Dr. Enns’s Opinion of May 2022 Reevaluation

343. Dr. Enns was critical of the District’s April 2022 reevaluation of the Student. T2532. He considered the District’s assessments superficial and believed Dr. Hungelmann’s data “should have been at the forefront of the assessment.” P84p30. Additionally, Dr. Enns believed the District’s executive functioning data based on input from teachers was “pretty much useless,” opining that unless a teacher “really, really knows that student and works intimately and consistently with them,” it would be difficult for them to gauge a student’s executive functioning. T2522, 2533, 2553. His own assessment in this area was based solely on Ms. Kulkin’s input, who only worked with the Student one-on-one, and included no input from anyone who had worked with the Student in a school setting. P84p27.

344. Dr. Enns also questioned the scoring of the TILLS and pointed to what he considered to be simple math errors. P84p29; T2519, 2552; 2593. Dr. Enns acknowledged, however, that he is not an SLP and did not know how the TILLS is scored. T2545, 2521. I give more weight to Ms. Connelly’s informed testimony regarding her use of the TILLS easy score system on the TILLS website to generate the Student’s scores. T3022-23.

February 17, 2023, IEP Meeting

345. The District held an IEP team meeting on February 17, 2023. D36p2. The IEP at issue at the meeting is not part of the record. Ms. Paris attended the meeting as a special education teacher, although she was not the Student’s special education teacher at the time or previously during the 2022-2023 school year. T357-58.

346. The Student’s aunt took notes during the IEP team meeting, which were distributed to the IEP team for approval via email on March 5, 2023. P88p1. However,

there is no evidence that IEP team members reviewed or approved the notes. Accordingly, they are given little weight.

347. The Student read a statement at the February 17, 2023, IEP meeting. T365.

348. The team discussed the Parents' request for a special education eligibility evaluation⁴⁸ based on Dr. Enns' report and a report issued by Seattle Children's Hospital (Exhibit P69). It is unclear when the Parents first provided the District with these reports.

349. The Student's adaptive horseback riding instructor attended the February 17 meeting. The Parents' counsel stated that the instructor was a certificated special education teacher who had worked with the Student and asked that she provide input since Ms. Paris had never worked with the Student. The adaptive horseback riding instructor then provided input. P88pp1, 8.

350. The team also discussed the Parents' request to amend the Student's IEP to reflect data from Lindamood Bell; Ms. Kulkin / Northwest K-8 Learning Support; the Student's SBA and MAP scores; the Student's grades; letters from the Student's providers; Dr. Enn's IEE; and the report from Seattle Children's Hospital. P88pp3, 7-8.

351. After the IEP meeting, Ms. Paris also met with Ms. Haakanson, Ms. Blair, Mr. Matthews, and Mr. Ohashi to go over the Student's accommodations and modifications and give suggestions and examples of how to provide them. T349-51; 371-72, 518, 588. Ms. Paris also contacted the Student after the IEP meeting to discuss her accommodations and modifications, but the Father responded that Ms. Paris should not contact the Student. T352-53, 370-71.

352. Following the February 17, 2023, IEP meeting, the District issued a PWN proposing to explore a new academic schedule at Eckstein to accommodate the Student's schedule at Yellow Wood, to consider the Parents' request for an evaluation, and to ensure, through administrator and case manager support, that the Student was receiving all accommodations in her IEP. D36p2. Via email on March 5, 2023, the Parents claimed that the PWN was false and misleading. P89p1. The request to amend was made after February 23, 2023, and is therefore outside the scope of this hearing.

353. On February 23, 2023, Dr. Enns participated in a team meeting to review his IEE report. T2060-61. The record does not contain any documents related to this

⁴⁸ The Parents requested an initial special education eligibility evaluation rather than a reevaluation because the Student had been exited from special education services following the 2022 reevaluation. During the 2022-2023 school year, the Student's stay-put IEP was in place.

meeting. Dr. Enns testified that the team agreed with his recommendation to make the Student eligible for special education services in the category of multiple disabilities, but there is no further evidence in the record regarding the Student's eligibility status or any other decisions made by the team. T2579-80.

Records

354. On January 3, 2022, Ronald Boy, a former District employee, sent the Parents an invitation to a FERPA hearing regarding the Parents' claim that certain records were inaccurate or misleading. P49p1; T1472-74. However, the Parents did not want to set a hearing date until after an IEP team meeting had been scheduled to ensure the two meetings did not conflict. P49p2. Mr. Boy responded that the scheduled date for the IEP team meeting did not conflict with the hearing date. P49p4. The Parents' counsel proposed a different date for the hearing, but Mr. Boy was not available. P49pp7, 10. The Parents' counsel requested additional options but did not suggest any dates that worked for her and the Parents. P49pp15, 20. The Parents' emails to Mr. Boy and the District did not state what records were at issue for the FERPA hearing.

355. On September 20, 2022, the Parents' counsel notified the District that they believed the Student's report card and attendance records for the 2021-2022 school year were inaccurate and misleading. P50Ap2. They requested: 1) a letter grade for the Math Improvement class taught by Mx. Barrett during the first semester of the 2021-2022 school year; 2) a grade of "W" rather than a passing grade for Basic Math during the second semester of the 2021-2022 school year; and 3) that attendance records not include absences for sixth period because the Student was completing work for that class remotely initially and was later receiving instruction from Yellow Wood. P50App2-3.

356. On September 21, 2022, the Parents contacted Mr. Boy regarding a hearing date, but received an automated response indicating he no longer worked for the District. P49pp30, 36. The Parents' counsel then emailed the District's counsel to determine who would be handling the FERPA hearing. P49p36.

357. On October 2, 2022, via email, the Parents also challenged the accuracy of information posted on the Source website. They contended that color-coding of the Student's Smarter Balance Assessment (SBA) scores "did not appear to align with her actual scores and OSPI's scaled scoring information," leading to the perception that the Student's scores "are higher than what they are." P50Ap5.

358. Via email on October 5, 2022, the District agreed to change the Student's Basic Math grade from P to N, which means No Progress, to reflect that she did not attend

the class, but declined to award a grade of W because the Student was not withdrawn from the class. P50Ap1; T2659. The District also declined to remove absences for sixth period. P50Ap1. The Parents' counsel noted that the District's responsive email failed to comply with applicable WACs because it did not provide information about the right to a hearing. P50Ap1; T2661.

359. There is no evidence in the record that a hearing was held regarding the Parents' requests to amend records. T2660.

360. The Parents' Complaints in these consolidated matters requested that the District provide copies of the Student's educational records. These requests were managed by the District's Public Records Office. T792. The Parents provided no evidence regarding when educational records were provided, nor did they provide evidence that educational records were not provided.

Invoices

361. The Parents seek reimbursement for the following:

Provided Service Time Span	Provider	Cumulative Invoice Total	Total paid	3/1/23-6/30/23 Estimated Projected Cost
5/11/20-1/27/23	NW K-8 Learning Support (Margaret Kulkin)	\$ 3,340.00	\$ 3,340.00	3/2023-4/26/2023 weekly math support session at \$40/hour; time to assess or to attend school meetings, etc.
1/8/21-3/4/23	Dr. Laura Snow, SLP	\$ 1,245.66	\$ 1,245.66	Once weekly SLP sessions; \$11.10 copay per session with in-network insurance
1/01/21-2/28/23	Yellow Wood Academy	\$ 22,153.00	\$ 22,153.00	Approx. \$77 per tutoring session 4-5 times per week; math class SDI class 3/1/23-6/30/23
7/1/22-7/31/22	Morningside Academy 4-Week Summer School in Math	\$ 1,850.00	\$ 1,850.00	NA
5/11/20-2/28/23	Stacie Frank, LMHC, NCC - Therapy	\$ 8,504.00	\$ 8,504.00	Approx. every other week counseling session at \$160 per session
9/9/20-1/28/23	Little Bit Therapeutic Riding Stable	\$ 8,465.00	\$ 8,465.00	Spring Session 2023 Tuition, \$1000; Summer Session 2023 Tuition \$800
1/5/2023	Dr. Lionel Enns Independent Educational Evaluation	\$ 7,957.50	\$ 7,957.50	NA
9/29/22-2/23/23	Dr. Matthew Enkema and Dr. Ariel Ravid - Parent Counseling and Training	\$ 10,935.00	\$ 10,935.00	Parent training and counseling for parents averaging once or twice weekly, \$160 per session
Total		\$ 64,450.16	\$ 64,450.16	

P56p1 (summarizing invoices contained in P56pp2-161).⁴⁹

362. As of the last hearing date, the Student was fully enrolled in a private school and was not receiving SDI from a public school. T3010-12. 3016-17. In the Mother's opinion, the Student is "doing well. She is able to access the instruction." T3014.

⁴⁹ The Mother testified that Exhibit P56 contains all invoices updated to the exchange date and represents the total costs requested by the Parents. T2408.

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 Parents are seeking relief and bear the burden of proof with respect to Cause Nos. 2022-SE-0069 and 2023-SE-0001. The District is seeking relief and bears the burden of proof with respect to Cause No. 2022-SE-0072. 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); *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 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 parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's 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 (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. *Id.* 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 391. Additionally, the Student's "educational program must be appropriately ambitious in light of his circumstances . . ." *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.*

Hearsay Evidence

8. Some of the evidence presented at the due process hearing was hearsay, which is a statement made outside of the hearing used to prove the truth of what is in the statement. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). An ALJ may not base a finding of fact exclusively on hearsay evidence unless the ALJ determines that doing so "would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence." RCW 34.05.461(4). To the

extent any findings of fact are based on hearsay, the ALJ determined such findings did not unduly abridge the parties' opportunity to confront witnesses and rebut evidence.

Motion in Limine

9. The District filed a Motion in Limine (motion) to exclude the Parents' exhibits that were untimely filed and to bar the testimony of Amy Carter, John Halfacre, and District counsel Susan Winkelman.

10. The District's request to exclude the Parents' untimely exhibits was denied because any prejudice to the District could be mitigated by offering the District additional time to prepare. This was done, and the hearing was continued to the date requested by the District.

11. The ALJ initially reserved ruling on whether to bar testimony by Mr. Halfacre and Ms. Carter. Subsequently, the District's motion was denied with respect to Ms. Carter. See *Order on Motion in Limine, May 19, 2023*. Ms. Carter was subpoenaed to testify at the hearing but failed to appear and the Parents did not pursue the subpoena enforcement process. See *Order to Release Address, June 14, 2023; Corrected Order to Release Address, June 15, 2023; Order Setting Additional Hearing Date, June 28, 2023; T2337-38, 2466*. The District's motion was granted with respect to Mr. Halfacre for the reasons discussed in the *Second Order on Motion in Limine, June 8, 2023*.

12. The District's motion in limine to bar testimony by its attorney, Susan Winkelman, was granted for the following reasons.⁵⁰ There was no merit to the Parents' argument that Ms. Winkelman was a necessary witness on the ground that she was making decisions for the District rather than communicating on its behalf. Attorneys in special education cases, including the Parents' counsel, routinely attend meetings and email communications for their clients without specifying that such communications are made "on behalf" of the client. The Parents point to exhibit P94—an email from Ms. Winkelman to the Parents setting out the contours of a communication protocol—as an example of Ms. Winkelman making a decision for the District. Neither this email nor anything else submitted or asserted by the Parents establishes that Ms. Winkelman was doing anything more than conveying information on behalf of her client. Moreover, the Parents did not establish that Ms. Winkelman was a necessary witness with respect to the communication protocol or any other issue. Documents pertaining to the protocol speak for themselves and the Parents testified regarding how it impacted their ability to participate in the Student's education. Additionally, any testimony regarding

⁵⁰ The Parents waived their opportunity to file a responsive brief addressing this issue when they missed the filing deadline. See *Readiness Prehearing Conference Order, ¶30, February 28, 2023*.

communications between Ms. Winkelman and her client is barred by attorney-client privilege. See RCW 5.60.050. Finally, granting the District's motion to preclude the Parents from calling Ms. Winkelman is consistent with Washington Rule of Professional Conduct (RPC) 3.7 LAWYER AS WITNESS, which provides in relevant part:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: . . .

(4) the lawyer has been called by the opposing party and the court rules that the lawyer may continue to act as an advocate.

The comments to RPC 3.7 note:

[8] When a lawyer is called to testify as a witness by the adverse party, there is a risk that Rule 3.7 is being inappropriately used as a tactic to obtain disqualification of the lawyer. Paragraph (a)(4) is intended to confer discretion on the tribunal in determining whether disqualification is truly warranted in such circumstances.

13. In this case, permitting the Parents to call Ms. Winkelman would have led to her disqualification at the start of the hearing and would have caused substantial hardship to the District and the tribunal. These matters, which had been pending for nearly a year when the hearing commenced, required a significant investment of time and resources, even before the due process hearing began. Given the extensive procedural history in this case, coupled with the fact that the Parents raised seven pages of issues, submitted thousands of pages of exhibits, and identified forty-five witnesses for hearing, disqualifying Ms. Winkelman at such a late date would have resulted in tremendous hardship to the District. It also would have caused extensive delay, which is not anyone's interest, including the Student's. On balance, the District's motion in limine to preclude the Parents from calling Ms. Winkelman to testify was GRANTED.

Issue in Cause No. 2022-SE-0072: Was the District's May 2022 reevaluation appropriate?

14. The sole issue in Cause No. 2022-SE-0072 is whether the District's reevaluation of the Student conducted in May 2022 was appropriate and, if not, whether the Parents are entitled to an IEE (independent educational evaluation) at public expense.

15. A school district must reevaluate a student eligible for special education services at least every three years unless the parent and the district agree that a reevaluation is unnecessary. A reevaluation is also required if the district determines

that the student's educational or related services needs, including improved academic achievement and functional performance, warrant reevaluation, or if the student's parent or teacher request a reevaluation. WAC 392-172A-03015. Additionally, a district must evaluate a student before determining that the student is no longer eligible for special education services. WAC 392-172A-03035.

