

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF:THE	)	<b>FINAL ORDER</b>
EDUCATION OF	)	
	)	OAH Case No. 2022-ABC-05754
<b>STUDENT AND MEDFORD</b>	)	Agency Case No. DP 22-110
<b>SCHOOL DISTRICT 549C</b>	)	
	)	

**HISTORY OF THE CASE**

On December 19, 2022, Parent filed a Request for a Due Process Hearing (Complaint) with the Oregon Department of Education (ODE) on behalf of BK (Student), alleging that Medford School District 549C (the District) violated federal and state statutes, federal regulations, and state administrative rules during the 2020 to 2021, 2021 to 2022, and 2022 to 2023 school years (the period in issue) resulting in the denial of a free appropriate public education (FAPE) to Student.

On December 20, 2022, the ODE referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ) Bradley A. Schmidt to conduct the due process hearing and issue a Final Order in the case.

On January 20, 2023, ALJ Schmidt conducted a telephone prehearing conference in the matter. Parent<sup>1</sup> appeared with counsel, attorney Kim Sherman. Rich Cohn-Lee and Taylor Kinch of the Hungerford Law Firm, LLP, appeared and represented the District. Michele Cleveland, the District’s Special Education Director, also attended the conference. The parties agreed to the issue statements for hearing as stated in the Complaint. The parties also agreed to an eight-day hearing to be held in-person in Medford, Oregon, which would commence on May 15, 2023. At the Parent’s request, the Final Order due date was extended to July 28, 2023.

The hearing commenced as scheduled at North Medford High School in Medford, Oregon, with ALJ Schmidt presiding. Witnesses testified on May 15 through 19 and May 22 through 24, 2023. Parent appeared without counsel during most of the proceedings, with Ms. Sherman acting as representative by video conference during the testimony of Karen Cooke and by telephone to confirm communications and agreements between Parent and the District.<sup>2</sup> Joel

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<sup>1</sup> A single parent was involved with the hearing and with all of Student’s educational decisions, and so is referred to simply as “Parent” throughout the present Order.

<sup>2</sup> Although not generally in attendance, Ms. Sherman remained a legal resource for Parent during the hearing. Ms. Sherman played an active role in drafting Parent’s questions for all witnesses. At various points in the proceeding, Parent contacted Ms. Sherman for legal advice or requested that witnesses be

Hungerford and Ms. Kinch of the Hungerford Law Firm, LLP, represented the District. Ms. Cleveland and Sandra Stack, the District's Assistant Director of Special Education, attended the hearing for the District throughout the proceeding. The following individuals testified:

May 15, 2023

- Sandra (Sandy) Stack, Assistant Director of Special Education for the District, who was called as a witness for both parties.<sup>3</sup> At the District's request, Ms. Stack was qualified as an expert in the District's policy and procedures with regard to the special education program with no objection from the Parent.

May 16, 2023

- Aaron Breswick, Special Education Teacher at North Medford High School, who was called as a witness for both parties.
- Hunter Foulon, English Teacher at North Medford High School, who was called as a witness for both parties.
- Jessica Cook, Math Teacher at North Medford High school, who was called as a witness for both parties.

May 17, 2023

- Krista Kohler, Special Education Teacher and Teacher on Special Assignment (TOSA) with the Medford School District, who was called as a witness for both parties; at the District's request, Ms. Kohler was qualified as an expert in special education instruction over the Parent's objection.
- Mikel Brunner, Math Teacher at McLoughlin Middle School (Medford School District), who was called as a witness for both parties.
- David Brown, English Teacher at McLoughlin Middle School, who was called as a witness for both parties.
- David Kirkpatrick, Social Studies Teacher at McLoughlin Middle School, who was called as a witness for both parties.

May 18, 2023

- Kalin Cross, former Principal of McLoughlin Middle School, now with the Phoenix-Talent School District, who was called as a witness for the District. At the request of the District, Mr. Cross was qualified as an expert in school administration with no objection from the Parent.
- Karen Cooke, former Special Education Teacher at McLoughlin Middle School, now Special Education TOSA for the District, who was called as a witness for both parties.

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delayed until she received witness questions from Ms. Sherman. Ms. Sherman continued to represent Parent after the hearing, filing the Student's Closing Brief on June 28, 2023.

<sup>3</sup> By agreement of the parties, witnesses called by both parties received both direct and cross examination from both sides during a single appearance rather than having the witnesses appear twice as part of each party's case-in-chief. In addition, the parties agreed to schedule some witnesses out of order to accommodate their schedules.

May 19, 2023

- Michelle Storie, PhD, Assistant Professor at the State University of New York (SUNY) Oswego, who testified as a witness for the Parent. At the Parent's request, Dr. Storie was qualified as an expert in school psychology with no objection from the District; she was also qualified as an expert in the following areas over the District's objections: evaluation in the areas of reading and psychology; the implementation of evidence-based interventions in reading; data collection to make educational decisions for students with reading difficulties including dyslexia; and the science of reading instruction.
- Claire Swagler, School Psychologist for the District, who was called as a witness for the District. At the District's request, Ms. Swagler was qualified as an expert in school psychology over the Parent's objection.
- Sarah Costa, Washington Elementary School (Medford School District) Teacher, who was called as a witness for the Parent.

May 22, 2023

- Gregg Fehr, School Psychologist for the District, who was called as a witness for the Parent.
- Caitrin Sevcik, School Psychologist for the District, who was called as a witness for the Parent.
- Wendy Mayer, Washington Elementary School Teacher, who was called as a witness for the Parent.
- Michele Cleveland, Director of Special Education for the District, who was called as a witness for both parties. At the District's request, Ms. Cleveland was qualified as an expert in special education administration with no objection from the Parent.
- Zach Boyd-Helm, former Special Education Teacher at Howard Elementary School (Medford School District), now with the Phoenix-Talent School District, who was called as a witness for the Parent.

May 23, 2023

- Student, who was called as a witness for the Parent and was allowed to testify over the District's objection.
- Douglas Col, PhD., Licensed Clinical Psychologist, who was called as a witness for the Parent. At the Parent's request, Dr. Col was qualified as an expert in clinical psychology with no objection from the District.
- Megan Johnson, Special Education Assistant at North Medford High School, who was called as a witness for the Parent.
- Sruti Raghavan, Center Director for Lindamood-Bell Learning Processes in Portland, Oregon, who was called as a witness for the Parent. At the Parent's request, and without objection by the District, Ms. Raghavan was qualified as an expert in the following: Lindamood-Bell processes and procedures; implementation with fidelity and systematic and direct instruction in reading, writing, and math skills for students with disabilities within Lindamood-Bell; analyzing standardized assessment results and interpreting intervention plans in Lindamood-Bell; and training and supporting educators in providing systematic direct instruction and in collecting and analyzing progress-monitoring and intervention-plan-based data within Lindamood-Bell.

May 24, 2023

- Parent, who testified on her own behalf.
- Mr. Breswick, who testified as a rebuttal witness for the District.
- Katie D’Errico, Social Studies Teacher at North Medford High School, who testified as a rebuttal witness for the District.
- Mr. Brown, who testified as a rebuttal witness for the District.

On June 14, 2023, ALJ Schmidt issued a letter ruling resolving the outstanding objections to the admission of exhibits.

On June 28, 2023, upon receipt of the parties’ closing briefs, ALJ Schmidt closed the hearing record.

## ISSUES

1. Whether the District failed to identify and evaluate Student’s educational needs in math and writing during the 2020 to 2021 school year, resulting in a denial of FAPE, in violation of the Individuals with Disabilities Education Act (IDEA) and its implementing Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR).

2. Whether the District failed to identify and evaluate Student’s educational needs in math and writing during the 2021 to 2022 school year, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

3. Whether the District failed to effectively track Student’s progress in reading during the 2020 to 2021 school year, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

4. Whether the District failed to develop or implement an appropriately ambitious individualized education program (IEP) during the 2020 to 2021 school year, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

5. Whether the District failed to develop or implement an appropriately ambitious IEP during the 2021 to 2022 school year, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

6. Whether the District failed to implement educational accommodations identified in Student’s IEP during the 2020 to 2021 school year, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

7. Whether the District failed to implement educational accommodations identified in Student’s IEP during the 2021 to 2022 school year, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

8. Whether the District prevented Parent’s meaningful participation in the special

education process during the 2020 to 2021 school year by failing to provide data showing Student's progress, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

9. Whether the District prevented Parent's meaningful participation in the special education process during the 2021 to 2022 school year by failing to provide data showing Student's progress, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

10. Whether the District prevented Parent's meaningful participation in the special education process during the 2020 to 2021 school year by failing to provide specifics regarding the reading intervention curriculum, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

11. Whether the District prevented Parent's meaningful participation in the special education process during the 2021 to 2022 school year by failing to provide specifics regarding the reading intervention curriculum, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

12. Whether the District failed to implement Student's IEP during the current (2022 to 2023) school year, resulting in a denial of FAPE, in violation of the IDEA and its implementing ORS and OARs.

### **EVIDENTIARY RULINGS**

District Exhibits D1 through D46, D48 through D114, and D116 through D219 were admitted into evidence without objection. District Exhibit D115 was admitted into evidence over Parent's relevance objection. District Exhibit D47 was withdrawn.

Parent/Student Exhibits S4, S6, S7, S9 through S20, S31 through S33, S35 through S47, S50, S51, S55 through S64, S68, S70 through S74, S80 through S90, and S98 through S100 were admitted into evidence without objection. Parent/Student Exhibits S1 through S3, S5, S8, S21 through S30, S48, S49, S52 through S54, S65 through S67, S69, S76, S91, S92, S94, and S96 were admitted into evidence over the District's objections.<sup>4</sup> The ALJ sustained the District's objections to Exhibits S75, S77 through S79, S93, S95, and S97 and these documents were not admitted into evidence.<sup>5</sup> Parent/Student's Exhibit S34 was withdrawn.

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<sup>4</sup> Regarding Exhibits S52 and S53, the District only objected to those portions of the documents predating December 19, 2020, *i.e.*, those from more than two years before the date of the Complaint.

<sup>5</sup> The Oregon Rules of Evidence do not apply to administrative hearings. Rather, OAH Procedural Rule OAR 137-003-0610, entitled "Evidentiary Rules" sets out the standard for the admissibility of evidence in an administrative proceeding:

- (1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

The ALJ took judicial notice under OAR 137-003-0615 of the following: Oregon Department of Education Final Order 21-054-039; the Oregon Board of Psychology’s Online License Search information, available at <https://obop.us.thentiacloud.net/webs/obop/register/#>; and the Oregon Department of Education, Standards, and Instruction, available at <https://www.oregon.gov/ode/educator-resources/standards/pages/default.aspx>.