16. Evaluations and reevaluations must comply with the requirements set out in WAC 392-172A-03020 to 03080. Under these procedures, a "group of qualified professionals selected by the school district" must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . ." WAC 392-172A-03020(2). The group must not use any single measure or assessment as the sole criterion for determining eligibility or educational programming and must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. *Id.*; see also 34 CFR §300.304.

17. Assessments must be administered by "trained and knowledgeable personnel" and "in accordance with any instructions provided by the producer of the assessments." Students must be assessed "in all areas related to the suspected disability" and the evaluation must be "sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified." WAC 392-172A-03020; see also 34 CFR §300.304(c).

18. Under WAC 392-172A-03025, as part of any evaluation or reevaluation, the team must review existing data on the student, including evaluations and information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers. WAC 392-172A-03025 further requires that the team:

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

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

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the

measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

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

19. As part of an initial evaluation or reevaluation, the District must prepare and provide the parents with an evaluation report. WAC 392-172A-03035. The evaluation report must include, among other things, a statement of whether the student has a disability that meets applicable eligibility criteria, a recommendation as to what special education and related services the student needs, and the date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. WAC 392-172A-03035(a), (d) and (f).

20. After the “administration of assessments and other evaluation measures,” the parent of the student and qualified professionals “determine whether the student is eligible for special education and the educational needs of the student.” WAC 392-172A-03040(1)(a).

21. When interpreting evaluation data for purposes of determining eligibility for special education services, the school district must:

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

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

WAC 392-172A-03040(3).

22. “[A] district need not reevaluate a student in every area in which a parent requests reevaluation.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *56 (W.D. Wash 2019), *aff’d sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022). “Rather, the district must review existing evaluation data on the student and, on the basis of that review and input from the parents, identify what additional data, if any, are needed to ensure the child receives a FAPE. WAC 392-172A-03025(2).” *Id.* (Internal quotation marks omitted.)

23. If the parent of a student eligible for special education disagrees with a school district's evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner who is not employed by the school district. When a parent requests an IEE at public expense, the district must provide the parent with information on obtaining IEEs. Additionally, the district must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation or ensure a publicly funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. WAC 392-172A-05005.

24. When a school district requests a due process hearing to demonstrate that its evaluation is appropriate, it "must defend the appropriateness of the evaluation as a whole and, thus, all of the assessments on which it relies." *Jones-Herrion v. District of Columbia*, 2019 U.S. Dist. LEXIS 176173 *9 (D.D.C. Oct. 10, 2019). In that case, the court explained:

Diagnostic assessments—which the IDEA refers to simply as assessments—are the tools used as part of an evaluation or reevaluation of a student to ensure that the child is evaluated in all areas of suspected disability and to determin[e] an appropriate education program for the child. . . . On the other hand, an evaluation or reevaluation is the process during which these assessments occur. . . . Thus, the statute envisions that an evaluation or reevaluation will make use of multiple assessments to fully evaluate the child's needs. . . . Evaluations must take into account a holistic perspective of the child's needs. . . . Ultimately, the outcome of an evaluation flows from all of the assessments which undergird it.

Id. at **8-9 (internal citations and quotation marks omitted).

25. In this case, the District received the Parents' signed consent for the reevaluation on March 7, 2022. The evidence demonstrates that the Student was assessed in all areas to which the Parents consented⁵¹ and there is no evidence that the Student required assessment in any other areas.

26. As required by WAC 392-172A-03025, the District's reevaluation included a comprehensive review of existing evaluative data and records. In keeping with the

⁵¹ While the Parents broadly assert that the reevaluation was not consistent with what the District agreed to do, the Parents do not identify the alleged inconsistencies.

Parents' consent, the reevaluation focused heavily on review of reports by Dr. Hungelmann and Dr. Snow. The reevaluation also included review of the Student's April 2019 reevaluation, the assessment revision, the Student's special education records and grades, and the Student's medical history and diagnoses. The reevaluation also considered information from multiple District teachers, along with extensive input from the Parents, which included Student work samples and information from Yellow Wood. In addition, Ms. Woodle, Ms. Connelly, and Ms. Kloberdanz observed the Student. Ms. Kloberdanz observed the Student during two classes and also conducted two one-hour individual sessions.

27. The District also demonstrated that it used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student. In addition to considering Parent and teacher input and conducting Student observations, the District used formal assessment tools to assess the Student's skills in the areas of Behavior/Social Emotional, Executive Functioning, Communication, OT, and Math. This is in keeping with the Parents' consent, which only authorized new assessments in these areas.

28. Moreover, the District demonstrated that it used technically-sound instruments in each of these areas. Ms. Connelly assessed the Student's communication skills using the TILLS and the CELF-5 ORS. Although Dr. Enns was critical of Ms. Connelly's scoring of the TILLS, Ms. Connelly credibly explained how the TILLS is scored and that she scored the Student's test in keeping with these procedures. More weight is given to her testimony because Dr. Enns is not an SLP and is not familiar with the TILLS. To assess the Student in the area of OT, Ms. Kloberdanz administered the IWT and the BOT-2. In the area of Behavior, the Parents and four teachers, including the Student's former and current special education teachers, completed the BASC-3. In Executive Functioning, the Mother and five general education teachers completed the Executive Control Skills Checklist. Although Dr. Enns was critical of the District's assessment in this area because it was premised on teacher input, his own assessment of the Student's executive functioning relied solely on input from one individual who has never observed or worked with the Student in the school setting, and only worked with her one-on-one. In contrast, the District's assessment was premised on input from multiple teachers, including Mr. Ohashi, who worked with the student routinely in the school setting. It also included input from the Mother.

29. Finally, Ms. Woodle administered the JW-IV to assess the Student's Math skills. While the JW-IV is an appropriate assessment tool, the District did not complete the JW-IV assessment. Rather, the Student "ask[ed] to leave in the middle of the Math Applied Problems assessment (when she had begun incorrectly answering questions)

and did not return to complete the assessment.” D9p21. Accordingly, the District’s Math assessment only contained a score on the Student’s overall math calculation skills and did not contain a score on the Math Applied Problems Assessment.

30. The remaining question is whether the District’s reevaluation was “sufficiently comprehensive to identify all of the student’s special education and related service needs.” WAC 392-172A-03020(3)(g). In making this determination, the District’s reevaluation, with all of its assessments, must be viewed as a whole. *Jones-Herrion*, 2019 U.S. Dist. LEXIS 176173 at *9.

31. The evidence demonstrates that the District’s reevaluation provided a wealth of information about the Student’s special education and related services needs with one exception – the math assessment was incomplete. The Student left the assessment when she began incorrectly answering questions in the problem-solving assessment and there is no evidence that Ms. Woodle or anyone else took steps to complete the assessment or to administer a different assessment. As a result, the math assessment did not provide any formal evaluative data regarding the Student’s math problem solving skills. This is problematic because the Student’s skills in this area were in the low average range when she was assessed by Dr. Meilenz in 2019 and by Dr. Hungelmann in 2021 and decreased from the 19th percentile in 2019 to the 12th percentile in 2021. While the Student had good grades in math, Ms. Mensher’s feedback stated that the Student sometimes struggled with word problems. Additionally, these struggles occurred during a time period when the Student was receiving math SDI. Considered collectively, these factors made it important for the team to have a formal measure of the Student’s math problem solving skills in order to be able to accurately determine her special education and related services needs. Because the team did not have this information, it did not have sufficiently comprehensive information to identify all of the Student’s special education and related services needs as required by WAC 392-172A-03020(3)(g).

32. In conclusion, the District has not met its burden to demonstrate that the reevaluation, as a whole, was appropriate, because the math assessment is incomplete. *Id.* Accordingly, the Parents are entitled to an IEE at public expense.

33. In this case, the Parents have already obtained an IEE based on their disagreement with the District’s reevaluation; they seek reimbursement of \$7,957.50 for the IEE conducted by Dr. Enns. P56p1.

34. It is appropriate to award reimbursement for the IEE the Parents have already obtained for several reasons. First, after the IEE was complete, the Parents provided it to the Student’s IEP team for consideration and the IEP team has already met and

considered the completed IEE. Second, the Student has already been tested extensively in recent years, which led Dr. Enns to limit the new testing he conducted as part of his IEE. Finally, given the highly contentious relationship between the parties and the fact that the Student no longer attends school in the District, it is appropriate to reimburse the Parents for the IEE they obtained rather than to order a new IEE, which would require further interaction between the parties.

35. Therefore, as an award of an IEE at public expense, the District shall reimburse the Parents \$7,957.50 for the cost of the IEE report already obtained and reviewed. The Parents did not submit any other reimbursement requests associated with the IEE; therefore, no additional costs are awarded.

Issues in Cause Nos. 2022-SE-0069 and 2023-SE-0001

Issue I: The Parents have not shown that the District failed to provide the Student with FAPE by failing to initiate a special education eligibility reevaluation.

36. Wholly apart from the obligation to reevaluate students triennially, a school district must reevaluate a student if it determines that the student's educational or related services needs, including improved academic achievement and functional performance, warrant reevaluation, or if the student's parent or teacher request a reevaluation. WAC 392-172A-03015.

37. In this case, the Parents contend that the District should have initiated a reevaluation after it received certain reports or learned of certain information or concerns related to the Student and her needs, as discussed below.

38. (Issue Ia) The Parents claim that the District should have reevaluated the Student after it received reports from the UW Speech and Hearing Clinic when the Student was in fifth grade (2019-2020 school year). The evidence demonstrates that when the Parents provided UW Speech and Hearing Clinic reports to the District in the spring of 2020, they asked the District to reconsider the Student's eligibility for SLP services in the Fall of 2020. In keeping with the Parents' request, the District issued a PWN on November 3, 2020, agreeing to conduct an assessment revision in the area of Communication. There is no evidence that the Parents or any District staff believed it was necessary to reevaluate the Student earlier. Because the District initiated an assessment revision in response to the Parents' request, the Parents cannot prevail on this claim.

39. Moreover, even if the evidence indicated that the District should have responded to the Parents' request earlier in the fall of 2020, the assessment revision

ultimately determined that the Student did not require special education services in the area of Communication. Accordingly, any procedural violation did not impede the Student's right to FAPE, significantly impede the Parents' participation, or deprive the Student of educational benefit. WAC 392-172A-05105(2).

40. (Issue Ib; Issue Id) The Parents claim the District should have reevaluated the Student after learning of concerns related to anxiety starting in the spring of 2021, and after the Student ceased attending at least one class each day during the fall of 2021 due to anxiety. The Parents have not proven either claim.

41. During the spring of 2021, the Parents voiced their continuing disagreement with the assessment revision conducted in February 2021, and sought an IEE. Following the assessment revision, the Parents did not request a reevaluation of the Student at any time during the 2020-2021 or the 2021-2022 school years. Additionally, there is no evidence that any of the Student's teachers requested a reevaluation or believed one was necessary. Accordingly, a reevaluation would have been required only if warranted by the Student's needs. *W.S. v. Edmonds Sch. Dist.*, 2022 U.S. Dist. LEXIS 118717 *8-9 (W.D. Wash. July 6, 2022). The evidence in the record does not demonstrate that the Student's needs warranted an evaluation during the spring or the fall of 2021.

42. In the Spring of 2021, the Student's IEP team discussed the Parents' concerns that the Student was experiencing anxiety. Mr. Manzo, a counselor at Eckstein, met with the Mother multiple times, consulted with the Student's private counselor, and attended the June 2021 IEP team meeting. Although the Parents reported that the Student was experiencing anxiety at home, Mr. Manzo never observed the Student exhibiting signs of anxiety at school, which is consistent with teacher reports. The IEP team also documented the Parents' continuing concerns regarding the Student's communication skills, even though Mr. Deskin and District members of the team did not share this concern based on their experience with the Student in the school setting. Based on this evidence, the Parents have not shown that the Student's needs warranted reevaluation in the Spring of 2021.

43. Additionally, the evidence does not support the Parents' claim that the Student was missing at least one class each day during the fall of 2021 due to anxiety. The Student's attendance declined as the 2021-2022 school year progressed, but this decline resulted from the Parents' decision that the Student would not attend Basic Math and would instead receive her SDI from Yellow Wood. Aside from absences from Basic Math, the Student did not have a significant number of absences and the Parents did not demonstrate that the absences were due to anxiety. Accordingly, the Parents

have not met their burden to establish that the Student's needs warranted a reevaluation.

44. (Issue Ic) The Parents contend that the District should have reevaluated the Student instead of conducting an "Assessment Revision" in the spring of 2021. They contend that a comprehensive reevaluation of the Student was required in order to address her anxiety and broader communication concerns listed in her IEPs.

45. The District used the term "Assessment Revision" to refer to an evaluation that required an assessment in only one area. Although the Parents now claim that the Student required assessment in other areas, the Parents did not raise concerns about any other areas at the time. While the Mother contended at hearing that she had concerns about listening comprehension, the consent form contained a check box titled "listening comprehension" and the Parents did not check it. Moreover, the extensive notes that the Parents added to the consent form did not request assessment in any area besides communication.

46. Finally, the evidence does not demonstrate that the Student's needs warranted a reevaluation in any area besides communication. There is no evidence that District teachers or staff requested or believed the Student should be assessed in additional areas. Mr. Deskin, in particular, did not see the Student exhibiting signs of anxiety and did not receive reports from teachers that the Student was showing signs of anxiety. Because there is no showing that other areas required assessment, the Parents have not met their burden to show that the District was required to conduct a reevaluation instead of an assessment revision.⁵²

47. (Issue Ie; Issue If) The Parents next claim that the Student should have been reevaluated in the fall of 2021, after the Parents provided the District with reports from Dr. Snow and Dr. Hungelmann. The Mother admitted she did not request a reevaluation of the Student after she provided these reports to the District because the Student's triennial reevaluation was scheduled for the Spring of 2022. There is no evidence in the record that she believed, or communicated to the District, that these reports demonstrated a need for an earlier reevaluation. Similarly, there is no evidence that District teachers or staff requested a reevaluation or believed a reevaluation was necessary based on these reports. Finally, the evidence does not demonstrate that the Student's needs warranted an earlier reevaluation. Dr. Snow's report did not recommend SLP services in the school setting; she believed implementation of the accommodations and modifications listed in the Student's IEP would likely meet her

⁵² The Parents' claim that the District failed to comply with procedural requirements in conducting the assessment revision is addressed subsequently.

needs. Dr. Hungelmann's report recommended reevaluation of the Student when she turned 16, which was three years in the future. She encouraged the Parents to focus on the Student's strengths, to allow increased independence in her academic work, and to convey confidence in her ability to be successful. For these reasons, the Parents have not met their burden to prove this claim.

48. (Issue Ig) The Parents contend that the Student should have been reevaluated prior to March 3, 2022, given known concerns about the Student's anxiety and OCD diagnosis and disagreement regarding whether her math grades and progress reports were accurate.

49. Although the Student's IEP team met four times between December 9, 2021, and March 3, 2022, the Parents never raised concerns that the Student should be reevaluated prior to the spring of 2022 due to her anxiety or OCD diagnosis, or due to disputes regarding the accuracy of her math grades and progress reports. Likewise, teachers did not request a reevaluation of the Student prior to the spring of 2022. Additionally, the Student's needs did not warrant reevaluation prior to the spring of 2022. While the Parents frequently notified Mr. Manzo that the Student was exhibiting signs of anxiety at home, Mr. Manzo, as a school counselor skilled in supporting students, never saw any signs of anxiety or behavioral concerns at school. Similarly, teachers did not see or report any concerns related to anxiety, OCD, or behavior. During the December 9, 2021, IEP meeting, teachers described the Student as doing great work, emailing teachers if she missed work, curious, on task, going above and beyond with respect to effort, asking questions and asking for help and feedback, and friendly and outgoing. The District addressed the Parents' concerns about the Student's anxiety by arranging for her to meet with Mr. Manzo each week. However, the Parents would not let Mr. Manzo discuss anxiety or anything that could potentially upset the Student during these meetings. The District also granted the Parents' request to allow the Student to attend her sixth period class remotely. In sum, the District took steps to address the Parents' concerns about the Student's anxiety and OCD, even though the Student was not exhibiting any behaviors of concern at school. Given that the Student's needs did not require reevaluation prior to the spring of 2022, and that the Parents and District staff did not request earlier reevaluation, the Parents have not met their burden to prove this claim.

50. The Parents did not explain how their dispute regarding the accuracy of the Student's grades and progress reports warranted an earlier reevaluation of the Student. It is therefore concluded that there is no merit to this claim.

51. (Issue lh, i through x) The Parents next contend that the District should have initiated a special education eligibility reevaluation after June 28, 2022, upon receipt of certain documents or learning certain information about the Student.

52. The Parents requested an initial special education eligibility evaluation⁵³ on or about February 17, 2023. During the February 17 meeting, the IEP team agreed to consider the Parents' request.

53. There is no evidence in the record that the Parents requested an evaluation or reevaluation between June 28, 2022, and February 17, 2023.

54. Additionally, there is no evidence that District staff requested an evaluation or reevaluation of the Student during that time period. Nor is there evidence that the Student's needs warranted evaluation prior to the Parents' evaluation request on February 17, 2023. To the contrary, the Student's teachers testified that the Student was doing well in class, participating, asking questions, happy, and communicating well with peers and adults. Additionally, there are no reports of any behavioral concerns.

55. Toward the end of 2022, the Parents notified the District that the Student was engaging in school refusal. As found above, the Student had numerous absences from Eckstein because her Parents had determined she would receive her SDI and other support at Yellow Wood. The evidence does not support a finding that the Student's absences could be attributed to school refusal or anxiety so as to require an evaluation.

56. To the extent that Parents contend Dr. Enns' IEE report diagnosing the Student with ADHD required the District to initiate an evaluation prior to their evaluation request, the record does not establish that the Parents provided Dr. Enns' report to the District prior to mid-February 2017. See *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016), cert. denied, 137 S. Ct. 1578, 197 L. Ed. 2d 704 (2017).

57. In sum, the Parents have not met their burden to prove that the District should have initiated an evaluation of the Student between June 28, 2022 or February 17, 2023.⁵⁴

⁵³ As discussed in the findings of fact, the Parents' requested an initial evaluation rather than a reevaluation because the 2022 reevaluation had determined that the Student was ineligible for special education services. Subsequently, the District implemented the Student's stay-put IEP.

⁵⁴ The Parents have not met their burden with respect to any of the issues in lh i through x.

Issue II a through k: The Parents have not shown that the District failed to provide the Student with FAPE by failing to have the IEP team timely consider information provided by the Parents in creating and amending her annual IEPs.

58. The Parents next contend that the Student's IEP team failed to timely consider reports and information they provided when it created and amended her annual IEPs, resulting in a denial of FAPE.

59. In developing a student's IEP, the IEP team must consider the strengths of the student; the concerns of the parents for enhancing the education of their student; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student. WAC 392-172A-03110.

60. The Parents first contend that the IEP team failed to timely consider reports from the UW Speech and Hearing Clinic, Dr. Snow, and Dr. Hungelmann, and letters from the Student's medical and mental health providers (Issue II a through d).

61. During the December 2020 IEP team meeting, the Student's IEP team considered information from the UW Speech and Hearing Clinic which was provided to the District in the spring of 2020. Additionally, Mr. Deskin included extensive information provided by the Parents in the December 2020 IEP. As discussed above, the Parents asked the District to reconsider the Student's eligibility for SLP services during the Fall of 2020, based on the UW Speech and Hearing Clinic reports. There is no evidence in the record that the Parents or anyone else requested an earlier IEP team meeting to discuss the reports, or that anyone believed it was necessary to consider the reports prior to the December 2020 meeting.

62. Dr. Snow completed her report on August 18, 2021. It is unclear when the report was first provided to the District, but it was discussed at the facilitated IEP team meeting in October 2021, and again during the IEP team meeting on December 9, 2022. The Parents have not shown that the IEP team failed to timely consider this document.

63. The Parents provided Dr. Hungelmann's report and letters from medical and mental health providers to the District at some point during the fall of 2021. When the Student's IEP team met on December 9, 2021, it considered the Student's mental health and hypothyroidism diagnoses, as discussed in these letters, and the impact on her education. The team also considered the Parents' request to include information from Dr. Snow and Dr. Hungelmann in the present levels of performance. There is no evidence that the Parents or anyone asked for the IEP team to consider this information earlier, or believed earlier consideration was necessary.

64. The Parents further contend that the District denied the Student FAPE by failing to have the IEP team timely consider reports and information they provided on and after June 28, 2022 (Issue 2 e through k). At issue are documents from Morningside Academy and Lindamood Bell; curriculum-based measurements by Ms. Kulkin / Northwest K-8 Learning Support; SBA and MAP assessment results; notice that the Student had been diagnosed with ADHD; information provided by Ms. Frank related to the Student's mental health needs; and the Student's Yellow Wood report card.

65. The record demonstrates that the Student was "exited" from special education services, meaning she was determined to be ineligible for such services, following the May 2022 reevaluation. As a result, the preliminary question is whether the District was required to hold IEP team meetings after the Student was exited from special education services. The Parents did not brief this issue and therefore provided no authority to support their claim.

66. The Ninth Circuit Court of Appeals has determined that the "mere existence of a stay put order" does not excuse a school district from its responsibility to have a statutorily compliant IEP in place at the beginning of each school year. *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047, 1056 (9th Cir. 2012). The court recognized that a stay put order precludes a change to a student's educational placement, but concluded:

updating an eligible student's present levels of academic achievement and functional performance and establishing corresponding goals and objectives does not qualify as a change to a student's educational placement, so long as such revisions do not involve changes to the academic setting in which instruction is provided or constitute significant changes in the student's educational program.

Id. at 1057.

67. Although *Anchorage* makes clear that a district is required to conduct an IEP meeting to adopt a statutorily compliant IEP and does not preclude IEP meetings to make updates that are not related to educational placement, it is unclear whether a district is required to hold IEP team meetings at parent request when a stay-put order is in place. It is not necessary make such a determination in this case, however, because the record demonstrates that the IEP team met on February 17, 2023, at which point the Parents had an opportunity to discuss the information and reports they had provided to the District and any other concerns.

68. To the extent the Parents contend the team should have met earlier, it is concluded that any procedural error was harmless. The Parents have not articulated how any delay impeded the Student's right to FAPE, caused a deprivation of educational benefit, or significantly impeded their participation. WAC 392-172A-05105(2).

69. The Parents have not demonstrated that the Student was denied FAPE because her IEP team failed to timely consider information provided by the Parents.

Issue III: The Parents have not shown that the District failed to provide the Student with FAPE since May 11, 2020, by failing to provide her with an annual IEP that included all of the specially designed instruction, accommodations, modifications, supports to staff, and supplementary aids and services that she required.

70. During the timeframe at issue in this matter, the Student's IEP team developed the December 2020 IEP, the May 2021 IEP Amendment, and the June 2021 IEP Amendment. The Parents' briefing does not identify what SDI, accommodations, and modifications, supports to staff, and supplementary aids and services they believe the Student required in order to receive FAPE that was not provided in her IEPs.

71. As discussed previously, 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.*, 580 U.S. at 399. An IEP team is charged with developing a comprehensive plan that is "tailored to the unique needs of a particular child." *Id.* at 391. Additionally, the Student's "educational program must be appropriately ambitious in light of his circumstances" *Id.* at 402.

72. 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.*

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

74. An IEP must include a statement of the special education and related services and supplementary aids and 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).

75. In this case, the Student's IEP team adopted an annual IEP in December 2020. The Parents provided extensive information to Mr. Deskin, which was considered and added to the IEP. This included information from Dr. Mielenz, Dr. Rodda, and Ms. Frank.

76. The December 2020 IEP provided 255 minutes per week of SDI in math in a special education setting. It did not provide any related services or supplementary aids and services. The IEP also provided 27 accommodations and 7 modifications.

77. Mr. Deskin believed this amount of SDI was appropriate for the Student and did not believe she required any related services or supplementary aids and services. There is no evidence that the Parents or any other team members voiced disagreement with the provisions in the IEP. Nor does the record indicate that the Student required additional SDI, supplementary aids and services, or accommodations and modifications, in order to receive FAPE.

78. To the extent the Parents allege that staff members working with the Student required support, they have not identified what supports were required. If they are referring to support from an Instructional Assistant, the record demonstrates that the Student did not require this level of support in order to participate in her classes.

79. Therefore, the Parents have not shown that the December 2020 IEP was not reasonably calculated to provide FAPE.

80. Likewise, the Parents have not shown that the May 2021 IEP Amendment and/or the June 2021 IEP Amendment were not reasonably calculated to enable the Student to make progress appropriate in light of her circumstances.

81. Ms. Frank and Mr. Manzo attended the May 2021 IEP Amendment meeting, and the team discussed the Parents' concerns related to the Student's anxiety. Mr. Manzo and Mr. Deskin did not see the Student exhibiting signs of anxiety and teachers did not report such concerns. The team also discussed the recently completed assessment revision and the Parents' continuing concerns that the Student required support from an SLP. Unlike the Parents, Mr. Deskin and teachers did not have concerns about the Student's communication skills. Thus, to the extent the Parents claim the IEP should have been amended to add counseling and SLP as supplementary aids and services, the record does not support a need for these or any other services.

82. During the May 2021 IEP Amendment meeting, the team did not change the amount of SDI, which remained at 255 minutes per week. There is no evidence that anyone believed this amount of SDI was inconsistent with the Student's needs. Similarly, the evidence does not establish that the extensive accommodations and modifications provided in the Student's IEP were not appropriate to meet her needs.

83. Consequently, the Parents have not demonstrated that the May 2021 IEP Amendment was not reasonably calculated to provide the Student with FAPE.

84. During the June 2021 IEP Amendment meeting, the team discussed the Parents' concerns related to the Student's math placement. The team added 90 minutes per week of math SDI in a special education setting based on her transition to seventh grade. There is no evidence in the record that the Parents or other team members disagreed with the amount of SDI or the setting for the Student to receive her SDI.

85. Dr. Snow attended the June 2021 meeting, and the team discussed the Parents' concerns related to the Student's communication skills. Dr. Snow did not believe the Student required SDI in this area or SLP services. She believed the accommodations and modifications in the Student's IEP likely would be sufficient to meet the Student's language needs. The evidence in the record does not support the Parents' assertion that the Student required SLP as a related service or as a supplementary aid and service. Nor does it indicate that the Student required any other related services or supplementary aids and services. Similarly, the evidence does not demonstrate that the Student required additional or different accommodations or modifications.

86. The Parents have not met their burden to demonstrate that the June 2021 IEP Amendment was not reasonably calculated to provide the Student with FAPE.

87. In conclusion, a preponderance of the evidence does not support the Parents' claim that the District failed to provide the Student with an annual IEP that included all of the specially designed instruction, accommodations, modifications, supports to staff, and supplementary aids and services that she required.

Issue IV: The Parents have not Shown that the District failed to provide the Student with FAPE since May 11, 2020, by failing to provide her with Extended School Year (ESY) services.

88. School districts must provide ESY services to a student only if the student's IEP team determines on an individual basis that the services are necessary for the

provision of FAPE to the student. WAC 392-172A-02020(3). The purpose of extended school year services is to maintain a student's learning skills or behavior, not to teach new skills or behaviors. WAC 392-172A-02020(5).