### FINDINGS OF FACT

1. Student, born February 2008, has attended school in the District since kindergarten, as follows:

School Year	Grade	School
2013 - 14	Kindergarten	Washington Elementary School
2014 - 15	1st	Washington Elementary School
2015 - 16	2nd	Washington Elementary School
2016 - 17	3rd	Washington Elementary School
2017 - 18	4th	Washington Elementary School and Howard Elementary School
2018 - 19	5th	Howard Elementary School
2019 - 20	6th	Howard Elementary School
2020 - 21	7th	McLoughlin Middle School
2021 - 22	8th	McLoughlin Middle School
2022 - 23	9th	North Medford High School

(Exs. D30 at 1, D117 at 1.)

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(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the administrative law judge.

(3) All offered evidence, not objected to, will be received by the administrative law judge subject to the administrative law judge’s power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the administrative law judge. \* \* \*. If the administrative law judge has authority to issue a final order without first issuing a proposed order, the administrative law judge may rule on the admissibility of the evidence in the final order.

The District phrased its objections to the excluded documents in terms of lack of foundation and/or lack of authentication. Because the authenticity of the excluded documents was not established at hearing, no witness made reference to these documents during testimony, and the Parent was unable to identify or explain why these documents were submitted, the relevance of these documents was not established, and the documents were excluded as irrelevant under OAR 137-003-0610(2).

2. The District utilizes iReady assessments three times per year to measure student progress in math and reading for kindergarten through eighth grade. (Tr. Vol. I at 188:4-9.) District special education case managers may administer iReady diagnostic tests more often to track student progress toward IEP goals. (*Id.* at 188:10-12.) In iReady reading diagnostics administered during kindergarten and first grade, students receive subtests in the following order: phonics, phonological awareness, high-frequency words, vocabulary, literature comprehension, and informational text comprehension. In iReady reading diagnostics administered in second grade, students receive subtests in the following order: phonics, phonological awareness (only if the student's phonics score is below 421), vocabulary, literature comprehension, informational text comprehension, and high-frequency words. (Ex. D21 at 1.) From third grade to eighth grade, students receive vocabulary, literature comprehension, and informational text comprehension subtests, followed by a phonics subtest only if the student's overall score is below 511, followed by a high-frequency words subtest only if the student's phonics score is below 421. (*Id.* at 2.)

3. EasyCBM is a standardized academic progress measure that can be used to track academic progress in reading as compared with peers. (Exs. D15 at 2-3, D55 at 11; Tr. Vol. IV at 1203:1-9.)

4. During Student's second-grade year (the 2015 to 2016 school year), Student repeatedly fell short of second grade benchmarks on standardized reading assessments. (Ex. S8 at 4-5.) Starting on November 9, 2015, Student's classroom teacher at Washington Elementary School, Sarah Costa, attempted multiple classroom interventions to improve Student's progress in reading and writing. (Exs. D30 at 2, S7 at 1-3.) In April 2016, Ms. Costa referred Student to a school-level team (SLT) to address Student's reading and writing deficits after Student continued to fail to meet intervention goals. (Exs. D30 at 2-3, S4 at 1-2; Tr. Vol. V at 1617:5-1618:1.) The SLT met on April 18, 2016, and recommended that Student be referred for academic (specific learning disability or SLD) special education evaluation. (Ex. S3 at 1.)

5. On April 27, 2016, Michele Cleveland, then a special education teacher at Washington Elementary School, submitted a Request for Initial Special Education Evaluation of Student due to Student's difficulties with reading. (Ex. S6 at 1; Tr. Vol. VI at 1855:13-1856:25.)

6. On November 7, 2016, District Assessment Specialist Gregg Fehr completed Student's special education Evaluation Report. (Ex. D30 at 1.) Mr. Fehr based the November 7, 2016, Evaluation Report on the following: a comprehensive review of Student's records, Student's developmental health history, classroom observations, the Woodcock-Johnson IV Tests of Cognitive Abilities, and the Woodcock-Johnson IV Tests of Achievement. (*Id.* at 1.) Parent completed a questionnaire to provide the information of Student's developmental health history. (*Id.* at 1-2; Ex. S11 at 9-14.)

7. During classroom observation, Mr. Fehr observed that Student appeared attentive and "98% on task." (Ex. D30 at 3-4.) In the Woodcock-Johnson IV Tests of Cognitive Abilities, Student received scores in the average range in the following areas: Comprehension-Knowledge, Fluid Reasoning, Short-Term Working Memory, Cognitive Processing Speed, and Auditory Processing. (*Id.* at 4-6.) Regarding Comprehension-Knowledge, Mr. Fehr noted that "[t]his cognitive ability is often a good predictor of a person's ability to understand text (reading

comprehension) as well as reason mathematically.” (*Id.* at 4.) Student received a below-average score in Long-Term Retrieval. (*Id.* at 6-7; Ex. D31 at 1.) On the Woodcock-Johnson IV Tests of Achievement, Student received below-average scores in Reading Fluency, Oral Reading, and Sentence Reading Fluency. (Exs. D30 at 7, D31 at 1-2.) Mr. Fehr noted that Student’s below average score in Long-Term Retrieval was “most likely correlated with [Student’s] weakness in Reading Fluency.” (Ex. D30 at 6.)

8. Based upon all the information he received, Mr. Fehr determined that Student met the eligibility criteria as a student with a Specific Learning Disability as follows:

In order for a student to qualify as a student with a Specific Learning Disability, deficits must exist within an “otherwise normal ability” profile. There is evidence of a pattern of strengths and weaknesses in psychological processing that impacts learning as measured by the Woodcock Johnson Tests of Cognitive Abilities. [Student] demonstrated a cognitive processing weakness in Long-Term Retrieval. This can be directly correlated with [Student’s] weakness in Reading Fluency. This cognitive deficit is specific and exist within an “otherwise normal ability” profile. [Student] demonstrates average or better functioning in most broad cognitive abilities, including those most important to acquiring the academic skills at [Student’s] grade level. This pattern of cognitive strength suggests at least average overall cognitive ability.

(Ex. D30 at 7.)

9. On November 29, 2016, the District convened an IEP meeting for Student, which was attended by Ms. Cleveland, Special Education Teacher Wendy Mayer, and Jodi Smith, Student’s general education teacher. (Ex. S21 at 1-5.) The IEP approved specially designed instruction in reading; math and written language were notated as “Not an area of concern,” meaning that none of the IEP team present expressed any concern about Student’s needs in these areas. (Ex. S21 at 8, 14; Tr. Vol. VI at 1858:8-1859:16.) The IEP set a goal of for Student, who was then in third grade, to demonstrate foundational reading skills at the first grade level. (Ex. S21 at 6.) The IEP approved the following accommodations: audio books/textbooks and assignments being read to Student.<sup>6</sup> (*Id.* at 16.)

10. On November 29, 2016, the District issued a Prior Notice and Consent for Initial Provision of Special Education Services and a Written Notice of Special Education Action notifying Parent of the development of the IEP. (Ex. S21 at 22-23.)

11. On November 30, 2016, Parent provided written consent to Student’s Initial Provision of Special Education. (Ex. S21 at 23.)

12. On October 24, 2017, the District convened an IEP meeting for Student’s fourth grade year, which was attended by Parent, Ms. Mayer, Ms. Cleveland, and Karale Farschon, Student’s third grade general education teacher. (Ex. S23 at 3.) The IEP noted that Student met

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<sup>6</sup> IEPs not in force during the statutory two-year review period are not addressed in detail.



Student's prior goal of demonstrating foundational reading skills at the first grade level; the IEP set a new goal for Student to demonstrate foundational reading skills at the second grade level with the following short-term objectives: "distinguish long and short vowels with 80% accuracy[,] \* \* \* decode words with prefixes and suffixes with 80% accuracy[, and] \* \* \* read text with purpose and understanding with 80% accuracy." (*Id.* at 11, 17.) Math and written language were again notated as "Not an area of concern." (*Id.* at 11.)

13. On October 23, 2018, the District convened an IEP meeting for Student's fifth grade year, which was attended by Parent, a special education teacher, IEP Specialist Meryl Roberts, and Miles Barnes, Student's fourth grade general education teacher. (Exs. S26 at 1, 14, S52 at 14.)

14. The October 2018 IEP noted that Student "[m]ade some progress" towards the October 2017 IEP's reading goal. (Ex. S26 at 2.) The IEP restated the goal for Student to demonstrate foundational reading skills at the second grade level with the following short-term objectives: "know and apply phonics and word analysis skills with 80% accuracy [and] decode regularly spelled two-syllable words with long vowels with 80% accuracy." (*Id.* at 5.) The IEP listed Math as an "[a]rea of concern (accommodations and/or modifications will be provided)" with some iReady diagnostic scores below grade level. (*Id.* at 2.) The IEP provided for math assignments to be read to Student, as well as frequent checks for understanding in math, but set no specific math goals. (*Id.* at 2, 10.) In written language, the IEP noted Student's need for accommodations in the form of "frequent checks for understanding and word prediction and word processor to help [Student] with written language." (*Id.* at 3.)

15. In statewide standardized testing administered on April 2, 2019, Student scored in the Level 1 (lowest) range in English Language Arts. According to the Individual Student Report of test results,

A student performing at Level 1 demonstrates a minimal ability to

- Comprehend texts of low complexity and uses minimal textual evidence to demonstrate thinking.
- Produce writing for a range of purposes and audiences.
- Interpret or use information delivered orally or audio-visually.
- Conduct simple research to investigate a topic and locate information and cite evidence to support ideas.

(Ex. S53 at 5.)

16. In statewide standardized testing administered on April 9, 2019, Student scored in the Level 1 (lowest) range in Math. (Ex. S53 at 4.)

17. On October 10, 2019, during Student's sixth grade year, Parent and the District agreed that a three-year reevaluation of Student was not required to assess Student's continued need for special education services. (Ex. S12 at 1; Tr. Vol. VI at 1998:1-22.)

18. On October 28, 2019, the District convened an IEP meeting, which was attended by

Parent, District School Psychologist Jeffrey P. Fry, Ph.D., and Grenda B. David, who attended as a support for Parent. At the time of this IEP meeting, Student was still reading “far below grade level.”<sup>7</sup> (Ex. S29 at 1.)

19. As of January 9, 2020, Student was “performing at an overall grade level 2” according to an iReady diagnostic test; Student received “a scale score of 479, demonstrating significant improvements in the area of phonics and vocabulary.” (Ex. D122 at 1.) This information was included on Student’s IEP Progress Report. (*Id.*)

20. During January 2020, Student received a scaled score of 466 on an iReady math diagnostic test, placing Student at the fifth-grade level. (Ex. D15 at 5.)