89. In *N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1211-12 (9th Cir. 2008), the Ninth Circuit Court of Appeals explained that ESY services are integral to a FAPE only when the benefits a child gains during the regular school year will be significantly jeopardized if the student is not provided ESY services during the summer.

90. With respect to the summer of 2020, there is no evidence in the record that any District teachers or staff believed the Student required ESY services that summer. Moreover, there is no evidence that the Parents or anyone else requested that the Student receive ESY services. The Parents have not met their burden to prove this claim.

91. With respect to the summer of 2021, the Student attended District special education programming for a period of four weeks. The testimony of the Parents' advocate, Ms. Schwindt, makes clear that the IEP team agreed that the Student would receive summer programming as recovery services in lieu of ESY. There is no evidence that she required ESY services in addition to this programming.

92. In May and June 2021, the Student's IEP team discussed the Parents' belief that the Student required ESY services. The team agreed to address the Parents' concern by taking data the following year, although other team members did not share this belief. At hearing, Mr. Deskin explained that a statement in the May IEP Amendment regarding the Student's need for "frequent reteaching and reinforcement of skills learned" to retain math skills meant that the Student would have difficulty applying something several days after she learned it, which he distinguished from regression seen after school breaks. Mr. Deskin did not believe at any point that the Student required ESY services. Nor is there evidence that any other teachers believed the Student required ESY services. A preponderance of the evidence does not support the Parents' claim.

93. With respect to the summer of 2022, there is no evidence that any District teachers or staff believed the Student required ESY services. The Student's IEP team met five times during the 2021-2022 school year and meeting minutes do not reflect teacher concerns that the Student required ESY. This is consistent with teacher feedback indicating that the Student was performing at or above grade level in all of her classes and with evidence that the Student's grades ranged from B+ to A. Moreover, there is no credible evidence that the Student required ESY services to maintain what she learned. WAC 392-172A-02020(5).

94. The Parents have not met their burden to prove this claim.

Issue V: The Parents have not shown that the District failed to provide the Student with FAPE since May 11, 2020, by failing to implement the Student's February and December 2020 IEPs, May, and June 2021 IEP Amendments, by failing to provide the Student with all of the specially designed instruction, accommodations, and modifications called for in these documents, and in the settings they identified.

95. A school district's obligation to provide the special education and related services provided in a student's IEP does not require "perfect adherence to the IEP . . ." *Van Dyun v. Baker Sch. Dist.* 5J, 481 F.3d 770, 779 (9th Cir. 2007). Failure to implement an IEP constitutes a denial of FAPE only "when the services provided to a disabled child fall significantly short of those required by the IEP," so as to constitute a material failure. *Id.* at 773.

96. The Parents first contend that the District denied the Student FAPE since May 11, 2020, by failing to implement the February and December 2020 IEPs, and the May and June 2021 IEP Amendments.

97. At the outset, it is important to identify what is not at issue. First, there is no evidence in the record of a February 2020 IEP, despite mention of one in the Parents' issue statement. Second, the Parents' issue statement specifies the IEPs they are challenging. The December 2019 IEP is not listed. The Parents' issue statement plainly does not allege that the District failed to implement the December 2019 IEP, which was in effect between May 11 and June 18, 2020, and for the first months of the 2020-2021 school year. A party requesting a due process hearing may not raise issues during the hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3). The District has not agreed to consideration of any new issues. It did, however, brief this issue in its response to the Parents' post-hearing brief.

98. Even if the issue is considered, the Parents have not shown a material failure to implement the December 2019 IEP. During the six-week period between May 11, 2020, and June 18, 2020, the Student's IEP called for a total of 9 hours of math SDI. The Student received her math SDI through a combination of synchronous and asynchronous learning. She participated in weekly one-to-one zoom meetings, where she received 40 of her 90 minutes of weekly math SDI. The District provided the remainder of her SDI through asynchronous learning. The Student's special education teacher provided weekly math review and worksheets aligned with the Student's IEP goals. The District also made an instructional assistant available.

99. Although the Student had some difficulty engaging in remote learning outside of one-to-one meetings, the Parents have not shown that these difficulties amounted to a material failure to implement the IEP. Moreover, the Student ultimately received 74 hours of recovery services to make up for missed instruction during COVID-19. (7 hours between March and June 2021; 64 hours during summer programming in 2021; 3-4 hours in fall of 2021). By providing 74 hours of recovery services, the District more than compensated for any shortfall.⁵⁵

100. In conclusion, even if the Parents' issue statement can be interpreted to challenge implementation of the December 2019 IEP, a preponderance of the evidence demonstrates that the District implemented the IEP between May 11 and June 18, 2020.

101. The record clearly demonstrates that Mr. Deskin provided the Student with all SDI required by her IEP between September and December 2020. Because a special education class was typically 255 minutes per week, Mr. Deskin actually delivered more SDI minutes to the Student than the 90 minutes per week provided by the December 2019 IEP. The Parents were aware of this and did not disagree with it at the time or raise it as an issue for hearing.

102. In the fall of 2020, the Student's SDI was delivered online two times per week through synchronous learning (2 sessions per week lasting 1 to 1.5 hours each) and asynchronous learning, for a total of 5 hours per week. More than 90 minutes were delivered through synchronous learning. The Student's math class began with direct instruction followed by break-out sessions in which Mr. Deskin and Ms. Irvin supported small groups of three or four students. Support included accommodations and strategies to help the Student, such as showing visuals, repeating directions, and providing additional practice.

103. To the extent that the Parents argue that the Student required her SDI to be delivered in person, rather than remotely, the evidence does not support this assertion. There is no evidence in the record that the Student was unable to access her education remotely during this time period. The Parents have not met their burden to show that the District failed to implement the December 2019 IEP in any material way.

104. Likewise, the Parents have not met their burden to show that the District failed to implement the December 2020 IEP or the May 2021 IEP Amendment. First, it is important to note that the overwhelming evidence in the record demonstrates that Mr. Deskin went above and beyond to meet the Student's needs, as the Mother

⁵⁵ The District offered the Parents another 22.5 hours of recovery services through private tutoring but, ultimately, the Parents did not accept this offer.

acknowledged. Second, both the December 2020 IEP and the May 2021 IEP Amendment required the District to deliver 255 minutes per week of math SDI to the Student. A preponderance of the evidence demonstrates that it did so.

105. Between December 2020 and March 2021, the Student continued to receive five hours of SDI remotely each week, comprised of two synchronous learning sessions lasting 1 to 1.5 hours each, with the remainder delivered asynchronously. Between April 2021 and the end of the 2020-2021 school year, the Student attended two classes online and two classes in person each week and received additional SDI support from Mr. Deskin or Ms. Irvin when she was in person. Again, there is no evidence in the record that the Student was unable to access the portion of SDI that was delivered remotely. Nor is there any evidence that the Student did not receive all of her SDI minutes.

106. Further, the Parents have not shown that the District failed to provide the accommodations and modifications required by the December 2020 IEP and the May 2021 IEP Amendment. The Parents, who bear the burden of proof on this issue, did not articulate what accommodations or modifications were not provided during this timeframe. Moreover, a preponderance of the evidence does not establish a material failure to implement the IEP by failing to provide the accommodations and modifications in the IEP.

107. In sum, the Parents have not shown that the District failed to implement the December 2020 IEP or the May 2021 IEP Amendment in any material way.

108. The Parents next claim that the District denied the Student a FAPE by failing to implement the June 2021 IEP Amendment. This IEP remained in effect throughout the Student's seventh grade year. It was also in effect during the Student's eighth grade year as the stay put IEP.

109. The June 2021 IEP Amendment provided 345 minutes of math SDI in a special education setting. At issue is whether the District failed to provide this SDI in the appropriate setting. The Parents do not appear to contend that the District failed to provide the appropriate number of minutes and did not build a record to support such a claim.

110. From the start of the 2021-2022 school year through mid-November 2021, the Student received all her math SDI in Mx. Barrett's Homeroom and Math Improvement class. Throughout the entire year, Mx. Barrett provided services to all students in Ms. Mensher's class who had IEPs. As of mid-November, the Student was moved to Ms. Mensher's homeroom, at the Parents' request. Additionally, as of mid-November, the Student was the only student left in Mx. Barrett's class. At that point, the Student

stopped attending Mx. Barrett's class. Also, around that time, the District consolidated the Math Improvement class with a Basic Skills Math taught by Ms. Vesmanova.

111. The Parents contend that the District "eliminated the Student's special education math class and moved her to a general education homeroom, thereby effectively ended [sic] her receipt of specially designed instruction in the matter [sic] called for by her IEP." Parents' Post-Hearing Brief at 21. A preponderance of the evidence does not support this assertion.

112. The evidence demonstrates that Basic Skills Math was a special education class that offered individualized instruction to all students. This necessarily meant instruction to support all students in meeting their individual goals at their level. To the extent the class contained other students with differing skills, or provided some general instruction to all students, the Parents have not demonstrated that providing the Student's SDI in this classroom departed from her IEP in any material way.

113. Moreover, when the Student's IEP team discussed options for providing the Student's SDI during the January 6, 2022, IEP meeting, the Mother made clear that the Parents disagreed with all options offered by the District and wanted the District to consider SDI delivered one-on-one at Yellow Wood, even though her IEP did not require one-on-one instruction and did not support such a restrictive model. The Student never attended the Basic Math Class. The record demonstrates that the Parents were unwilling to seriously consider the Basic Math class, or to permit the Student to attend the class, because they believed she required one-on-one SDI at Yellow Wood.

114. Additionally, to the extent the Parents now contend the provision of SDI in Ms. Mensher's homeroom did not comport with her IEP, the Student was moved to Ms. Mensher's homeroom at the Parents' request. Aside from broadly asserting that this did not comport with her IEP, the Parents have not articulated or pointed to any evidence to demonstrate how this change denied the Student FAPE. Nor does the record demonstrate that the change resulted in a FAPE denial.

115. The Parents further claim that the Student did not receive the accommodations and modifications in her IEP. The evidence does not support this claim. Ms. Mensher credibly testified that she reviewed the Student's IEP "all the time" because the Student had so many accommodations and because the Mother had sent numerous emails regarding the need to provide accommodations. Ms. Mensher also described in detail the steps she took to support the Student. I give less weight to the Parents' belief that the Student was not receiving accommodations and modifications, which was largely based on conversations with the Student. There is little information as to what the Student actually conveyed to the Parents regarding specific accommodations

and modifications; moreover, the Student did not testify at the hearing and her hearsay statements were not subject to cross-examination. On balance, the Parents have not met their burden to show that the accommodations and modifications provided were “significantly short” of those required by the Student’s IEP, so as to constitute a material failure. *Van Dyun* at 773.

116. The Parents also claim that the Student did not receive recovery services consistent with the June 2021 IEP Amendment. The overwhelming evidence does not support this claim. As discussed previously (see issue V), the Student received a total of 74 hours of recovery services between March of 2021 and the fall of 2021. On top of that, the District offered to provide another 22.5 hours of recovery services through private tutoring, but the Parents never accepted this offer.

117. In sum, the Parents have not shown that the District failed to implement the June 2021 IEP Amendment in any material aspect during the 2021-2022 school year.

118. With respect to the 2022-2023 school year, the issue statement alleges only that the District failed to provide the Student with all of the accommodations and modifications in her IEP and does not challenge implementation of the IEP in any other way.⁵⁶

119. The Parents acknowledged at hearing that Mr. Ohashi and Mr. Matthews provided the Student with the accommodations and modifications called for in her IEP. Although the Parents contend that other teachers failed to provide the Student with her accommodations and modifications, the evidence does not support their claim.

120. Ms. Haakanson credibly testified regarding her extensive efforts to understand and faithfully implement the Student’s IEP. She met with Mr. Goodwin and asked Ms. Connelly for SLP support and guidance. She detailed the numerous ways she provided accommodations and modifications to the Student. Moreover, when the Parents raised specific concerns, Ms. Haakanson responded. She changed Power Point presentations, made a point of giving the Student hard copies of documents, created new materials after the Parents said existing materials were not helpful, and offered the Student a chance to take shortened tests at the Mother’s request, although the Student declined this offer.

121. Ms. Beard also rewrote class materials for the Student when she had questions about certain definitions and vocabulary, and developed support materials she thought would be helpful to the Student in the context of a particular assessment.

⁵⁶ As the District points out, the stay put order was in effect during the 2022-2023 school year, meaning the Parents’ claim regarding implementation actually asserts a stay put violation.

122. Ms. Blair was not familiar with the accommodations and modifications in the Student's IEP until shortly before the hearing, which is troubling. However, she testified that the accommodations and modifications listed in the IEP were "what I do anyway with all of my students." Ms. Blair credibly testified that she gave all students up to a week extension to submit assignments; provided video visual supports through tutorial videos and printed materials; provided audio, video and paper copies, and repeated things in the classroom; posted materials on Schoology so students could access them when absent or at home and provided instructions with bulleted lists. Additionally, when Dr. Enns observed Ms. Blair's class, she checked in with the Student and provided clarification on two occasions.

123. The Parents, who bear the burden of proof on this claim, have not provided credible evidence that specific accommodations and modifications were not provided. On balance, a preponderance of the evidence does not demonstrate that the accommodations and modifications provided were "significantly short" of those required by the Student's IEP, so as to constitute a material failure. *Van Dyun* at 773.

124. Even if the Parents' issue statement can be interpreted to encompass the provision of SDI during the 2022-2023 school year, the District continued to implement the Student's IEP by offering 255 minutes weekly of math SDI in Ms. Reuter's Basic Math Class and by offering 90 minutes weekly of math SDI during homeroom. The Student never attended Basic Math because the Parents decided that she would receive her SDI at Yellow Wood. She attended homeroom five times at most. When the Student informed Ms. Reuter that the work was too easy, Ms. Reuter stated she could provide more difficult work. She never had a chance to do so because the Student stopped attending. With this evidence, the Parents have not proven that the District failed to implement the Student's IEP during the 2022-2023 school year.

125. In conclusion, the Parents have not met their burden to prove that the District denied the Student FAPE by failing to provide her with all of the specially designed instruction, accommodations, and modifications called for in her IEPs and in the appropriate setting.

Issue VI: The Parents have not shown that the District failed to provide the Student with FAPE since May 11, 2020, by failing to provide copies of the Student's February and December 2020 IEPs, and May and June 2021 IEP Amendments, to the Student's sixth and seventh grade general education teachers, and to persons identified in these IEPs as "shared program instructional assistant."

Issue VII: The Parents have not shown that the District failed to provide the Student with FAPE since May 11, 2020, by failing to timely provide “IEP at a Glance” documents to the Student’s sixth and seventh grade general education teachers, or to persons identified in her IEPs as “shared program instructional assistant” during her seventh-grade year.

126. Issues VI and VII raise similar concerns and are considered together.

127. A student’s IEP must be accessible to special and general education teachers and any service provider responsible for implementation. WAC 392-172A-03105(3)(a); 34 CFR 300.323(d)(1); *Reynolds Sch. Dist.* 7, 116 LRP 40139 (SEA OR August 19, 2016). The IDEA does not define “IEP at a Glance,” and there is no requirement associated with that document.

128. Here, Mr. Deskin’s unrefuted testimony establishes that after the Student enrolled at Eckstein full-time during sixth grade, he sent a copy of the Student’s IEP and IEP at a Glance to her teachers. He also provided teachers with a hard copy of IEP at a Glance. The Parents offered no evidence related to whether IEPs were accessible to instructional assistants.

129. With respect to seventh grade, Ms. de Normandie testified that the District had procedures in place to ensure teachers had access to IEPs. This was consistent with Ms. Mensher’s testimony that she received a copy of the Student’s IEP and IEP at a Glance via email. Furthermore, Mx. Barrett, as the Student’s case manager and special education teacher, had access to the Student’s IEP. Additionally, the Mother sent the IEP to the Student’s teachers to ensure they had access. Again, the Parents offered no evidence related to whether IEPs were accessible to instructional assistants.

130. In sum, the Parents have not met their burden to prove that the Student’s 6th and 7th grade teachers and shared instructional assistants did not have access to the Student’s IEP.

131. To the extent that the Parents contend that the District failed to provide the Student’s IEP to her eighth-grade teachers and instructional assistants, the Parents did not allege such a violation. Issues VI and VII expressly refer to the Student’s sixth and seventh grade years only. Moreover, a party requesting a due process hearing may not raise issues during the hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B); *L.C.*, 2019 U.S. Dist. LEXIS 77834 at *34-35. Here, the District has not agreed to litigate any issues that were not raised in the Complaint.

132. Even if this claim had been raised, however, I found as fact that the Student's eighth grade teachers were provided with copies of the Student's IEP at the start of the school year based predominantly on Ms. Anderson's credible testimony. The Parents provided no evidence regarding whether instructional assistants had access the Student's IEP.

133. Accordingly, the Parents have not met their burden to prove that the Student's eighth grade teachers and instructional assistants did not have access to her IEP.

Issue VIII: The Parents have not shown that the District failed to provide the Student with FAPE by failing to conduct a Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) to address her behavioral, social emotional, and mental health concerns since the spring of 2021.

134. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports to address that behavior. WAC 392-172A-03110(2)(a)(i); 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

135. "A functional behavior assessment is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors." *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 (E.D. Cal. June 14, 2016). The IDEA only requires an FBA when a child is removed from his current placement due to problem behaviors. *Butte Sch. Dist. No. 1 v. C.S.*, 817 F. App'x 321, 326 (9th Cir. 2020) (unpublished); 20 U.S.C. § 1415(k)(1)(D)(ii).

136. In this case, the Parents never requested an FBA or BIP for the Student. None of the Student's teachers or District staff reported behavior issues or observed the Student exhibit any behaviors to warrant an FBA or BIP. Dr. Enns, who conducted an IEE of the Student during eighth grade, did not recommend an FBA for her and did not have concerns about her behavior. Moreover, there is no evidence in the record that the Student engaged in behaviors that would warrant an FBA or BIP.

137. The Parents have not met their burden to prove this claim.

Issue IX: The Parents have not shown that the District failed to provide the Student with FAPE since the start of the 2021-2022 school year by allowing its staff to provide modifications to the Student's grades not called for in her IEP, and then relying on inflated and inaccurate grades to justify denying the Student special education services.

138. The Parents did not brief this issue. The nature of their claim is unclear and the evidence on which they rely is not apparent.

139. The evidence demonstrates that Mr. Ohashi simplified word problems on quizzes so that they were not overly wordy. Additionally, Ms. Beard graded the Student based on partially completed work when she did not formally submit her final class assessment. There is no evidence in the record that District teachers or staff modified the Student's grades. To the extent that the District gave the Student a grade of "P" for the Basic Math Class she never attended, this cannot reasonably be considered a modification. This evidence does not demonstrate that the District was modifying the Student's grades.

140. If the Parents are relying on the Mother's belief that the Student was unable to complete her math homework in seventh grade, but it was still being marked as complete, the Mother provided no basis for her belief, and it is afforded no weight. Similarly, no weight is afforded to Ms. Kulkin's hearsay testimony that the Student told her an unidentified teacher gave all students in an unidentified class a test but told the Student she did not have to take it. Finally, there is no credible evidence in the record to support the Parents' assertion that the Student's IEP progress reporting was inaccurate.

141. The Parents have not met their burden to prove this claim.

Issue XI: The Parents have not shown that the District failed to provide the Student with FAPE since April 4, 2022, by having no current special education eligibility reevaluation completed upon which the Student's IEP team could make decisions.

Issue XII: The Parents have not shown that the District's May 10, 2022, reevaluation denied the Student FAPE because it failed to determine whether the Student has a disability and the nature and extent of the special education and related services that the student needs.

142. Issues XI and XII raise similar concerns and are considered together.⁵⁷

143. Under WAC 392-172A-03015(3)(a), reevaluations must be completed thirty-five school days after the District has been provided with written consent. Although the Parents contend that the reevaluation was due on April 4, 2022, the Parents did not provide consent for the reevaluation until March 7, 2022.

⁵⁷ For convenience, the ALJ moved the discussion of issue X to follow issues XI and XII.

144. Therefore, the reevaluation was due on May 2, 2022, which is thirty-five school days after March 7, 2022. The District sent the Parents a draft reevaluation report on May 10, 2022, for discussion at a reevaluation meeting on May 12, 2022.

145. The District concedes that it did not complete its reevaluation on time but contends that the 10-day delay between May 2 and May 12, 2022, did not deny the Student FAPE.

146. The Parents have not shown that the brief delay of 10 days deprived the Student of educational benefits or denied her FAPE. Nor have the Parents demonstrated that the delay impeded their right to participate in the decision-making process. To the contrary, the record demonstrates that the Parents refused to attend the reevaluation meeting on May 12, 2022, and were not willing to engage in meaningful discussion of the reevaluation despite the District's attempts to reschedule the meeting.

147. In sum, the Parents have not proven that the District's 10-day delay in completing the reevaluation denied the Student FAPE.

148. The Parents next contend that the District denied the Student FAPE because the 2022 reevaluation failed to determine whether the Student has a disability and the nature and extent of the special education and related services that the Student needs. Aside from broadly asserting that the District's failure to appropriately evaluate the Student resulted in a denial of FAPE, the Parents offered no meaningful discussion of their theory of this claim or the evidence to support it.

149. WAC 392-172A-03110(c) requires a student's IEP team, in developing an IEP, to consider the results of the initial evaluation or the most recent evaluation of the student. In short, an appropriate evaluation or reevaluation is the foundation for an appropriate IEP.

150. In this case, as concluded above, the incomplete math assessment meant that the 2022 reevaluation was not sufficiently comprehensive to determine the nature and extent of the Student's special education and related services needs and was therefore inappropriate.

151. The question, then, is whether the failure to conduct an appropriate reevaluation denied the Student FAPE.

152. The evidence demonstrates that immediately following the 2022 reevaluation, the Parents filed their due process hearing request and the District continued to

implement the June 2021 IEP Amendment as the Student's stay put IEP. Accordingly, the reevaluation resulted in no change to the Student's educational programming.

153. The Parents rely on Dr. Enns' IEE report of November 2022 to establish what programming they believe the Student would have received if the District had conducted an appropriate reevaluation. Dr. Enns' IEE report recommended continued SDI in math, but there is no evidence he believed the Student required more SDI than the stay-put IEP provided, or that he believed it should be provided in a different setting. Dr. Enns also recommended SDI in organizational support, but his report does not indicate how much SDI he believed the Student required. Moreover, the weight afforded to this recommendation must be tempered by the fact that the assessment in this area did not contain input from any District teachers or staff, and is premised solely on input from Ms. Kulkin, who has never worked with the Student in a school setting and has only worked with her one-on-one.

154. Dr. Enns also recommended SLP services as a related service, but I gave more weight to Dr. Snow's informed professional opinion that the Student did not require related services in SLP, and that pulling her out of class to receive SLP services would not be the best use of her time. Dr. Enns's recommendation for counsel/social work support in the form of a supportive relationship with a school-based adult is consistent with the District's unaccepted offer to make such support available through Mr. Manzo or a difference counselor or social worker. In addition, Dr. Enns recommended supports for the Student, which were consistent with the accommodations and modifications already provided by the stay-put IEP. Finally, while Dr. Enns opined that the Student likely would require OT support as a supplemental aid and service, he acknowledged that he is not licensed as an OT and has never served as an OT.

155. Moreover, the record is unclear as to what decisions the Student's IEP team actually made based on its consideration of Dr. Enns' report in February 2023. Dr. Enns testified that the team agreed with his recommendation to make the Student eligible for special education services in the category of multiple disabilities, but there is no evidence in the record regarding what SDI and/or related services or supplementary aids and services the team recommended.

156. With this record, the Parents have not established that the Student required more SDI, related services, supplementary aids and services, or accommodations and modifications than the stay-put IEP provided in order to receive FAPE. Therefore, the Parents have not demonstrated that the District's reevaluation, although ultimately determined to be inappropriate, denied the Student FAPE.

Issue X. The Parents have not shown that the District failed to provide the Student with FAPE since December 11, 2021, by having no current annual IEP in place for her in order to ensure that she was receiving the services she required to meet her unique needs.

157. The IDEA mandates annual review of a student's IEP. 20 U.S.C. §1414(d)(4); see also 34 C.F.R. § 300.324(b)(1)(i); WAC 392-172A-03110(3)(a). In this case, the Student's annual IEP meeting was due to occur by December 12, 2021, and the IEP "start date" was December 18, 2021. D26p3.

158. It is undisputed that the IEP team did not develop an annual IEP on time or at any point during the 2021-2022 school year. The Parents contend that the failure to complete the Student's annual IEP denied the Student FAPE. The District argues that the IEP team met four times (December 9 and 10, 2021, January 6, 2022; March 3, 2022) in an attempt to develop an annual IEP but was unable to do so due to extensive discussions and feedback by the Parents' counsel.

159. Guidance from the Ninth Circuit is helpful in addressing this claim. In *Anchorage School Dist. v. M.P.* 689 F.3d 1047 (9th Cir. 2012), after the parents and the district reached an impasse regarding the student's IEP, the district continued to use an IEP that was outdated by two years. *Id.* at 1052-53. The court determined that the district had two options: it could continue working with the parents to develop a mutually acceptable IEP, or it could unilaterally revise the IEP and then file an administrative complaint to obtain approval of the proposed IEP. *Id.* at 1056. It could not, however, "ignore its affirmative duty under the IDEA by postponing its obligation to revise the outdated IEP." *Id.*

160. The overwhelming evidence makes clear that the District made continual efforts between December 9, 2021, and March 3, 2022, to complete the IEP and to ensure full parental participation throughout the process. The record demonstrates that the primary reason for the delay in finalizing the IEP was because the Parents had numerous concerns they wanted to discuss fully, and the District made every effort to provide the Parents and their counsel ample opportunity to discuss their concerns with the team. Additionally, the meeting agenda was lengthy, and meetings were contentious. The Parents and their counsel dominated the IEP team discussions.

161. Unlike in *Anchorage*, there is no evidence that the District ignored its obligation to draft an IEP for the Student. Rather, the District "continue[d] working with [the Parents] in order to develop a mutually acceptable IEP," which is one of the options expressly noted in *Anchorage*. *Id.* at 1056. On balance, the record demonstrates that the District prioritized the Parents' right to participation over strict compliance with procedural requirements and continued working with the Parents to adopt an

appropriate IEP. See *Doug C. v. State of Hawaii Dep't of Educ.*, 61 IDELR 91 (9th Cir. 2013) (parent's right to participate was more important than district's need to comply with deadline for annual IEP review); *AAA v. Clark Cty. Sch. Dist.*, 643 F. Supp. 3d 1153 (D. Nev. 2022) ("this circuit requires this court to give the [d]istrict reasonable latitude to determine whether to forge ahead with the IEP process without parental participation or delay revisions until parental participation can be achieved"). Additionally, the IEP that remained in effect in this case was the June 2021 IEP Amendment, which was adopted six months before the annual IEP was due.