21. On March 5, 2020, Dr. Fry completed an Evaluation Report of Student after Parent expressed concerns about Student’s academic progress. (Exs. D32 at 1, S92 at 2.) Dr. Fry based the Evaluation Report upon a review of Student records, administration of the Reynolds Intellectual Assessment Scales – Second Edition (RIAS-2), and administration of the Feifer Assessment of Reading (FAR). (Ex. D32 at 1.) On the RIAS-2, Student received a composite score and scores in the verbal and nonverbal sections within the average range. (Ex. D32 at 2.) On the FAR, Student received a Phonological Index score of 71 (Moderately Below Average range), a Fluency Index score of 51 (Significantly Below Average range), a Mixed Index score of 59 (Significantly Below Average range), a Comprehension Index score of 73 (Moderately Below Average range), and a FAR Total Index score of 60 (Significantly Below Average range). (Ex. D32 at 3-4.) After analyzing Student’s results in each subsection of the FAR, Dr. Fry concluded:

If these results are commensurate with typical, daily reading performance, then the findings suggest mixed dyslexia, which involves a combination [of] poor phonological processing skills, slower rapid and automatic word-recognition skills, inconsistent language comprehension skills, and odd error patterns during reading.

(*Id.* at 6.)

22. In the March 5, 2020, Evaluation Report, Dr. Fry made the following recommendations:

- Decades of research on the practice of grade retention have overwhelmingly demonstrated its ineffectiveness and detrimental effects. If [Student] does not meet grade level academic proficiency standards, alternatives to grade retention should be discussed.

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<sup>7</sup> The only evidence regarding the October 28, 2019, IEP meeting was Exhibit S29, a letter from Grenda B. David dated March 30, 2023. Neither party submitted any contemporaneous record of the IEP meeting or a copy of the resultant IEP. As such, it is not known if the IEP meeting had additional participants. Moreover, the relevant details of Student’s progress, Parent’s concerns at the time, and any discussion on either subject are not in evidence. That said, there is no dispute that Student continued to read at below grade level at the time.

- Given [Student's] mixed presentation with phonemic awareness and orthographic difficulties, [Student] would likely benefit from a balanced literacy approach and top down strategies; for example, consider using a multi-sensory type of Orton-Gillingham program, coupled with a fluency model such as Read Naturally, and the computerized models of Read 180.
- Provide [Student] access to computer-assisted writing tools in order to help with organization, spelling, and grammar.
- Reduce the amount of work and modify assignments to [Student's] instructional level.
- Reduce the amount of work required to demonstrate mastery and allow partial credit.
- Provide [Student] extra time to complete assignments and tests.
- Reduce the amount of work that needs to be copie[d] from the board.
- Check for comprehension after group directions are given.
- Reduce the amount of work on tests and daily work necessary to demonstrate proficiency and allow credit for late assignments.
- Allow the use of a vocabulary bank to assist with spelling.
- Allow [Student] to use a computer for essay compositions and other written work to address difficulties with spelling, organization, grammar, and fluency.
- Increase keyboarding skills or explore voice to text methods of writing.
- Provide a copy of key concepts or class notes or allow [Student] to make a photocopy of notes from a high achieving, well-organized peer.
- Teach [Student] to use checklists to help with work completion and organization.
- Provide [Student] with a “cheat sheet” of common writing mechanics that [Student] can use during assignments and tests (e.g., use of commas or other punctuation).
- Teach [Student] to use graphic organizers and story maps to assist [Student's] writing.
- Grade only the second version of written work once [Student] has had the opportunity to proof read and correct mistakes.
- Provide a template to use for organizing written work (e.g., reminders of introduction, conclusion, elaborations, transition words, audience, etc.)
- Provide [Student] with clear expectations/requirements for assignments and steps to accomplish them, as well as[] examples of finished products.

**For auditory working memory/sustained attention:**

- Check for comprehension after group directions are given.
- Establishing eye contact with [Student] prior to giving essential instructions or new material [Student] help ensure that [Student] is ready to listen carefully. Children like [Student] with working memory difficulties often need to be alerted when essential material or instructions are being presented.
- The rate of presentation for new material may need to be altered for

[Student]. [Student] may need additional processing time or time to rehearse the information.

- A child like [Student] with working memory difficulties often needs tasks or information broken down into smaller steps or chunks.
- Limit extraneous activities that create auditory distractions and competing background noise.
- Provide preferential seating that supports monitoring of [Student's] comprehension.
- Provide a peer assistant or buddy to provide information when tasks require increased memory demands.
- When practical, word instructions individually to [Student] in order to avoid competition with extraneous background sounds.
- Seat [Student] in proximity to the teacher in order to facilitate monitoring and to individualize instructions.
- Word directions and instructions clearly, succinctly and in simple terms.
- Encourage [Student] to ask questions and seek help if [Student] does not understand.
- Supplement oral directions/instructions with a written counterpart.
- Write key words on the board or on an overhead to support oral instruction.
- Provide a signal to alert [Student] when an oral direction/instruction is going to be given.

(Ex. D32 at 6-7.)

23. In the March 5, 2020, Evaluation Report, Dr. Fry listed the following “**Instructional strategies to improve reading fluency and comprehension:**

- **Use *listening previewing as an individualized instructional strategy*** to build rate and fluency. This strategy is also helpful to preview passages that are at frustrational reading level. [Student] and a peer tutor read passages from the assigned reading text within a day before the passage is read in class. [Student] listens and follows along as the tutor reads a sentence or short paragraph. [Student] then orally reads the paragraph. This process is continued until the passage is completed and [Student] reads the passage aloud independently. Errors are corrected by the tutor saying the word correctly and [Student] repeating the word three times while looking at the word. After an error correction, [Student] starts reading at the beginning of the sentence in which the error occurred.
- **Use the *repeated reading method*** to improve reading fluency. In this strategy a baseline reading rate of words correct per minute is established for a passage from [Student's] basal reading text. The instructor assists [Student] to plot this information on a graph and set a goal. Across daily sessions [Student] re-reads the same passage orally and plots [Student's] reading fluency (i.e., words correct per minute) on the graph. Reinforcement is provided when [Student] reaches the reading fluency

goal and the process begins again with a new passage. Goal setting and regular plotting of data by [Student] are important parts of this method.

- **Employ a *simultaneous or choral reading strategy*** (also known as neurological impress method) with a peer tutor to improve fluency and to read passages that are at frustrational reading level. [Student] and a tutor read orally together (simultaneously) from [Student's] reading instructional text. The tutor reads at a rate approximately 1/3rd faster than the baseline rate of the target student. After a paragraph or several lines are read in chorus, [Student] orally reads the passage alone. It is helpful for the tutor to follow along with his/her finger when modeling. If [Student] mispronounces a word or fails to identify a word while reading alone, the tutor immediately says the word and [Student] repeats it and continues reading. Passages should be material to be read in class within the next couple of days.
- **Use Stop and Start technique** – [Student] reads a passage out loud, and every 30 seconds the teacher says “stop” and asks questions about the story. Eventually the time interval is lengthened.
- **Use Directional Questions** – ask questions at the beginning of the text instead of the end so [Student] can become a more directional reader.
- **Use Story Maps** – a pre-reading activity where graphic organizers are used to outline and organize information prior to reading the text.
- **Employ Narrative retelling** – have [Student] retell the story after reading it aloud.
- **Encourage [Student] to read aloud** – reading out loud allows students to hear their own voices and can facilitate working memory.
- **Classroom Discussions** – introduce new topic areas with general classroom discussions to capture [Student's] attention and interest prior to reading the material.
- Provide an organizational framework for verbal information to help [Student] with retrieval since [Student] has difficulty with [Student's] own internal structure.
- Allow [Student] to read [from] high interest books such as anime along with required materials at [Student's] instructional level.

(Ex. D32 at 7-8.)

24. On approximately March 19, 2020, Student received a scaled score of 512 on an iReady reading diagnostic test, placing Student at a third-grade reading level. (Ex. D122 at 1.) This was the last iReady diagnostic administered to Student during the 2019 to 2020 school year due to the COVID-19 pandemic. (Ex. D122 at 1.) Student's scaled score and grade level were included in an IEP progress report for Parent. (*Id.*)

25. In approximately March 2020, the District moved from in-person instruction to comprehensive distance learning due to the COVID-19 pandemic. (Tr. Vol. V at 1602:17-21, Vol. VI at 1794:18-19.) During comprehensive distance learning, all students attended school online, with teachers providing instruction remotely via either synchronous videoconference or

by posting assignments online. (Tr. Vol. I at 104:3-105:3.) At the beginning of the 2020 to 2021 school year (Student's seventh grade year), the District was still providing instruction by comprehensive distance learning. (Tr. Vol. III at 883:10-23.)

26. During Student's time at McLoughlin Middle School and North Medford High School, the school provided each student with a Chromebook; teachers utilized Canvas, an application that allowed teachers to post online content (such as documents, videos, notes, and assignments) for students, and which also served as an online grade book. (Tr. Vol. II at 350:23-351:1, Vol. III at 863:4-8, 887:5-888:8.) At the beginning of seventh grade, Student required some one-on-one instruction on how to use Canvas, but eventually became skilled in its use. (Tr. Vol. IV at 1156:4-1157:3.)

27. Since at least 2012, the District has used the program Read Naturally and its online digital version, Read Naturally Live, as reading interventions for students with a reading disability. (Tr. Vol. I at 148:4-15; Vol. III at 756:6-20; 821:4-16.) Read Naturally and Read Naturally Live are "phonics-based and provide explicit, systematic instruction;" they include explicit phonics lessons, word-reading practice, and informational practice texts structured to introduce decodable words. (Ex. D194 at 21.) The intervention includes frequent repetition of vocabulary words to reinforce learning. (*Id.* at 22.) Read Naturally and Read Naturally Live are both premised upon evidence-based practices. (*Id.* at 24; Tr. Vol. I at 148:9-15.) Read Naturally and Read Naturally Live have material similar to the Orton-Gillingham approach to reading but are presented at a higher level. Because Read Naturally and Read Naturally Live are more appropriate for middle and high school level students, these would be the District reading interventions best suited to Student. (Tr. Vol. I at 149:17-151:16, Vol. III at 758:7-762:5.) Some District students with a reading disability have made great progress in reading (*e.g.*, multiple grade levels of growth in a matter of months) using these programs. (Tr. Vol. III at 756:21-758:3.)

28. During Student's seventh grade year (the 2020 to 2021 school year), McLoughlin Middle School divided the school year into three terms or trimesters. (Ex. D118 at 1; Tr. Vol. I at 185:6.) During Student's time at McLoughlin Middle School, all core subject teachers (English, math, science, and social science) moved with the students from seventh to eighth grade, meaning that middle school students had the same core subject teachers both years. (Tr. Vol. III at 839:18-840:15, 845:15-18, 882:1-16, 933:14-934:9.) Student had the following teachers at McLoughlin Middle School: Mikel Brunner for math, David Brown for English, David Kirkpatrick for social science, and Joseph Miracle for science. (Exs. D7 at 1, D8 at 1, D9 at 1, D11 at 1, D12 at 1, D13 at 1; Tr. Vol. III at 840:4-9, 934:1-9, Vol. IV at 1155:6-15.) Student's Special Education Case Manager at McLoughlin Middle School was Karen Cooke, a special education teacher who also provided daily specially designed instruction to Student throughout Student's time at McLoughlin Middle School. (Ex. D39 at 1; Tr. Vol. III at 844:11-12, Vol. IV at 1094:24-1095:4.) Student also received specially designed instruction daily from resource teacher Callie Kidwell during the 2020 to 2021 school year. (Exs. D7 at 1, D8 at 1; Tr. Vol. IV at 1096:18-1097:9.)