162. To the extent that the delay may have constituted a procedural violation of the IDEA, the Parents have not demonstrated that it impeded the Student's right to FAPE, significantly impeded their opportunity to participate in the decision-making process regarding the provision of FAPE or caused a deprivation of educational benefits. WAC 392-172A-05105(2). The delay was caused by efforts to *ensure* the Parents' right to parental participation. The June 2021 IEP Amendment, which was in effect at the time, was developed approximately six months prior to the deadline for annual review and was concluded above to be reasonably calculated to enable the Student to make progress appropriate in light of her circumstances. Moreover, in January 2022, the Parents' counsel made it "explicitly clear" that there was no agreement regarding a final IEP and that the June 2021 IEP Amendment would be implemented as the stay-put IEP in the event of disputes. Finally, as discussed above (see Issue XI and XII), the Parents did not establish that the Student required more SDI, related services, supplementary aids and services, or accommodations and modifications than the stay-put IEP provided in order to receive FAPE.

163. The Parents have not demonstrated that any delay in completing the Student's annual IEP between December 9, 2021, and March 3, 2022, denied the Student FAPE.

164. The remaining question is whether the District denied the Student FAPE by failing to complete the annual IEP between March 3, 2022, and the end of the 2021-2022 school year, and during the 2022-2023 school year. As discussed previously, the "mere existence of a stay put order" does not excuse a school district from its responsibility to have a statutorily compliant IEP in place at the beginning of each school year. *Anchorage*, 689 F.3d at 1056; *AAA v. Clark Cty. Sch. Dist.*, 643 F. Supp. 3d 1153 (D. Nev. 2022).

165. While the District made extensive efforts to develop an annual IEP for the Student between December 9, 2021, and March 3, 2022, those efforts tapered off for the remainder of the 2021-2022 school year. Additionally, the District made no efforts to complete the annual IEP after the 2022 reevaluation determined the Student to be

ineligible, and after the implementation of the stay put order. The failure to develop an annual IEP during this time period constitutes a procedural violation of the IDEA. WAC 392-172A-03110(3)(a); see also *Anchorage*, 689 F.3d at 1056.

166. The Parents have not, however, established that the District's procedural violation denied the Student FAPE. As discussed above, the Parents did not establish that the Student required more SDI, related services, supplementary aids and services, or accommodations and modifications than the stay-put IEP provided in order to receive FAPE.

167. Accordingly, the Parents have not established that the District's procedural violation in failing to complete an annual IEP between March 3, 2022, and the remainder of the 2021-2022 school year and during the 2022-2023 school year deprived the Student FAPE.

Issue XIII: The Parents have not shown that the District failed to provide the Student with FAPE since September 28, 2022, by failing to hold an annual IEP team meeting for the Student and by failing to hold an IEP team meeting during the 2022-2023 school year.

168. See issues II and X, above. As discussed in those sections, the Parents have not met their burden to prove this claim.

Issue XIV: The Parents have not shown that the District failed to provide the Student with FAPE since June 28, 2022, by failing to provide her with a schedule that was aligned with her IEP and designed to meet her unique educational needs.

169. The Parents have not articulated this claim in their briefing, and it is unclear what schedule they believe was required to align with the Student's IEP and to meet her educational needs.

170. In this case, the Parents made the unilateral choice to enroll the Student in Yellow Wood to receive her SDI. As found above, Yellow Wood provided the Student's SDI through one-on-one instruction, which was not consistent with the June 2021 IEP Amendment and was not recommended by District members of the IEP team during the January 6, 2022, IEP team meeting. Given that the Student's IEP did not provide for receipt of one-on-one SDI at Yellow Wood, it follows that the Student's IEP did not require a schedule to permit the Student to receive such SDI.

171. Nevertheless, following the February 17, 2023, IEP team meeting, the District agreed to consider scheduling to accommodate the Student's Yellow Wood schedule.

172. The Parents have not met their burden to prove this claim.

Issue XV: Whether the District failed to meet the procedural requirements of the IDEA and in turn denied the Student FAPE by:

- a. failing to timely schedule IEP team and evaluation team meetings upon the Parents' request during the 2021-2022 school year;**
- b. failing to timely schedule IEP team and evaluation team meetings when the same were required by law during the 2021-2022 school year;**

173. Issues XVa and XVb raise similar concerns and are considered together.

174. The District held five IEP team meetings during the 2021-2022 school year (October 21, December 9 and 10, 2021; January 6 and March 3, 2022) and held a reevaluation meeting on May 12, 2022. The Parents did not attend the reevaluation meeting and were not willing to engage in meaningful discussion of the reevaluation when the District sought to reschedule. There is no evidence in the record that the District refused to schedule an IEP team meeting or reevaluation meeting during the 2021-2022 school year in response to the Parents' request. Additionally, the record does not establish that the District delayed in scheduling IEP team meetings or in scheduling a reevaluation meeting.

175. The Parents have not met their burden to prove these claims.

- c. failing to ever have the Student's IEP team discuss if she was eligible for ESY services since May 11, 2020;**

176. See discussion in issue IV, above. As discussed in that section, the Parents have not met their burden to prove this claim.

- d. failing to ever take data to allow for the Student's IEP team to appropriately discuss if she was eligible for ESY services since May 11, 2020;**

177. See discussion in issue IV, above. As discussed in that section, the Parents have not met their burden to prove this claim.

- e. failing to provide the Parents with the District's criteria for determining ESY eligibility since May 11, 2020;**

178. The Parents provided little to no evidence on this issue and have not met their burden. Even if they had, they have not articulated how they were impacted by the

District's alleged failure to provide them with the District's criteria for determining ESY eligibility. Accordingly, the Parents have not met their burden to prove this claim.

f. failing to take data to allow for the Student's IEP team to appropriately discuss if she was eligible for ESY services consistent with a June 18, 2021, Prior Written Notice identifying that the District would do the same;

179. See discussion in issue IV, above. As discussed in that section, the Parents have not met their burden to prove this claim.

g. denying the Student related services and supplemental aids and services based upon her disability category since May 11, 2020;

180. Because the Parents did not brief this claim, it is unclear what related services and supplemental aids and services they believe were denied on the basis of disability category.

181. To the extent the Parents are alleging the District failed to add SLP or counseling to the Student's IEP as related services or supplementary aids and services on the basis of disability category, the record does not support this claim.

182. The District provided counseling services to the Student in the fall of 2021, when Mr. Manzo started meeting with the Student on a weekly basis. While the Parents wanted the District to add counseling services to the Student's IEP, they have not shown that the District declined to do so on the basis of her disability category. To the contrary, as discussed in the October 22, 2021, PWN, the IEP team determined the Student did not require counseling as a supplementary aid and service because she had access to counseling services like other students at Eckstein. Additionally, Mr. Manzo and teachers did not see anxiety in the school setting. Moreover, the Parents refused to let Mr. Manzo discuss anxiety or anything upsetting with the Student. As a result, adding such services to the Student's IEP likely would have been an exercise in futility.

183. Similarly, the IEP team determined that Dr. Snow's recommendations were consistent with observations by District staff and previous evaluations indicating SLP as a related service was unnecessary. Again, this does not establish denial of services on the basis of disability category.

184. The Parents have not met their burden with respect to this claim.

h. failing to ensure that the Student had a new annual IEP in place by December 11, 2021, when her prior annual IEP had expired;

185. See discussion in issue X, above. As discussed in that section, the Parents have not met their burden to prove this claim.

i. since the fall of 2021, failing to have a special education teacher of the Student's present at any IEP team meetings that occurred after the District eliminated the Student's special education class;

186. Under WAC 392-172A-03095(1)(c), a student's IEP team must include "[n]ot less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student." See also 20 U.S.C. §1414 (d)(1)(B).

187. During the 2021-2022 school year, Mx. Barrett attended all of the Student's IEP team meetings. Mx. Barrett taught the Student's Math Improvement class for part of the year and continued to work with the Student in Ms. Mensher's class after the Student started attending Yellow Wood. There is no evidence in the record that the District failed to have a special education teacher of the Student present for any of the IEP team meetings that occurred during the 2021-2022 school year.

188. During the 2022-2023 school year, the Student never attended her Basic Math 8 class because she was receiving her SDI at Yellow Wood, and therefore did not have a special education teacher. Ms. Paris attended the February 2023 IEP meeting in the special education teacher role because she was the Student's case manager. The Parents appear to challenge Ms. Paris' attendance in this role because she never worked with the Student.

189. Given that the Student could not work with any District special education teacher during the 2022-2023 school year because the Parents decided that she would receive her SDI at Yellow Wood, it was reasonable for Ms. Paris, as the Student's case manager, to serve in the special education teacher role.

190. To the extent that the Parents claim the Student's adaptive horseback riding instructor was better suited to provide input as a special education teacher during the February 2023 meeting, the team heard input from the instructor.

191. In sum, the Parents have not articulated any adverse impact resulting from Ms. Paris attending as the Student's special education teacher.

192. The Parents have not met their burden to prove this claim.

j. since the fall of 2021, failing to hold an IEP team meeting to discuss where the Student should receive specially designed instruction in math after the District eliminated the Student's special education class;

193. The Student's IEP team met four times after the Student's Math Improvement class was consolidated with Basic Math. The Parents and their counsel, who participated extensively in all of these meetings and controlled the discussion, did not bring up where the Student would receive her math SDI at the December 9 and 10, 2021 meetings. During the January 6, 2022, meeting, the team discussed various options for math. Ultimately, however, the Mother stated that the Parents had asked the District for the Student "to receive SDI one-on-one at Yellow Wood Academy." In sum, the Student's IEP team *did* meet to discuss this issue.

194. The Parents have not met their burden to prove this claim.

k. since the fall of 2021, failing to hold an IEP team meeting to discuss moving the Student to a Homeroom class that was not aligned with her IEP before doing the same;

195. The evidence demonstrates that the Student was moved from Mx. Barrett's homeroom to Ms. Mensher's homeroom at the Parents' request. Additionally, the Parents had ample opportunity to discuss the Student's homeroom during the multiple IEP team meetings held during the 2021-2022 school year. Moreover, there is no evidence that the move denied the Student FAPE in any way. There is no merit to this claim.

l. since the fall of 2021, failing to hold an IEP team meeting to discuss moving the Student into a Basic Skills Math class despite it not being the class called for in her IEP before doing the same;

196. This claim is duplicative of the claim in XVj. As discussed in that section, the Parents have not met their burden to prove this claim.

m. providing the Parents with false and misleading IEP Progress reports since the fall of 2021 and failing to provide the Parents with IEP progress reports during the 2022-2023 school year;

197. The Parents did not brief this claim and, therefore, did not point to evidence to support their contention that the District issued false and misleading IEP Progress reports during the 2021-22 school year.

198. As found above, there is no credible evidence in the record to support the Parents' contention that the Student's IEP progress reports issued during the 2021-2022 school year were false, misleading, or inaccurate.

199. With respect to the 2022-2023 school year, Ms. Reuter did not issue a progress report because the Student never attended her Basic Math class to receive her SDI. Given this circumstance, no progress report was required.

200. The Parents have not met their burden to prove this claim.

n. providing the Parents with false and misleading prior written notice documents since the fall of 2021;

201. The Parents did not brief this claim and did not identify what PWNs, and what information within those PWNs, the Parents are challenging.

202. It is reasonable to expect the Parents, who are represented by counsel experienced in litigating special education matters, to identify what PWNs they are challenging. This is especially true in a matter that was heard over the course of seventeen days and has a record consisting of thousands of pages of documents. See *L.C.*, 2019 U.S. Dist. LEXIS 77834 *33 n.10 ("[J]udges are not like pigs, hunting for truffles buried in briefs.") (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)).

203. A review of the record indicates that it does not contain sufficient evidence to support the Parents' claim.

204. The Parents have not met their burden to prove this claim.

o. since the fall of 2021, failing to comply with the requirements associated with the Parents' challenges to false and misleading educational records, including challenges related to IEP progress reports and prior written notice documents, and failing to timely and properly respond to the Parents' request to amend false and misleading educational records;

205. A parent who believes information in a student's educational records is inaccurate or misleading may request that the school district that maintains the

information amend it. WAC 392-172A-05215; 34 CFR §300.618; 34 CFR §99.20. The school district must then decide whether to amend the information or deny the request and provide the parent with an opportunity for a hearing to challenge information in the educational records. WAC 392-172A-05215 and 05220; 34 CFR §300.619; 34 CFR §99.21.

206. To the extent that the Parents challenge procedures related to the amendment of records they believe are false and misleading, their request cannot be addressed through the due process hearing procedures of WAC 392-172A-05080 through 05125. *Daniels v. Northshore Sch. Dist.*, 2022 U.S. Dist. LEXIS 237690 (W.D. Wash. July 13, 2022). In *Daniels*, the Ninth Circuit Court of Appeals affirmed an ALJ's decision that the parents' claim regarding the amendment of school records did not fall within the purview of due process procedures. The court explained:

the amendment of a student's educational records is addressed in an entirely different process that provides parents an opportunity for a hearing to challenge the information contained in the record. . . . compare WAC § 392-172A-05080-05125 (due process hearings involving the identification, evaluation or educational placement, or the provision of FAPE) with WAC §§ 392-172A-05215(4), 392-172A-05220 (hearings to determine parent's request for an amendment of school records).

Id., *25.

207. Because this claim falls outside the scope of this due process proceeding, the claim is not addressed, and no conclusions of law are warranted.

p. failing to provide the Parents with prior written notice of decisions made by the District and proposals of the Parents rejected by the District since May 11, 2020;

208. In this issue, the Parents contend that the District failed to provide PWN of decisions made and proposals rejected by the District. However, the Parents have not identified what decisions or proposals are at issue, how they were impacted by the alleged lack of PWNs, or how the failure to issue PWNs denied the Student FAPE.

209. The Parents have not met their burden to prove this claim.

q. denying the Mother the ability to communicate with the Student's teachers regarding her educational progress and needs since the spring of 2022;

r. denying the Mother the ability to communicate with the providers who were conducting the District's 2022 reevaluation;

210. Issues XVq and Xvr are similar and are therefore considered together.

211. The District issued a communication protocol on April 22, 2022, that required the Mother to direct her communications to Ms. de Normandie and to consolidate her email communications to one email per week. The evidence does not establish that the limitation to one email per week denied the Mother the ability to communicate with the Student's teachers or with providers who were conducting the District's May 2022 reevaluation.

212. Moreover, the Father acknowledged that the communication plan did not apply to him, and that he could have communicated with teachers without limitation. There is no evidence that his ability to communicate with teachers or providers was limited in any way. Likewise, the Parents' counsel continued to send emails while the plan was in place. Moreover, by the start of the 2022-2023 school year, the protocol was no longer in effect.

213. On balance, the evidence does not establish that the communication plan denied the Mother the ability to communicate with teachers or with providers who were conducting the 2022 reevaluation. Accordingly, the Parents have not met their burden with respect to this claim.

s. failing to provide the Parents with educational records they had requested prior to IEP team meetings since the fall of 2021, and failing to provide such records not later than 45 days after the request was made;

214. The Parents provided no evidence at hearing to support this claim and have not met their burden.

t. since April 2022, failing to complete a reevaluation of the Student within three years of her last special education eligibility evaluation;

u. since April 2022, failing to complete a special education eligibility reevaluation of the Student within 35 school days of receiving consent for the same;

215. Issues XVt and XVu are duplicative of Issue XI and XII. As discussed in that section, the Parents have not demonstrated that the timing of the 2022 reevaluation denied the Student FAPE.

v. failing to comply with the procedures set forth WAC 392-172A-03005 through 392-172A-03080 in completing the February 2021 and May 2022 evaluations.

216. The procedures pertaining to evaluations and reevaluations are set out in the discussion of the issue in Cause No. 2022-SE-0072, regarding the appropriateness of the District's 2022 reevaluation.

217. In this issue, the Parents contend that the assessment revision and the 2022 reevaluation failed to comply with multiple procedural requirements of the IDEA. Claims related to the assessment revision are addressed first, followed by the 2022 reevaluation.

218. With respect to the assessment revision, the Parents first contend that the Student was not assessed in all areas related to the suspected disability. This claim was addressed in Issue Ic. As discussed, the Parents did not ask the District to assess the Student in any area besides communication and the evidence does not demonstrate that the Student's needs warranted assessment in any area besides communication. There is no evidence that District teachers or staff requested or believed the Student should be assessed in additional areas. Additionally, Mr. Deskin, who provided input for Ms. Trejo Savani, did not see the Student exhibiting signs of anxiety, and did not receive reports from teachers that the Student was showing signs of anxiety.

219. The Parents next claim that the assessment revision was not conducted by qualified personnel. The record demonstrates that Ms. Trejo Savani, who conducted the assessment, works for the District as an SLP. It is reasonable to infer that in this role, she is qualified to conduct assessments. The Parents, who bear the burden of proof on this issue, offered no evidence to call into question Ms. Trejo Savani's qualifications.

220. Moreover, it is clear that the District used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student, and used technically sound instruments in its assessment. The assessment revision considered input from the Parents, Mr. Deskin, Ms. Irvin, teachers at ASB, and Ms. Kulkin. It also included a review of past evaluations by the District and private providers, including the UW Speech and Hearing Clinic and Dr. Mielenz, which discussed both expressive and receptive language. Ms. Trejo Savani also administered two formal assessments – the Comprehensive Assessment of Spoken Language 2 (CASL-2) and the Test of Narrative Language – 2nd Edition (TNL-2). The CASL-2 assesses “expressive language and higher-level language processing” and the TNL-2 measures the “ability to understand stories, retell stories, and to create their own stories with visual support.” D32pp17-18.

221. The evidence further demonstrates that the assessment revision was sufficiently comprehensive to identify the Student's special education and related services needs. Although the Parents disagree with the assessment revision, they have not established that it failed to provide comprehensive information to identify what special education and related services the Student required.

222. The Parents next challenge the assessment revision on the ground that they never received an evaluation report including the date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion.

223. The District acknowledges that the evaluation report was not signed and dated. As the District points out in its reply, however the Parents "fail to identify how the lack of physical signatures and dates render the assessment revision inappropriate." District's Reply at 4. While the District failed to comply with the procedural requirements in WAC 392-172A-03035(1) in this regard, there is no evidence that the lack of signatures and dates deprived the Student of educational benefit, impeded her right to FAPE, or significantly impeded parental participation.

224. Additionally, the Parents were aware that there were multiple versions of the assessment revision report, because they conditioned their agreement with the assessment revision on the District providing an updated draft that included their input. Moreover, the Mother acknowledged at hearing that she received Ms. Trejo Savani's email with the updated report and the Parents' feedback attached.

225. In conclusion, the evidence demonstrates the assessment revision complied with the procedural requirements of the IDEA with the exception of the date and signature requirement. Because the Parents did not establish that this procedural violation adversely impacted their participation, impeded the Student's right to FAPE, or deprived her of educational benefit, the Parents are not entitled to a remedy.

226. The Parents next challenge the 2022 reevaluation on the ground that it did not comply with procedural requirements of the IDEA. Many of these claims were addressed above; see issue in Cause No. 2022-SE-0072. In that section, it was concluded that the District used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student; used technically sound instruments in doing so; and assessed the Student in all areas related to the suspected disability.

227. The Parents contend that additional procedural violations in conducting the reevaluation denied the Student FAPE. They argue that the District failed to provide the

Parents with a final reevaluation report, signed and dated by the professional members of the group certifying that the report represents their conclusion. WAC 392-172A-03035. This argument is premised on the assertion that “to this day [the Parents] have no idea what document the reevaluation is [sic] the District is defending in this matter.” Parents’ Post-Hearing Brief at 15. As found above, however, the PWN in exhibit D9p34 specifically sets out the District’s efforts to hold a reevaluation meeting and states that the reevaluation had been “finalized.”

228. The Parents also contend that because Ms. Woodle, the school psychologist who conducted the reevaluation, did not testify at hearing, it cannot be concluded that “trained and knowledgeable personnel” administered the assessments, or that the assessments were administered appropriately. Neither party offered any legal analysis or authority on this issue.

229. It is not necessary to resolve this issue here because the District’s reevaluation, as a whole, was determined to be inappropriate, and the Parents were awarded an IEE at public expense. Thus, to the extent that the District failed to conduct an appropriate reevaluation, the Parents have already been awarded relief.

230. Moreover, the Parents have not shown that any procedural violations in conducting the reevaluation resulted in a denial of FAPE. The Parents have not shown that their right to participate was significantly impeded because they chose not to attend the May 12, 2022, reevaluation meeting or attempts to reschedule. Additionally, as discussed in issue XI and XII, above, the Parents have not established that the Student required more SDI, related services, supplementary aids and services, or accommodations and modifications than the stay-put IEP provided in order to receive FAPE. Therefore, the Parents have not demonstrated that the District’s reevaluation or any procedural violations in conducting it denied the Student FAPE or educational benefit.

w. inappropriately making eligibility determinations following the February 2021 and May 2022 evaluations based upon the administration of a single assessment tool;

231. As discussed previously, Ms. Trejo Savani considered a wide variety of information in conducting the February 2021 assessment revision. This included input from the Parents, teachers from Eckstein and ASB, and Ms. Irvin; a review of private reports provided by the Parents; and administration of two formal assessments. Therefore, the Parents’ claim that the District’s eligibility determination was based on a single assessment tool must be rejected.

232. Similarly, the discussion regarding the issue in Cause No. 2022-SE-0072 makes clear that the District considered extensive information in conducting the 2022 reevaluation. While the District's reevaluation as a whole was inappropriate because the math assessment was incomplete, that does not establish that the eligibility determination was based upon the administration of a single assessment tool.

233. The Parents have not met their burden to prove this claim.

x. failing to ensure that the 2022 reevaluation of the Student was aligned with the scope of the reevaluation determined by the Student's IEP team;

234. As discussed above, the District demonstrated that the Student was assessed in all areas to which the Parents consented, and there is no evidence that the Student required assessment in any other areas.

y. failing to allow for meaningful parental input before the District determined that the Student was no longer eligible for special education in May of 2022;

235. The District held a reevaluation meeting on May 12, 2022, to discuss the Student's reevaluation. The overwhelming evidence in the record demonstrates that the Parents chose not to attend this meeting. It is clear that the Parents understood that the communication protocol did not prevent them from attending the meeting.

236. Additionally, the evidence demonstrates the Parents were unwilling to engage in any meaningful discussion regarding the reevaluation, despite the District's attempts to reschedule the meeting. Accordingly, the Parents had ample opportunity to discuss whether the Student was still eligible for special education services and declined to do so.

237. The Parents have not met their burden to prove this claim.

z. making eligibility decisions related to the May 2022 reevaluation outside of the multidisciplinary team process or in the alternative holding a multidisciplinary team meeting to make eligibility decisions related to the May 2022 reevaluation without inviting the Parents or Student to the same;

238. Under WAC 392-172A-03040(1), which governs the determination of eligibility, "Upon completion of the administration of assessments and other evaluation measures: (a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education services and the educational needs of the student . . ."

239. The record demonstrates that the District held a meeting on May 12, 2022, for the reevaluation team, including the Parents, to discuss the reevaluation. The Parents refused to attend this meeting and were not willing to engage in meaningful discussion regarding the reevaluation.

240. After the Parents' counsel informed the team that the Parents would not attend the May 12, 2022, meeting, the discussion ended. Ultimately, the team did not meet again to discuss the reevaluation. Accordingly, there is no merit to the Parents' claim that the District held a meeting to make eligibility decisions without inviting the Parents or the Student to attend.

241. With respect to how the eligibility determination ultimately was made, there is little evidence in the record. There is no evidence that the members of the District team made a group decision regarding eligibility.

242. However, the Parents have not articulated how this procedural violation impacted them. Even if the decision had been made by District members of the team meeting as a group, the Parents did not attend the May 12, 2022, meeting, and made clear they were not willing to be part of any meaningful discussion regarding the reevaluation. Accordingly, the procedural violation did not significantly impede parental participation. Additionally, it did not impede the Student's right to FAPE or deprive her of educational benefits. As discussed in issue XI and XII, the District implemented the Student's stay put IEP following the 2022 reevaluation and the Parents have not established that the Student required more SDI, related services, supplementary aids and services, or accommodations and modifications than the Stay-Put IEP provided in order to receive FAPE.

243. Accordingly, the Parents have not demonstrated that the District's procedural violation amounted to a denial of FAPE that warrants a remedy.

aa. failing to comply with the obligations of WAC 392-172A-05005(1)(b) with respect to the Parents' request for Independent Educational Evaluations (IEEs) related to the 2021 and 2022 evaluations;

244. WAC 392-172A-05005(1)(b) requires school districts to provide parents who request an IEE with information about where an IEE may be obtained and applicable criteria.

245. Via email on June 1, 2022, the Parents contended that the District had not provided IEE criteria following their request for an IEE. Aside from this email, there is

no evidence regarding whether the District did or did not provide information about where to obtain an IEE or applicable criteria.

246. The Parents' email further stated that the Parents "will be using providers that [the District] has agreed to in previously [sic], knowing that they meet [District] criteria." P41p1. Thus, even if the evidence established that the District failed to comply with the requirements of 392-172A-05005(1)(b), the Parents were aware of the District's criteria and intended to use providers known to meet such standards.

247. The Parents successfully obtained an IEE from Dr. Enns, which was considered by the IEP team. Additionally, as discussed in the procedural history in Appendix 1 of this Order, the Parents took steps toward obtaining an IEE from Ms. Brock, but ultimately did not introduce a report from Ms. Brock as an exhibit for the hearing.

248. The Parents have not met their burden to prove this claim.

bb. failing to comply with the obligations of WAC 392-172A-05005(2)(c) with respect to the Parents' request for an IEE related to the 2021 evaluation;

249. WAC 392-172A-05005(2) provides in relevant part:

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

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

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

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

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

250. The Parents contend that the District never filed a due process hearing request to defend the appropriateness of the assessment revision after the Parents "sought an IEE related to the 2021 Assessment Revision on May 12, 2021. P61." Parents'

Post-Hearing Brief at 18. Accordingly, the Parents contend they are entitled to an IEE at public expense.

251. The Parents' claim is not supported by the evidence. At hearing, the Mother acknowledged that the District filed a due process hearing request after the Parents requested an IEE in the Spring of 2021. The due process hearing request was dismissed after the Parents withdrew the request for an IEE.

252. On May 12, 2022, the Parents made another request for an IEE based on their disagreement with the assessment revision. It appears that the Parents' briefing on this claim actually meant to refer to this request, rather than the request made in the spring of 2021. As discussed below, the Parents cannot prevail on this claim.

253. The law is clear that the parents are entitled to only one IEE at public expense each time the school district conducts an evaluation. WAC 392-172A-05005(2)(b). As discussed in *D.S. v. Trumbull Bd. of Educ.*, 975 F.3d 152, 170 (2d Cir. 2020), a parent's right to an IEE at public expense "ripens each time a new evaluation is conducted." The court explained that the time within which a parent must express their disagreement with an evaluation and request an IEE depends on how frequently the child is evaluated, stating:

For example, if a child is reevaluated each year, the logical time frame within which to contest the evaluation is one year. Otherwise, the parent's disagreement will be rendered irrelevant by the subsequent evaluation.

Id. at 169-70.

254. Applying this analysis here, the Parents' window to request an IEE related to the assessment revision closed when the District conducted the May 2022 reevaluation. *Id.* As discussed, the Parents ultimately obtained an IEE from Dr. Enns based on their disagreement with the May 2022 reevaluation, which was discussed by the Student's IEP team. Therefore, the Parents are not entitled to a second IEE based on the 2021 assessment revision.