29. Mr. Brunner had access to, and reviewed, Student's IEP prior to the beginning of Student's seventh-grade year (2020 to 2021). (Tr. Vol. III at 860:4-9.) At or near the beginning

of the 2020 to 2021 school year, Mr. Brunner reviewed Student's IEP accommodations with Ms. Cooke. (*Id.* at 844:3-12.) Mr. Brunner had access to Student's IEP throughout the 2020 to 2021 school year. (*Id.* at 844:13-14.) Mr. Brunner also had access to Student's IEP at a Glance, which was a document giving a brief summary of Student's IEP accommodations as well as Student's preferences and interests. (*Id.* at 844:19-845:2.)

30. At or near the beginning of the 2020 to 2021 school year, Mr. Brown spoke with Ms. Cooke about the accommodations called for in Student's IEP. (Tr. Vol. III at 886:2-12.) Mr. Brown had access to Student's IEP and IEP at a Glance during the 2020 to 2021 school year. (*Id.* at 886:13-19.) Mr. Brown regularly spoke with Ms. Cooke about Student's progress and English assignments. (*Id.* at 886:20-23.)

31. At or near the beginning of the 2020 to 2021 and 2021 to 2022 school years, Mr. Kirkpatrick reviewed Student's IEP accommodations with Ms. Cooke. (Tr. Vol. III at 935:6-12, 936:3-7.) Throughout Student's time at McLoughlin Middle School, Mr. Kirkpatrick had access to Student's IEP and IEP at a Glance. (*Id.* at 935:13-20.)

32. During Student's seventh grade year, Student showed "limited engagement" in English class; Student would often do things such as play on a Chromebook or draw rather than give attention to instruction. (Tr. Vol. III at 884:20-885:10.) To encourage Student's English class engagement during Student's time at McLoughlin Middle School, Mr. Brown allowed Student to use art on assignments when possible. (*Id.* at 885:19-886:1.)

33. During Student's time at McLoughlin Middle School, Student participated in class discussions in social science class, but did not complete assignments. (Tr. Vol. III at 952:8-15.)

34. During Student's time at McLoughlin Middle School, Student's core subject teachers held weekly core team meetings. (Tr. Vol. III at 845:7-14, 889:20-890:9) During core team meetings, the core subject teachers discussed specific student needs. (*Id.* at 889:25-890:9; 894:3-895:5.) Typically, special education teachers did not attend these meetings. (*Id.* at 845:19-21, 895:9-896:11.) During Student's time at McLoughlin Middle School, Ms. Cooke regularly attended core team meetings to assist the core team with implementing, and to answer questions about, Student's IEP accommodations. (*Id.* at 845:7-9, 848:7-14, 895:6-8, 936:19-21; Tr. Vol. IV at 1113:14-1114:2.) Ms. Cooke made herself available to the core team for consultation about any issues with Student, and the core team was aware of her availability. (Tr. Vol III at 896:17-21, 935:21-24, 936:22-937:14, Vol. IV at 1114:3-7.)

35. During Student's time at McLoughlin Middle School, McLoughlin Middle School Principal Kalin Cross also attended the core team meetings on at least a semimonthly basis, in part to discuss Student's accommodations. (Tr. Vol. IV at 1063:16-1065:10.)

36. During Student's time at McLoughlin Middle School, Mr. Brown did not assign any homework or reading to be done exclusively outside the classroom, although students were expected to complete some independent reading of library books, which were available as audio books. (Tr. Vol. III at 914:23-919:6.) Mr. Brown posted videos to Canvas explaining English assignments. (*Id.* at 887:13-888:1.)

37. For novels read as part of the English curriculum during Student's time at McLoughlin Middle School, Mr. Brown used Canvas to post videos of reading assignments, the text depicted visually and read aloud by himself. (Tr. Vol. III at 888:15-889:19, 913:22-914:10.) For most shorter reading assignments read aloud in class from a physical (not digital) text, and thus not accessible to the Chromebook's digital text-to-speech software, there was no text-to-speech available for students who missed school on the day the assignment was read together. (*Id.* at 900:11-901:2, 914:4-16.)

38. On September 22, 2020, the District convened an IEP meeting by video conference, which was attended by Parent, Ms. Cooke, McLoughlin Middle School Dean of Students Karinn Calhoun, Special Education Building Facilitator Joshua Brown, District Special Education Coordinator Kendall Roberts, and Mr. (David) Brown. (Exs. D39 at 1, D40 at 1, D42 at 1; Tr. Vol. IV at 1098:7-15.) During the video conference, the draft IEP was displayed on the screen for all to review, with changes made in real time visible to meeting participants. (Tr. Vol. IV at 1060:1-18, 1098:15-1099:4.)

39. The September 2020 IEP listed the following in the "Strengths of Student" section:

Strengths: [Student] has academic strengths in math; [Student] has a strong ability to understand abstract concepts in algebraic thinking and in spatial concepts in geometry. [Student] made excellent progress in reading informational text in the past year, achieving growth from 1st grade level to the 3rd or 4th grade level. This demonstrates hard work and perseverance on [Student's] part. [Parent] states that [Student] tries to help out at home a lot, and sometimes tries to parent [Student's] younger brother.

Interests: [Parent] also let us know that [Student] is very good at art. [Student] likes talking with people a lot, and [Student] really enjoyed the friends [Student] made last year.

Preferences: Representing \* \* \* work in an artistic or concrete way, working independently or with a partner.

(Ex. D40 at 3.)

40. The September 2020 IEP listed the following as Parent's concerns: "[Parent] is very concerned about [Student's] progress in reading. She is worried that [Student] will not be ready for the pace and difficulty of reading required for high school classes." (Ex. D40 at 3.)

41. The September 2020 IEP noted that no state or district-wide assessments were administered in spring 2020 due to the COVID-19 school closures. In terms of Student's current level of academic performance, the IEP included the following: May 31, 2019, SmarterBalanced scaled scores of 2347, or fifth percentile for fifth grade students in English Language Arts, and 2406, or 17th percentile for fifth grade students in math; a curriculum-based measure from January 8, 2020, placing Student at the fifth-grade math level; and a curriculum-based measure



from March 19, 2020, placing Student at a third-grade reading level. (Ex. D40 at 3.)

42. The September 2020 IEP section concerning present level of academic performance contained the following discussion of Student's academic needs:

Reading: area of concern (goal will be developed)

\*What specific skills can the student do and at what level/rate?:

According to [Student's] progress report on 3/19/20:

[Student] scored 512, grade 3 on an iReady progress monitoring assessment.

[Student] has tested out of foundational reading skills. [Student] exceeded [Student's] previous goal of reading informational text at grade 2. Specific data is limited due to COVID-19 school closures, but [Student's] previous resource teacher stated that [Student] had made excellent progress and was able to read informational text at the 3rd-4th grade level by May 2020.

\*What specific skill does the student need to learn?

4.RI: reading-Informational Text - By June 2021 [Student] will be able to ask and answer questions and identify elements of informational text at the 4th grade level.

Mathematics: area of concern (accommodations will be provided)

\*What specific skills can the student do and at what level/rate?:

[Student] scored overall 466 (level 5) on an iReady math diagnostic 1/8/20.

[Student] scored the following in different domains: Algebra and algebraic thinking, level 6; Geometry, level 5; Measurement and data, level 4; Numbers and operations, level 3.

\*What specific skill does the student need to learn?:

In middle school, math involves a lot of reading, so [Student] will have accommodations to support [Student's] specific learning disability when in [the] general education math classroom.

Written Language: Not an area of concern

(Ex. D40 at 3-4.) Math was listed as an area of concern only because Student's difficulty with reading would present a hurdle to engaging with math curriculum, *e.g.*, with word problems. (Tr. Vol. IV at 1102:25-1105:2.) The IEP did not list any other areas of concern. (Ex. D40 at 4.)

43. The September 2020 IEP contained the following response regarding how Student's disability affects involvement and progress in the general education curriculum: "[Student's] Specific Learning Disability makes it difficult for [Student] to learn at the same rate and level as grade level peers, and [Student] requires specially designed instruction in the area of reading." (Ex. D40 at 4.)

44. The September 2020 IEP stated Student's need for the following assistive technology devices: "Word processor, Word prediction, Audiobooks and textbooks, Advance organizers, Access to charts, math tools, Text to speech, Speech-to-text[.]" (Ex. D40 at 5.)

45. The September 2020 IEP stated the following measurable annual goals in English:

Goal:

5.RF: Reading-Foundational Skills – [Student] can demonstrate foundational reading skills at the 5th grade level.

Present Level:

[Student's] progress report from 3/19/20 states:

According to a recent I-Ready progress monitoring assessment in the area of reading, [Student] scored at a 3rd grade level. The scaled score was 512.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
5.RF.03: [Student] can apply 5th grade-level phonics and word analysis skills in decoding with 80% accuracy.	Curriculum-based measures, iReady	9/21/2021
5.RF.04a: [Student] can read on-level text with purpose and understanding 2 out of 3 opportunities.	Curriculum-based measures, iReady	9/21/2021

(Ex. D40 at 8.) Ms. Cooke regarded this as an appropriately ambitious goal for Student based upon Student's current levels and prior rate of improvement. (Tr. Vol. IV at 1107:25-1111:22.)

46. The September 2020 IEP committed the District to providing IEP progress reports at the same time as it issued report cards. (Ex. D40 at 8.)

47. The September 2020 IEP Service Summary provided for 480 minutes per month of specially designed instruction in reading from a special education teacher in a special education setting from September 23, 2020 to September 21, 2021. (Ex. D40 at 9, 11.) It also provided for the following accommodations: shortened assignments; reduced volume of writing and copying tasks; advance organizers; extra time to complete tasks; encouraging Student to ask for clarification; text-to-speech; speech-to-text; pairing of auditory information with visual supports; access to a word processor; access to word prediction software; audio books or textbooks; access to charts and math tools; frequent checks for understanding; a calculator, multiplication table, and separate setting during statewide standardized math testing; text-to-speech, print on demand, and a separate setting for statewide standardized English testing; and a separate setting for districtwide math and reading assessments. (*Id.* at 9-10.)

48. During the September 22, 2020, IEP meeting, neither Parent nor anyone else present expressed concern about Student's progress in math or written language or suggested an independent IEP goal in one of these areas. (Tr. Vol. IV at 1101:2-12, 1105:19-1106:1, 1106:14-1107:7.)

49. On September 22, 2020, the District issued a Prior Written Notice (PWN) implementing the September 2020 IEP. (Ex. D41 at 1.)

50. In October 2020, Student received a scaled score of 511 on an iReady reading diagnostic test, placing Student at the third grade reading level. (Ex. D15 at 2.) Student received the following core-subject grades for the first trimester of the 2020 to 2021 school year (Student's seventh grade year), ending December 17, 2020: I (Incomplete) in Math, X (No Grade) in Social Science, B (Advanced Quality Work) in English, and C (Proficient) in Science. (Exs. D7 at 1, D118 at 1.) Students receive an Incomplete where insufficient school work has been turned in to determine a letter grade. (Tr. Vol. III at 842:13-24.)

51. On January 29, 2021, Student received a scaled score of 547 on an iReady diagnostic reading assessment, placing Student at the fourth grade reading level "in spite of rushing the test." (Exs. D123 at 1, D124 at 1.) Student received a scaled score of 509 (third grade level) in the specific category of Informational Text Comprehension (Ex. D124 at 1.)

52. During comprehensive distance learning in the 2020 to 2021 school year, Student was "not engaged" with the math curriculum provided in the video conference classroom; Student's Chromebook camera would often be facing upwards without Student in the frame, and Student would not respond or appear on camera when Mr. Brunner directed questions to Student. (Tr. Vol. III at 841:15-842:4.)

53. During comprehensive distance learning, Ms. Cooke provided some one-on-one reading instruction to Student herself and also had Student receive some phonics/reading instruction through online iReady lessons, which are geared towards areas in which a student has demonstrated deficits. (Tr. Vol. IV at 1153:12-24.) During one-on-one instruction, Ms. Cooke had Student read District-provided passages out loud. (Tr. Vol. IV at 1158:24-1159:21.)

54. During comprehensive distance learning in the 2020 to 2021 school year, Student actively engaged with Ms. Cooke's specially designed instruction. Student's high level of engagement with special education continued after the return to in-person instruction late in the school year. (Tr. Vol. IV at 1234:24-1235:25.)

55. During the second half of the 2020 to 2021 school year (Student's seventh grade year), McLoughlin Middle School moved to limited in person instruction (LIPI). (Tr. Vol. I at 105, Vol. III at 840:23-841:3.) During LIPI, students received some instruction in person in small groups and some instruction online. (Tr. Vol. I at 105:4-17.) By April 2021, McLoughlin Middle School returned to regular in-person instruction. (Tr. Vol. III at 841:4-6.)

56. Student received the following core-subject grades for the second trimester of the 2020 to 2021 school year (Student's seventh grade year), ending March 18, 2021: X (No Grade) in Math, X in Social Science, C in English, and B in Science. (Exs. D8 at 1, D118 at 1.)

57. On March 19, 2021, the District issued an IEP Progress Report, which included Student's overall iReady reading result from January 29, 2021. (Ex. D123 at 1.) According to the IEP Progress Report, Student was making adequate progress towards IEP goals. (Ex. D123 at 1-2.)

58. On April 27, 2021, Student received a scaled score of 550 (fourth-grade level) on an

iReady reading diagnostic. (Exs. D15 at 2, D124 at 1.)

59. During Student's time at McLoughlin Middle School, Mr. Brown recognized that Student had difficulty with written language based upon the lack of long-form assignments turned in and the quality of written assignments submitted for grading. (Tr. Vol. III at 904:20-905:7.) Because Student was generally not engaged with the English curriculum, and because the work Student did submit showed Student's general ability to engage with the curriculum, Mr. Brown was unable to assess exactly how much Student's failure to turn in assignments could be attributed to difficulty with written language as opposed to being attributable to Student's disinterest and lack of engagement. (*Id.* at 924:14-926:8.)

60. On May 25, 2021, the District convened an IEP meeting by video conference, which was attended by Parent, Ms. Cooke, District Special Education Teacher Vanessa Campbell, and Mr. Brown. (Exs. D44 at 1, D45 at 1; Tr. Vol. IV at 1114:16-1115:2.)

61. The May 2021 IEP listed the following in the "Strengths of Student" section:

Strengths: [Student] has academic strengths in math; [Student] has a strong ability to understand abstract concepts in algebraic thinking and in spatial concepts in geometry. [Student] made excellent progress in reading informational text in the past year, achieving growth from 1st grade level to the 3rd or 4th grade level. This demonstrates hard work and perseverance on [Student's] part. [Parent] states that [Student] tries to help out at home a lot, and sometimes tries to parent [Student's] younger brother. In class this spring, [Student] is friendly and kind. When [Student] is having a good day, [Student] works really hard and gets a lot done.

Interests: [Parent] also let us know that [Student] is very good at art. [Student] is fairly social and enjoys hanging out with friends here at MAC.

Preferences: Representing \* \* \* work in an artistic or concrete way, working independently or with a partner.

(Ex. D44 at 3.) This was identical to the language used in the "Strengths of Student" section of the prior (September 2020) IEP. (Ex. D40 at 3.)

62. The May 2021 IEP listed the following as Parent's concerns: "[Parent] is very concerned about [Student's] progress in reading. She is worried that [Student] will not be ready for the pace and difficulty of reading required for high school classes." (Ex. D44 at 3.) This was identical to the parent concerns section in the prior (September 2020) IEP. (Ex. D40 at 3.)

63. For present level of academic performance, the May 2021 IEP listed the most recent statewide or districtwide test results as SmarterBalanced scores from April 2019, (2347, or fifth percentile for fifth grade students in English Language Arts, and 2406, or 17th percentile for fifth grade students in math); the IEP also included a curriculum-based measures from January 29, 2021, placing Student at a fifth-grade math level and a fourth-grade reading level. (Ex. D44 at 3.)

64. The May 2021 IEP section concerning present level of academic performance contained the following discussion of Student's academic needs:

Reading: Area of concern (goal will be developed)

\*What specific skills can the student do and at what level/rate?:

Strengths: [Student] has gained 36 points this year on [Student's] iReady reading diagnostic.

Data/Progress Monitoring:

[Student] received a passing grade of "C" in [Student's] 7th grade English class 2nd trimester. On an iReady diagnostic reading assessment in a comprehensive distance learning education setting (1/29/21), [Student] scored an overall level 4 (547). [Student's] overall score places [Student] at the 18th percentile. [Student] has a Lexile Measure of 770.

[Student] tested out of Phonological Awareness, Phonics, and High-Frequency Words.

In Vocabulary, [Student] scored a level 5 (580) and can use prefixes, suffixes, and base words and understand word relationships at the 5th grade level.

In Literature Comprehension, [Student] scored a level 4 (552) and can connect text and visuals and identify points of view in literary text.

In Informational Text Comprehension, [Student] scored a level 3 (509) and is developing proficiency with below-grade informational texts in skills such as demonstrating understanding of key ideas and details and using text features to locate information.

\*What specific skill does the student need to learn?: 5.RI: Reading-Informational Text: By the end of the IEP cycle, [Student] can ask and answer questions and identify elements of informational text at the 5th grade level in 2 out of 3 opportunities as measured by iReady & Curriculum based measures.

Math: Area of concern (Accommodations will be provided)

\*What specific skills can the student do and at what level/rate?:

Strengths: [Student] is strong in the area of Measurement and Data.

Data/Progress Monitoring: [Student] scored overall 466 (level 5) on an iReady math diagnostic 1/8/20. [Student] scored the following in different domains: Algebra and algebraic thinking, level 6; Geometry, level 5; Measurement and data, level 4; Numbers and operations, level 3.

\*What specific skill does the student need to learn?: [Student] will have math accommodations to support [Student's] growth in this area.

Written Language: Not an area of concern

(Ex. D44 at 3-4.)

65. The May 2021 IEP section concerning present level of developmental and functional performance contained the following discussion of Student's needs:

Study Skills: Area of concern (related Service will be provided)

\*What specific skills can the student do and at what level/rate?:

Strengths: [Student] has made a lot of progress this year in finding work that needs to be completed.

[Student] is aware of how to locate work and can get some work completed independently.

\*What specific skill does the student need to learn?:

[Student] still needs support in identifying what work needs to be completed and turned in. [Student] also needs support in sticking with assignments until they are complete.

(Ex. D44 at 4.) The May 2021 IEP asserted no other areas of concern for Student. (*Id.*)

66. The May 2021 IEP contained the following response regarding how Student's disability affects involvement and progress in the general education curriculum:

[Student's] Specific Learning Disability impacts [Student's] ability to make progress in the core curriculum at the same rate and level as [Student's] peers without disabilities. [Student] requires specially designed instruction in the area of reading, as well as accommodations, in order to make adequate progress toward the core curriculum.

(Ex. D44 at 4.)

67. The May 2021 IEP stated Student's need for the following assistive technology devices: "Word processor, Word prediction, Audiobooks and textbooks, Advance organizers, Access to charts, math tools, text-to-speech, Speech-to-text[.]" (Ex. D44 at 5.) Regarding statewide standardized testing, the IEP provided for text-to-speech and a separate setting in English Language Arts and Math for seventh and eighth grade, a calculator and multiplication table in math for seventh and eighth grade, and text-to-speech and a separate setting in Science for eighth grade. (*Id.* at 6.) Regarding districtwide standardized testing, the IEP provided for a separate setting for both math and reading in both seventh and eighth grade. (*Id.* at 7.)

68. The May 2021 IEP stated the following measurable annual goals in English:

Goal:

5.RI: Reading-Informational Text

By the end of the IEP cycle, [Student] can ask and answer questions and

identify elements of informational text at the 5th grade level in 2 out of 3 opportunities as measured by iReady & Curriculum based measures.

Present Level:

[Student] received a passing grade of “C” in [Student’s] 7th grade English class 2nd trimester.

On an iReady diagnostic reading assessment in a comprehensive distance learning education setting (1/29/21), [Student] scored an overall level 4 (547). [Student’s] overall score places [Student] at the 18th percentile. [Student] has a Lexile Measure of 770.

In Informational Text Comprehension, [Student] scored a level 3 (509) and is developing proficiency with below-grade informational texts in skills such as demonstrating understanding of key ideas and details and using text features to locate information.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
5.RI.10: [Student] can read and comprehend history/social studies, science, and technical texts 2 out of 3 opportunities.	iReady; Curriculum-based measures	5/24/2022

(Ex. D44 at 8.) This represented a more advanced goal than on Student’s September 2020 IEP. (Tr. Vol. IV at 1122:17-1123:2.) Based upon Student’s current levels of achievement and progress since the last IEP, Ms. Cooke regarded this as an appropriately ambitious goal. (Tr. Vol. IV at 1121:14-1123:9.) The IEP obligated the District to provide IEP progress reports with Student’s report card. (Ex. D44 at 8.)