255. Moreover, when the Parents' requested an IEE in May 2022 related to the assessment revision, the request was conditional:

If the [District] wants to continue to take the position that the attached is not in fact a completed evaluation despite the plain language of the Prior Written Notice on page 35, on behalf of the Parents, I am hereby

requesting a comprehensive IEE at public expense because they do not agree with the District's 2021 evaluation.

P61p1 (emphasis added).

256. Given that the District *had* completed the 2022 reevaluation, the Parents' request cannot reasonably be considered a request for an IEE based on the assessment revision.

257. The Parents have not met their burden to prove this claim and are not entitled to an IEE at public expense based on their disagreement with the 2021 assessment revision.

cc. proposing to limit the Student's ability to participate in her own IEP team meeting to participation in writing since May 2022;

258. The Student attended the Feb 13, 2023, IEP team meeting and made an oral statement. That was the only IEP team meeting held after May 2022. There is no evidence in the record that the Student's ability to participate in IEP team meetings held after May 2022 was limited. There is no merit to this claim.

dd. not holding IEP meetings during the 2022-2023 school year and not explaining to the Parents why the District determined it would not do so, who made the decision, or what information the District relied on in making that decision;

259. The Parents' claim that the District failed to hold IEP team meetings in the 2022-2023 school year is addressed in issue II and issue X, above.

260. Contrary to the Parents' claim, the record demonstrates that Parents *were* informed of the reasons why the District determined it would not hold an IEP team meeting in the fall of 2022, the information relied on in making that decision, and the group that made the decision. Mr. Goodwin's email to the Parents on October 26, 2022, in response to the Parents' request for an IEP team meeting, addressed many of the concerns raised by the Parents, obviating the need for an IEP team meeting. For example, Mr. Goodwin provided instructions for the Student on how to write an email to more than five recipients and stated that he could refer the Student to the Wellness Center/Counseling Department if the Parents sent approval. He clearly articulated why he believed an IEP team meeting was not necessary to address the Parents' remaining concerns. When the Parents renewed their request for an IEP team meeting, the District's counsel referred to Mr. Goodwin's response and explained that the District and school IEP team members did not believe an IEP team meeting was the appropriate setting to address the Parents' concerns. The District's counsel further

clarified that she was not making decisions and was communicating on behalf of her client.

261. Moreover, even if the District was required to issue a PWN, the Parents have not articulated how they were impacted by the fact that they did not receive this information in the form of a PWN or how the purported procedural violation amounted to a denial of FAPE.

262. The Parents have not met their burden to prove this claim.

ee. substituting decision-making by unnamed and unidentified individuals that should be determined by the Student's IEP team.

263. The Parents did not brief this issue and it is unclear what decisions are at issue. It is not apparent from the record that unnamed and unidentified individuals were making decisions that should have been made by the Student's IEP team. There is no merit to this claim.

ORDER

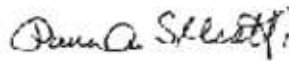
Cause No 2022-SE-0069

1. The District's May 2022 reevaluation of the Student was not appropriate. Therefore, as an award of an IEE at public expense, the District shall reimburse the Parents \$7,957.50 for the cost of the IEE report they have already obtained, which has already been reviewed. The Parents did not submit any other reimbursement requests associated with the IEE; therefore, no additional costs are awarded. No additional relief is awarded.

Cause Nos. 2022-SE-0072 and 2023-SE-0001

2. The Parents have not established that the District denied the Student a free appropriate public education and, therefore, are not entitled to a remedy.

SERVED on the date of mailing.



Pamela Meotti
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.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that true copies of this document were served upon the following as indicated:

Parents

[REDACTED]

via E-mail

[REDACTED]

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Dated February 14, 2024, at Seattle, Washington.

Representative
Office of Administrative Hearings
600 University Street, Suite 1500
Seattle, WA 98101-3126

cc: Administrative Resource Services, OSPI

Appendix 1 – Complete Procedural History

The Parents filed a due process hearing request (Complaint) in Cause No. 2022-SE-0069 on May 13, 2022. The District filed a due process hearing request in Cause No. 2022-SE-0072 on May 25, 2022. The matters were assigned to Administrative Law Judge (ALJ) Pamela Meotti and consolidated for a due process hearing on October 17 to 21 and 24 to 28, 2022.

During a prehearing conference on June 24, 2023, the ALJ granted the Parents' request to amend their Complaint and set a briefing schedule for the Parents' motion for stay put. *Prehearing Order, June 24, 2022*.

On July 19, 2022, the District filed a response to the amended complaint. The hearing dates were adjusted to October 18 to 21, 24 to 28, and 31, 2022. *Second Prehearing Order, July 28, 2022*.

On July 19, 2022, the Parents' counsel requested additional time to file the Parents' Stay Put motion due to emergency. On August 8, 2022, the Parents' counsel requested additional time to file the Parents' reply because she was ill. Both requests were granted. *Order Revising Briefing Schedule, July 19, 2022; Order Setting Prehearing Conference and Revising Briefing Schedule, August 8, 2022*. The ALJ issued an Order on Stay Put on August 26, 2022.

On September 29, 2022, the Parents moved to amend their Complaint a second time and to continue the due process hearing set for October 18, 2022, to which the District objected. The motion to amend the Complaint was denied. *Third Prehearing Order, October 3, 2022*.

The ALJ unconsolidated the matters to permit the hearing in Cause No. 2022-SE-0069 to be heard starting on October 18, 2022. *Id.* The hearing in Cause No. 2022-SE-0072 was continued to November 15 and 28 to 29, 2022, so the Parents' private providers (Dr. Enns and Ms. Brock) could observe the Student and prepare IEE reports as part of the Parents' defense. *Id.* The Parents filed an objection to the Third Prehearing Order on October 13, 2022.

On October 18, 2022, the first day of the hearing in Cause No. 2022-SE-0069, the Parents' counsel notified OAH she was ill and asked to continue the hearing. The District did not object and the request was granted. *Order on Parents' Objection to Third Prehearing Order n.5, October 19, 2022*. The matters were then reconsolidated and set for hearing on November 15, 28 and 29, 2022. *Id.; Fourth Prehearing Order, October 24, 2022*.

On October 28, 2022, the Parents asked to continue the due process hearing and filed Motions to Compel Production of Educational Records and Contact Information (Motions to Compel). The ALJ struck the November 15, 2022, hearing date to permit the District to file a response to the Motions to Compel and to hear argument. The ALJ denied the Parents' request to strike the hearing set for November 28 and 29, 2022. *Fifth Prehearing Order, November 1, 2022.*

Argument on the Parents' motions to compel was continued from November 15 to 17, 2022, after the Parents' counsel notified OAH that she was ill. *Order of Continuance, November 15, 2022.* On November 17, 2022, the date for exchanging witness and exhibit lists and exhibits, the Parents' counsel notified OAH that she was experiencing a medical emergency and could not attend the prehearing conference. Her request to continue the due process hearing set for November 28 and 29, 2022, due to medical emergency was granted. *Order of Continuance, November 18, 2022.*

During a prehearing conference on November 28, 2022, the Parents withdrew the Motions to Compel, stating the discovery dispute had been resolved. The due process hearing was set for February 27 to March 1, March 13 to 14, and April 3 to 7, 2023. *Sixth Prehearing Order, November 28, 2022.* On December 16, 2022, the Parents reasserted discovery concerns and asked to strike the February hearing dates. *Audio, January 5, 2023, Prehearing Conference.* The ALJ denied the request to strike the February hearing dates and set a deadline of February 17, 2023, for any discovery motions. *Seventh Prehearing Order, January 5, 2023.*

The Parents filed a second due process hearing request in Cause No. 2023-SE-0001 on January 3, 2023, which was consolidated with Cause Nos. 2022-SE-0069 and -0072 for efficiency. *First Consolidated Prehearing Order, January 27, 2023.* The parties agreed to strike the hearing dates set for February 27 to March 1, 2023, and to hold the consolidated due process hearing on March 13 to 14, and April 3 to 7, 2023. *Id.* Additional hearing dates were set for May 30 and 31, and June 1, 2023. *Second Consolidated Prehearing Order, February 8, 2023.*

The Parents filed a motion to amend the Complaint on February 10, 2023, and the motion was granted in part and denied in part. *Order Setting Amended Issue Statement, February 23, 2023.*

The District timely filed its witness and exhibit lists and exhibits for the hearing. *First Consolidated Prehearing Order, January 27, 2023; Second Consolidated Prehearing Order, February 8, 2023; Readiness Prehearing Order, February 28, 2023.* The Parents did not timely file their witness and exhibit list and exhibits P57 through

P97. The District timely filed a Motion in Limine; the Parents did not file a response. *Readiness Prehearing Order, February 28, 2023.*

The due process hearing convened on March 13, 2023. Because the Parents had not filed hearing exhibits in a timely manner, the hearing was continued to a date chosen by the District to mitigate any prejudice to the District. *Order Continuing Due Process Hearing, March 13, 2023.* The hearing reconvened on April 3, 2023.

On April 3, 2023, the ALJ denied the Parents' request to consolidate a new due process hearing request, filed on March 28, 2023, with the current due process hearing. T100. On April 4, 2023, the afternoon portion of the hearing was continued without objection because the Parents' counsel stated her father required urgent medical care. *Order Continuing Due Process Hearing, April 4, 2023.* The Parents' counsel was ill during the morning session of the hearing on April 7, 2023; the remainder of the hearing day was stricken, and the matter was continued without objection. *Order Continuing Due Process Hearing, April 7, 2023.* The continuance order required the Parents' counsel to arrange for back-up counsel to appear at future hearing dates in the event that she or family members became ill again. *Id.* The hearing was scheduled for May 2, 3, 12, 30 and 31, June 1 and 9, and July 6, 2023.

On June 8, 2023, the Parents notified OAH that the Mother was unable to attend the hearing on June 9 due to illness and the Father was unavailable. The hearing was not continued because the Parents agreed to two witnesses testifying with neither Parent present. At the Parents' request, the ALJ set additional hearing time to permit the Parents to be present for testimony by their expert witnesses (Ms. Brock and Dr. Enns). The hearing was set for June 9, June 27, and July 6, 2023. *Order Re: Due Process Hearing Dates, June 8, 2023.*

On June 27, 2023, the Parents' counsel did not complete her direct examination of the Parents and the ALJ added hearing time on July 7, 2023. *Order Setting Additional Due Process Hearing Date, June 28, 2023.*

On July 5, 2023, the District notified OAH that Principal Kristen Rose was not sufficiently recovered from a medical procedure to testify on July 6, 2023. The parties agreed to continue testimony by Ms. Rose and by Ms. Brock, who was unavailable due to a family emergency. The parties agreed to submit sworn declarations from Ms. Rose and Ms. Brock regarding their availability on July 6, 2023. Dr. Enns testified on July 6, 2023, as scheduled. *Order Continuing Due Process Hearing to Ensure Witness Availability, July 6, 2023.* The hearing set for July 7, 2023, was stricken and August 21, 2023, was scheduled as the final hearing date. *Id.*

The District filed Ms. Rose's declaration on July 6, 2023. The Parents did not file Ms. Brock's declaration, even after OAH sent to two email reminders. On July 19, 2021, the ALJ ordered the Parents to submit the declarations from Ms. Brock by July 21, 2023. *Order re: Declarations, July 19, 2021*. The Parents did not timely comply with this order.

On August 15, 2023, the Parents notified OAH that Ms. Brock was unable to testify on August 21, 2023, because she was having surgery that day. *Order Setting Additional Due Process Hearing Date, August 23, 2023*. On August 21, 2023, the Parents filed declarations from Ms. Brock and the Parents' counsel regarding Ms. Brock's availability to testify on August 21 and July 6, 2023. *Id.*

During the hearing on August 21, 2023, the District was unable to complete its cross-examination of the Mother and an additional hearing date was added. *Id.* The ALJ granted the Parents' request for Ms. Brock to provide her direct testimony by declaration (due September 25, 2023) and to appear for cross-examination, redirect and questioning by the ALJ on September 27, 2023, which was set as the final hearing date. *Id.*

On September 13, 2023, the Parents asked to continue Ms. Brock's testimony for a third time, stating that she was not sufficiently recovered from surgery to submit her direct testimony via declaration or to testify during the month of September 2023. *Order Re: Parents' Request to Continue Due Process Hearing, September 19, 2023*. The ALJ set a prehearing conference for September 15, 2023, which was continued after the Parents' counsel notified OAH of a family medical emergency. *Continuance Order, September 15, 2023*.

The ALJ permitted the Parents to submit an offer of proof and a declaration from Ms. Brock regarding her availability to testify and ability to prepare a declaration with her direct testimony. *Order Re: Parents' Request to Continue Due Process Hearing and Notice of Due Process Hearing, September 19, 2023*. On September 23, 2023, the Parents' counsel asked to extend the filing deadline because her spouse was experiencing a medical emergency. The deadline was extended from September 23 to September 25, 2023. On September 27, 2023, the ALJ denied the Parents' request to allow Ms. Brock additional time to submit her direct testimony via declaration and to add hearing time for her to appear for cross-examination, redirect, and questioning by the ALJ. T3036-3039.

The ALJ set a schedule for post-hearing briefs on September 28, 2023. On October 27, 2023, the Parents' counsel proposed a new post-hearing briefing

schedule, to which the District agreed. *Order Revising Schedule for Post-Hearing Briefs, October 31, 2023*. The following briefs were received and considered:

District's Post-Hearing Brief, December 4, 2023

Parents' Post-Hearing Brief, December 4, 2023

District's Response to Parents' Post-Hearing Brief, January 5, 2024⁵⁸

Parents' Response to District's Post-Hearing Brief, January 5, 2024

District's Reply Brief, January 16, 2024.

⁵⁸ The Parents objected to consideration of the District's Response because it was received at 5:10 p.m. Given the District's agreement to the Parents' request to revise the briefing schedule and the lack of any prejudice to the Parents from the 10-minute delay, the Response was considered.