69. The May 2021 IEP Service Summary provided for 4200 minutes per year of specially designed instruction in reading from a special education provider in a special education setting from May 26, 2021 to May 24, 2022. It provided for 540 minutes per year of related study skills instruction from a special education provider in a special education setting during the same time period. (Ex. D44 at 9.) It also provided for the following accommodations: frequent checks for understanding; copies of classroom presentations upon Student’s request; advance organizers; access to a word processor; speech-to-text; text-to-speech; shortened assignments; audio books or textbooks; the limitation of work outside of school to 30 minutes per day, with no penalty for unfinished portions of assignments that would have taken more than 30 minutes; reduced volume of writing and copying tasks; repetition, simplification, or clarification of directions; encouraging Student to ask for clarification; access to word prediction software; access to charts and math tools; and extra time to complete tasks. (*Id.* at 9-10.)

70. During the May 25, 2021, IEP meeting, no one present suggested that the IEP should include a separate math or writing goal. (Tr. Vol. IV at 1126:3-13.)

71. On May 25, 2021, the District issued a Prior Written Notice implementing the May

2021 IEP. (Ex. D46 at 1.)

72. On June 8, 2021, Parent emailed Ms. Campbell and asked for the District to provide Student with summer access to the Barton program. Ms. Campbell responded later that day that the District could not comply with the request because the Barton program was not approved by the District. Ms. Campbell further explained that the District could only use curriculum that had passed the District's review process; "[i]t must be research-based and proved to have positive outcomes for students with disabilities." (Ex. S76 at 5.) Parent responded with an email asking what programs were available, questioning the purpose of her participation in the IEP process given the denial, and challenging the May 2021 IEP's assertion that Student had made progress, noting that Student had improved less than a grade level in reading during the school year. (*Id.* at 4-5.) Ms. Campbell responded by informing Parent that Student could use Learning Ally during the summer, providing a link for Learning Ally, inserting a graph showing Student's growth and grade level in reading, explaining that the graph showed higher than expected growth over the school year, and asking whether Parent considered enrolling Student in the District's Summer Experience. (*Id.* at 3-4.)

73. Student received the following core-subject grades for the third academic trimester of the 2020 to 2021 school year (Student's seventh grade year), ending June 9, 2021: F (Below Proficiency) in English, F in Math, F in Social Science, and B in Science. (Exs. D9 at 1, D118 at 1.)

74. When in-person instruction resumed at McLoughlin Middle School, student became more engaged with the math curriculum, but engagement remained low. (Tr. Vol. III at 842:25-843:4, 848:22-849:5, 868:10-13.) Student's F in Math resulted from turning in assignments that were only 40 to 50 percent complete and not meeting the standards for a higher letter grade. (*Id.* at 843:12-23.) When Student did engage with the math curriculum, Student did not appear unable to access the curriculum. (*Id.* at 869:6-9) But because of Student's poor rate of completing assignments, Mr. Brunner had difficulty ascertaining Student's understanding of the material taught. (*Id.* at 843:24-844:2.)

75. On August 24, 2021, the District convened an IEP meeting by video conference, which was attended by Parent, Ms. Cleveland (by then in the position of District Director of Special Education), Ms. Cooke, Joshua Brown, Mr. (David) Brown, Mr. Brunner, Mr. Kirkpatrick, and Mr. Miracle. (Exs. D50 at 1, D51 at 1, D201 at 1.) Parent had two of her cousins join her in the video conference. (Ex. D53 at 1.)

76. The August 24, 2021, IEP meeting was convened at Parent's request. (Tr. Vol. IV at 1127:1-10.) During the meeting, Parent requested additional accommodations for Student based upon her belief that the services and accommodations currently provided were not effective. One of the accommodations requested by Parent was one-on-one support for Student. (Ex. D51 at 3-4.) The IEP team discussed all of the accommodations requested by Parent, including the request for one-on-one support. (*Id.* at 2-4.)

77. During the August 24, 2021, IEP meeting, Parent also requested a new full evaluation of Student. (Ex. D51 at 4.) Ms. Cleveland informed Parent that the District would



respond to this request in writing within two weeks. (*Id.*)

78. During the August 24, 2021 IEP meeting, Parent stated that Student had difficulty with reading but not with math. Ms. Cleveland asked Ms. Cooke to describe how reading instruction was provided in the special education classroom. Ms. Cooke explained that she had Student read material out loud, after which Ms. Cooke would check for understanding, and that they worked together on assignments. Ms. Cooke stated that twice per week Student received targeted instruction in reading using iReady lessons to build specific skills. Ms. Cleveland then reminded Parent that the iReady curriculum could be accessed at home as a way for Parent to support Student’s learning without having to know or understand the subject matter in Student’s curriculum. (Ex. D51 at 2; Tr. Vol. VI at 1863:21-1864:8.) Ms. Cooke later told Parent that she checks with students regularly to see where they need help. She also recommended the use of Learning Ally, “a text to speech program that highlights text as it is read to students[] by a human.” (Ex. D51 at 3.) Ms. Cleveland explained the advantage of having Student listen to someone read fluently. (*Id.*)

79. During the August 24, 2021 IEP meeting, no one suggested changing Student’s IEP goals or adding a math or writing goal to Student’s IEP. (Ex. D51 at 4; Tr. Vol. IV at 1129:4-10, Vol. VI at 1861:10-1862:24, 1865:4-12.) This IEP meeting resulted in an Amended version of the May 2021 IEP. (Ex. D50 at 1.)

80. The Amended May 2021 IEP listed the same strengths of student as the May 2021 IEP, with the added comment, “8/24/21 [Parent] stated that she did not have any other strengths, interests, or preferences to add to this section.” (Ex. D50 at 2.)

81. The Amended May 2021 IEP listed the following as Parent’s concerns:

[Parent] is very concerned about [Student’s] progress in reading. She is worried that [Student] will not be ready for the pace and difficulty of reading required for high school classes.  
8/24/21 [Parent] says it is her opinion that what is put in place isn’t helping, that [Student] isn’t making progress, and is requesting that accommodations be put in place.

(Ex. D50 at 2.)

82. The Amended May 2021 IEP made changes to the accommodations listed in the May 2021 IEP as follows:

<b>Accommodation in May 2021 IEP</b>	<b>As Amended in Amended May 2021 IEP</b>
Copies of classroom presentations upon Student’s request	Paper copy of class presentations provided in advance; paper copies of notes and assignment instructions provided when available

(Exs. D44 at 9, D50 at 9.) The Amended May 2021 IEP also added the following accommodations: a break card for Student to use when overwhelmed; weekly school-to-home email about Student's progress; checklists for assignment completion; encouraging initiation of tasks; and a separate setting for summative assessments, arranged by general education teacher with special education teacher, as needed. (Exs. D44 at 9-10, D50 at 8-10.) All of the changes to the accommodations in the IEP resulted from requests from Parent and were adopted after discussion by the IEP team on August 24, 2021. (Ex. D51 at 2-4.)

83. The Amended May 2021 IEP made no other changes to the May 2021 IEP. (Exs. D44 at 3-12; D50 at 2-12.)

84. On August 24, 2021, the District issued a Prior Written Notice denying Parent's requests for one-on-one supports—a District staff person assigned to accompany Student throughout Student's school day—and a new comprehensive evaluation. (Ex. D54 at 1; Tr. Vol. VI at 13-20.) The request for one-on-one supports was rejected because Student was making progress towards IEP goals without this support, and having a staff person accompany Student throughout the day could be upsetting to Student and could foster unhealthy dependence on the staff person; the request for a new comprehensive evaluation was rejected because Student had received evaluations in 2020 and 2016, and a new evaluation would not affect Student's placement in special education. (Ex. D54 at 1; Tr. Vol. VI at 1865:25-1866:22.)

85. During the 2021 to 2022 school year (Student's eighth grade year), McLoughlin Middle School divided the school year in to four quarters. Student received the following core-subject grades for the first academic quarter of the school year: C in English, C in Pre-Algebra, D in Social Science, and A in Science. (Ex. D118 at 1.)

86. During Student's eighth grade year, Student showed a lack of engagement with math class instruction. Student did not typically participate, and showed, at most, "half engagement," often talking with friends or putting his/her head down on a desk during class rather than focusing on class materials. (Tr. Vol. III at 848:22-849:5.) This lack of engagement negatively affected Student's ability to engage with the curriculum. (Tr. Vol. III at 849:6-9.)

87. During the 2021 to 2022 school year (Student's eighth-grade year), student showed much lower engagement with Ms. Cooke's specially designed instruction than Student had the prior year. (Tr. Vol. IV at 1234:24-1235:25.)

88. During the 2021 to 2022 school year (Student's eighth-grade year), Ms. Cooke provided specially designed instruction that included the following: practice making inferences, reading and discussing passages from English curriculum together, and having student read aloud while Ms. Cooke instructed on phonics strategies. (Tr. Vol. IV at 1177:2-1179:20.) Ms. Cooke also had Student utilize the Read Naturally Live program. (Ex. S61 at 1-6; Tr. Vol. I at 148:6-8, Vol. IV at 1260:21-1261:17, 1282:16-24.)

89. At or near the beginning of the 2021 to 2022 school year, Parent began sending a daily checklist to school with Student to complete and have each teacher sign. (Exs. D116 at 2, S69 at 1; Tr. Vol. VI at 1901:7-10.) The checklist asked whether classwork was assigned and completed, whether Student understood the classwork and asked for help, whether homework was assigned, whether Student requested class notes and the shortening of assignments, and whether Student sought help in the special education classroom. (Ex. S69 at 1-2.)

90. On or about September 15, 2021, Parent submitted a letter to the District expressing her lack of confidence in Ms. Cooke's understanding of Student's disability and Ms. Cooke's ability to teach Student. (Ex. D116 at 2.) Parent complained that

[n]ot once have I been given a clear plan or program (that is shown to work with dyslexic children such as [Student]) [or] anything that special education is doing to work with [Student] [to] teach [Student] the tools that are needed in an education environment[,] or have been given any indication you were helping [Student] with these things. [iReady] has been brought up many times; [iReady] is not a proven system to teach [Student] these things.

(*Id.* at 3.) Parent asserted that the District's failure to provide adequate help with reading was "setting [Student] up to fail" in high school. (*Id.*)

91. In September 2021, Student received a scaled score of 522 on an iReady diagnostic reading assessment, placing student at the third-grade level. Student placed in the 14th percentile on a fifth-grade level EasyCBM Fluency (reading) assessment. Student placed in the 17th percentile on a sixth-grade level writing assessment. (Ex. D15 at 2-3.)

92. By October 2021, Student's iReady reading assessment score was back to fourth-grade level, with a scaled score of 548. (Ex. D15 at 2.) That month, Student took multiple EasyCBM reading assessments: Student placed in the 47th percentile on a sixth-grade level Comprehension assessment, 37th percentile on an eighth-grade level Comprehension assessment, and 11th percentile on a seventh-grade level Fluency assessment. (*Id.*)

93. On October 11, 2021, the District convened an IEP meeting, which was attended by Parent, Mr. Brown, Ms. Cooke, Ms. Cleveland, Ms. Cross, Parent's attorney Kim Sherman, Ph.D., and Rich Cohn-Lee, counsel for the District. (Ex. D57 at 1; Tr. Vol. IV at 1057:10-13.) Student eventually joined the meeting. (Exs. D56 at 4, S40 at 2.) Ms. Cooke had previously shared a draft IEP with Parent for review on October 7, 2021. (Ex. D203 at 1.)

94. At the October 11, 2021, IEP meeting, Parent made several requests for additions or changes to the IEP:

- That the IEP provide more robust interventions to address Student's dyslexia. (Ex. D56 at 1.)
- A new full academic assessment for Student, including in the areas of reading, writing, and math, based upon the contention that Student's present levels were not fully known in these areas. Ms. Cleveland denied this request based upon the existence of the 2020

evaluation from Dr. Fry. (Ex. D56 at 1.)<sup>8</sup>

- That all raw scores reported to Parent be accompanied by an interpretation of the grade level of the results. Ms. Cleveland agreed to do so. (*Id.* at 2.)
- That Student be tested only at the eighth-grade level and that all Student’s goals be written at the eighth-grade level. Ms. Cleveland responded that a student with goals at grade level would not typically require an IEP or specially designed instruction. (*Id.*; Tr. Vol. VI at 1878:18-1879:25.) Ms. Cleveland also resisted changing the goals to eighth-grade level because that would make it difficult to compare current levels to prior levels evaluated at lower grade levels. (Tr. Vol. VI at 1875:6-1877:10.)
- That the IEP set goals within a mixed-dyslexia, research-supported, Orton-Gillingham-type curriculum. Ms. Cleveland responded that Orton-Gillingham is a strategy or approach, not a curriculum. (Ex. D56 at 2.)
- That Student’s specially designed reading instruction be in the Barton program, which Parent had researched and believed would address all Student’s shortcomings, and that Student receive a full class period of Barton program instruction per school day. Mr. Cohn-Lee suggested that it would be unwise to require a specific program in the IEP, which could limit the District’s flexibility to move to more effective programs as needed. (*Id.* at 3.)
- That Student receive a full period each day outside the general education classroom for self-organization. Ms. Cleveland noted that any additional periods devoted to special needs would remove a period from the general education classroom. (*Id.*)
- That teacher-produced notes be provided electronically in advance of classes, with the words “when available” stricken from the IEP. Ms. Cross explained that teachers posted assignments on Canvas, usually by the end of the day of class rather than prior to class, but that they do not post lesson plans. (*Id.* at 4, 6.)

95. At the October 11, 2021, IEP meeting, Ms. Cleveland informed Parent of the potential availability of Recovery Services—summer instruction with guaranteed special educators provided to compensate for the academic impact of the COVID-19 pandemic—and asked whether Parent would like Student to be considered for Recovery Services. (Ex. D56 at 2; Tr. Vol. I at 103:11-24.) Parent requested that Student be placed on the list for consideration for Recovery Services. (Ex. D56 at 2.)

96. During the October 11, 2021, IEP meeting, Parent also requested that the District provide a laptop computer (not a Chromebook) for Student to use in the Lexercise program outside school hours, for which Student had received a grant. (Ex. D56 at 3.)

97. During the October 11, 2021, IEP meeting, Parent also requested that the District provide the data of Student’s progress in graphs that are easier to understand. Ms. Cleveland agreed to provide progress information in a more representative form and later provided them to Parent. (Ex. D56 at 4; Tr. Vol. VI at 1989:15-1990:2.)

98. During the October 11, 2021, IEP meeting, Ms. Cleveland explained to Parent that in

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<sup>8</sup> It was either at the October 11, 2021, IEP meeting or in the email communications leading up to the meeting that the District received its first request for Student to be specifically evaluated in math and writing. (Tr. Vol. VI at 1877:11-1878:5.)

the special education classroom, Ms. Cooke was using strategies catered to Student's dyslexia and included specially designed instruction such as iReady and Learning Ally. (Ex. D56 at 3.)

99. When Student arrived at the meeting, Parent asked Student how much work was completed daily in the special education classroom. Student responded that approximately one assignment was completed per day. When asked if Ms. Cooke was available to help Student when needed, Student responded, "Pretty much, yeah." (Ex. D56 at 3.)

100. During the October 11, 2021, IEP meeting, the IEP team also discussed the accommodations Student was receiving, and IEP team members provided the following information:

- Ms. Cooke explained that, throughout Student's time at McLoughlin Middle School, Student had access and knowledge to use text-to-speech software in the form of the Snap and Read extension in Chrome. At Parent's request, Student also received permission to use the Speechify application on Student's smartphone as it was not available on District Chromebooks. (Ex. D56 at 4.)
- Ms. Cleveland explained the accommodations "Frequent checks for understanding," "Encourage student to ask for clarification," and offered to provide Parent with a list of definitions of accommodations when Parent asked for an explanation of "Advance organizer." (*Id.* at 5.)
- Mr. Brown explained that he spoke with all of Student's general education teachers before the meeting, and that all stated they were shortening Student's assignments and making daily checks with Student to make sure Student understood the classroom material and had all materials needed for assignments. (*Id.* at 6.)

101. The October 11, 2021, IEP meeting resulted in a refined draft IEP but not a completed new IEP; the draft IEP based upon the meeting discussion was shared with Parent after the meeting. (Exs. D55 at 1-17, D56 at 7, D204 at 1; Tr. Vol. IV at 1065:11-1066:5.)

102. The October 2021 Draft IEP listed the following in the "Strengths of Student" section:

Strengths: [Student] is very social and has many friends at school. This year overall [Student] has been much more engaged in class for in-person instruction. [Student] is a hard worker when [Student] puts [Student's] mind to it and is well-rested [Student] can get quite a bit of work completed during a class period. [Student] is working on ways to be responsible for [Student's] own work. [Student] is regularly checking school assignments and practicing keeping track of \* \* \* work for each class. [Student] regularly does well in \* \* \* science class here at MAC [McLoughlin Middle School], and states that Mr. Miracle is [Student's] favorite teacher.

According to standardized testing, [Student] demonstrates strengths on measures of Comprehension-Knowledge, Fluid Reasoning, Short-Term Working Memory, and Cognitive Processing Speed and Auditory Processing.

[Parent] states that [Student] tries to help out at home a lot, and sometimes tries to parent [Student's] younger brother.

Interests: [Student] likes science a lot, and is good at and enjoys art. Because [Student] is friendly and social [Student] has friends [Student] enjoys hanging out with during the day at MAC. [Student] likes to play virtual reality games and visit California.

Preferences: Representing \* \* \* work in an artistic or concrete way, working independently or with a partner, quiet work space, paper and pencil work instead of online assignments. [Student] has also stated that [Student] feels [Student] does best on work when [Student] has one-on-one help.

(Ex. D55 at 2.)

103. The October 2021 Draft IEP listed the following as Parent's concerns:

READING: Parent is concerned that [Student's] dyslexia has not been appropriately addressed. District's March 5, 2020 evaluation by Dr. Jeffrey Fry found [Student] to be moderately or significantly below same-aged peers in several critical reading skills and recommends "using a multi-sensory type of Orton-Gillingham program, coupled with a fluency model such as Read Naturally, and the computerized models of Read 180." District has not provided any evidence that those recommendations have been implemented.

Furthermore, District's "present levels of performance" assertion that [Student] received a "C" in [Student's] 7th grade English class 2nd semester ignores the teacher's statement that the teacher assigned a "C" only because [Student] is on an IEP, and that in fact [Student] had not passed [Student's] English class because [Student] had not completed sufficient work for the teacher to compute a grade. The letter grade of "C" was not "based on a reduced amount of work."

Finally, Parent requests that all statements of assessment scores be accompanied with a grade level equivalent so that Parent can understand [Student's] growth, or lack of growth, over time even if the assessments are not the same over time.

MATH: [Student's] math skills continue to be measured at below grade level expectations. [Student] scored in the 17th percentile of the Smarter Balanced State math assessment in 5th grade. Medford School district has not assessed [Student's] full academic achievement levels with a standardized assessment such as the KTEA in more than four years. Parent is concerned that [Student's] school team is not fully informed on the areas of strengths and weaknesses in [Student's] math skills and requests a full assessment to occur this school year (2021-2022).

ACCOMMODATIONS: Parent is concerned that needed accommodations, including those accommodations listed in the May 25, 2021 IEP and in Dr. Fry's March 5, 2020 evaluation report, are not being implemented daily and consistently in all of [Student's] classes, including reduced workload for classwork. Parent specifically requested that [Student] receive teacher-provided class notes at the beginning of class (a recommendation also made by Dr. Fry); this request for accommodation was refused. Additionally, [Student's] special education teacher requested that Parent assist [Student] at home with missing math assignments but none of the assignments were accompanied by instructions and examples or class notes. Parent explained that she was unable to help [Student] with the math assignments without those tools. To date, Parent has not received instructions, examples, or the class notes for homework. [Student] has also not received class notes for [Student's] courses (neither before the class [n]or after). Finally, needed accommodations should be provided by the teachers to [Student] without [Student] needing to request them - teachers or educational assistants should check with [Student] that [Student] understands coursework by asking [Student] to complete a portion of the assignment, or to explain [Student's] understanding of the assignment rather than requiring [Student] to ask for clarification, or asking simple Yes/No questions (Do you understand the assignment).

(Ex. D55 at 2.)

104. For present level of academic performance, the October 2021 Draft IEP listed the most recent statewide or districtwide test results as curriculum-based tests from September 23, 2021, of 522 or third-grade equivalent in reading and 471 or fifth-grade equivalent in math. (Ex. D55 at 2-3.)

105. The October 2021 Draft IEP section concerning present level of academic performance contained the following discussion of Student's academic needs:

Reading: Area of concern (goal will be developed)

\*What specific skills can the student do and at what level/rate?:

Strengths: [Student] shows relative strengths in the areas of Vocabulary, Literature Comprehension and oral fluency.

On an 8th grade level Easy CBM passage reading fluency assessment 10/21/21 in the special education setting, [Student] read 75 words correct per minute. This was read by [himself/herself]. Any words [Student] did not self-correct the teacher read and marked them incorrect per standard scoring instructions. This places [Student] at the 6th percentile for fall of 8th grade.

On a 7th grade level Easy CBM passage reading fluency assessment 10/1/2021 in the special education setting, [Student] read 97 words correct per

minute. This was read by [herself/himself]. Any words [Student] did not self-correct the teacher read and marked them incorrect per standard scoring instructions. This score is at the 11th percentile for fall.

On an 8th grade level EasyCBM Comprehension assessment given in October in the special education setting, read by [Student], [Student] placed at the 37th percentile.

On a 6th grade level Easy CBM reading comprehension assessment 10/4/21 in the special education setting, [Student] scored 65% which is the 45th percentile for fall. This means [Student] scored higher than 45 out of 100 6th graders on this assessment.

On an iReady diagnostic reading assessment in a special education setting (9/23/21)[, Student] scored an overall 3rd grade level (522). [Student's] overall score places [Student] at the 9th percentile, meaning out of 100 students [Student] reads at a higher level than 9 of them. [Student] exhibits a Lexile Measure of 660L in this assessment which is approximately at the 3rd grade level, 7th month. Observational data suggests that [Student] may have rushed through the assessment as [Student] completed 70% of the assessment within 20 minutes.

On the same iReady Assessment given 9/23/21 in the special education setting, [Student] tested out of Phonological Awareness, Phonics, and High Frequency words. These are the 3 foundational domains in the diagnostic assessment. Testing out in these 3 domains demonstrates that [Student] has the ability to distinguish individual sounds in spoken words, has accuracy in decoding, and accurately recognizes frequently occurring words. In Vocabulary, [Student] scored at a 4th grade level (551) and can use general academic and domain-specific vocabulary, and understand word relationships. In Literature Comprehension, [Student] scored at 3rd grade level (511) and can make inferences, compare and contrast, and retell plot events. In Informational Text Comprehension, [Student] scored at a 3rd grade level (506) and can demonstrate understanding of key ideas and details and identify reasons that support an author's point.

The Feifer Assessment of Reading (as written in the evaluation report dated 3/5/2020) indicates findings that [Student] is significantly below average in overall reading speed and rapid recognition of words. [Student] was moderately below average in [Student's] ability to categorize the acoustical properties of words, understand the sequential arrangement of sound properties embedded within words, and deconstruct words into natural syllable breaks. Testing also suggests poor rapid word retrieval skills and deriving meaning from printed material.

Index/Subtest Standard, Score, PR 95%CI, Classification



Phonemic Awareness 78 - - Below Average  
Nonsense Word Decoding 74 - - Below Average  
Isolated Word Reading Fluency 64 - - Significantly Below Average  
Oral Reading Fluency 61 - - Significantly Above Average  
Positioning Sounds 99 - - Average  
Phonological Index 71 3 66 - 76 Moderately Below Average  
Rapid Automatic Naming 57 - - Significantly Below Average  
Verbal Fluency 82 - - Below Average  
Visual Perception 79 - - Moderately Below Average  
Irregular Word Reading Fluency 50 - - Significantly Below Average  
Orthographical Processing 58 - - Significantly Below Average  
Fluency Index 51 <1 44 - 58 Significantly Below Average  
\* \* \* , 10/15/19, Page 4  
Mixed Index 59 <1 54 - 64 Significantly Below Average  
Semantic Concepts 82 - - Below Average  
Word Recall 78 - - Moderately Below Average  
Print Knowledge - - - -  
Morphological Processing 67 - - Significantly Below Average  
Silent Reading Fluency Comp 89 - - Average  
Comprehension Index 73 4 65 - 81 Moderately Below Average  
FAR Total Index 60 <1 55 - 65 Significantly Below Average

Instructional strategies to support [Student] include:

listening previewing  
repeated reading  
simultaneous or choral reading  
stop and start technique  
directional questions  
narrative retelling  
read aloud  
classroom discussions

As reported on the evaluation report by Dr. Fry, “If these results are commensurate with typical, daily reading performance, then the findings suggest mixed dyslexia, which involves a combination or poor phonological processing skills, slower rapid and automatic word-recognition skills, inconsistent language comprehension skills, and odd error patterns during reading. Although [Student] demonstrated overall difficulty on the comprehension index, [Student] was able to score only slightly below average on the silent reading comprehension task, which may suggest that [Student] used semantic cues to facilitate passage-comprehension skills.”

\*What specific skill does the student need to learn?:

6.RL: Reading-Literature - By the end of the IEP cycle, [Student] can ask and answer questions and identify elements of literature at the 6th grade level.

Phonics and Word Recognition:

RF.5.3: Phonics and Word Recognition - By the end of the IEP cycle, [Student] will know and apply 5th grade-level phonics and word analysis skills in decoding words, with 80% accuracy of unfamiliar multisyllabic words, as measured by curriculum-based assessments.

Math: Area of concern (goal will be developed)

\*What specific skills can the student do and at what level/rate?:

Strengths: [Student] shows relative strengths in the areas of Number and Operations and Geometry.

On an iReady diagnostic math assessment in a special education setting (9/14/21), [Student] scored an overall level 5 (471). This is at the 20th percentile, which means that out of 100 students, [Student] scored better than 20 others.

In Number & Operations, [Student] scored at a 6th grade level, and can divide multi-digit whole numbers, and express fractions as percents and percents as fractions.

In Algebra & Algebraic Thinking, [Student] scored at a 4th grade level, and can select the proper operation to solve real-world and mathematical problems, and solve problems involving sharing equal groups, including identifying the remainder.

In Measurement & Data, [Student] scored at a 4th grade level, and can measure capacity in ounces, cups, quarts, and gallons and liquid volume in milliliters and liters, using appropriate tools, such as measuring cups and beakers with a measurement scale, and show that the area is the same as would be found by multiplying the side lengths, and construct and interpret scaled bar graphs and scaled picture graphs.

In Geometry, [Student] scored at a 6th grade level, and can use the first quadrant of the coordinate plane to represent and solve real-world and mathematical problems, and find the length of a side of a polygon using two points with the same first coordinate or the same second coordinate.

\*What specific skill does the student need to learn?:

6.EE: Expressions and Equations

By the end of the IEP cycle, [Student] can demonstrate an understanding of expressions and equations at the 6th grade level.

Recovery Services:

[Student] participated in comprehensive distance learning and was provided services as outlined on [Student's] IEP, along with additional supports in completion of work. As [Student] has started this school year, the team has

noticed that [Student] may not have reached expected growth in the area of math. This may be related to access to general education curriculum during comprehensive distance learning. [Student] will receive Recovery Services as a related service.

Written Language: Area of concern (goal will be developed).

Strengths: [Student] is very creative and writes interesting stories for open-ended activities.

\*What specific skills can the student do and at what level/rate?:

On a timed AIMSWeb writing assessment in the special education setting 9/29/21, [Student] scored 23 correct word sequences per minute, which is the 17th percentile for 6th grade, meaning [Student] scored higher than 17 out of 100 6th grade student on this assessment. In addition, [Student] can have trouble with the amount of writing that is expected at the middle school level; the time [Student] needs to decode information can tire him. [Student] is able to write longer and more complete responses when using a word processor or a speech-to-text app.

\*What specific skill does the student need to learn?:

6.W.04/05/06 Writing-Planning/Editing - By the end of the IEP cycle, [Student] can demonstrate planning and editing at the 6th grade level.

Recovery Services:

[Student] participated in comprehensive distance learning and was provided services as outlined on [Student's] IEP, along with additional supports in completion of work. As [Student] has started this school year, the team has noticed that [Student] may not have reached expected growth in the area of written language. This may be related to access to general education curriculum during comprehensive distance learning. [Student] will receive Recovery Services as a related service.

(Ex. D55 at 3-5.)

106. The October 2021 Draft IEP section concerning present level of developmental and functional performance contained the following discussion of Student's needs:

Study Skills: Area of concern (related service and accommodations will be provided)

Strengths: In the special education setting, in 2 out of 3 opportunities, [Student] works hard on assignments and completes them independently.

\*What specific skills can the student do and at what level/rate?:

[Student] regularly completes work for general education classes but does not turn it in; [Student] struggles with organization and follow through. [Student] particularly struggles in this area with work from English and math.

\*What specific skill does the student need to learn?:

Work organization skills to be able to keep track of work and turn it in, and strategies to remember to turn work in when it is complete.

(Ex. D55 at 5.) The October 2021 Draft IEP contained no other areas of concern. (*Id.*)

107. The October 2021 Draft IEP contained the following response regarding how Student's disability affects involvement and progress in the general education curriculum:

[Student's] Specific Learning Disability in the area of reading; specifically phonemic awareness and orthographic difficulties, impacts [Student's] ability to make progress in the core curriculum at the same rate and level as [Student's] peers without disabilities. [Student] demonstrates a cognitive weakness in the area of Long Term Retrieval which is the ability to store and organize new information in long-term memory and later fluently retrieve the stored information through some type of association.

[Student] requires specially designed instruction in the area of reading, written language, and mathematics, as well as accommodations, in order to make adequate progress toward the core curriculum.

(Ex. D55 at 5-6.)

108. The October 2021 Draft IEP stated Student's need for the following assistive technology devices: word processor, word prediction software, audiobooks and textbooks, access to charts, math tools, text-to-speech, speech-to-text, and a break card. (Ex. D55 at 7.) Regarding statewide standardized testing, the IEP provided for the same accommodations in the Amended May 2021 IEP. (*Id.* at 8.) Regarding districtwide standardized testing, the IEP provided for the tests to be taken with a small group of students in a familiar location separate from the general education classroom. (*Id.* at 9.)

109. The October 2021 Draft IEP stated the following measurable annual goals in reading, with progress to be reported with Student's regular report cards:

Goal:

6.RL: Reading-Literature - By the end of the IEP cycle, [Student] can ask and answer questions and identify elements of literature that [Student] reads [himself/herself] at the 6th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures and district assessments.

Present Level:

On an 8th grade level EasyCBM Comprehension assessment given in October in the special education setting, [Student] placed at the 37th percentile. [Student] placed at the 45th percentile on the 6th grade level EasyCBM Comprehension assessment given in the same setting.

On an iReady diagnostic reading assessment in a special education setting (9/23/21)[, Student] scored an overall level 3 (522). [Student's] overall score places [Student] at the 9th percentile, meaning out of 100 students [Student] reads at a higher level than 9 of them. [Student] exhibits a Lexile Measure of 660L in this assessment. Observational data suggests that [Student] may have rushed through the assessment as [Student] completed 70% of the assessment within 20 minutes.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
6.RL.03: [Student] can describe how a story's plot unfolds as it moves towards resolution 2 out of 3 opportunities.	Curriculum-based measures, iReady	10/07/22
6.RL.10: [Student] can read and comprehend literature with scaffolding as needed 2 out of 3 opportunities.	Curriculum-based measures, iReady	10/07/22

\* \* \* \* \*

Goal:

Phonics and Word Recognition:  
CCSS.ELA-LITERACY.RF.5.3

By the end of the IEP cycle, [Student] will know and apply 5th grade-level phonics and word analysis skills in decoding words, with 80% accuracy of unfamiliar multisyllabic words, as measured by curriculum-based assessments.

Present Level:

On a 7th grade level Easy CBM passage reading fluency assessment 10/1/2021 in the special education setting, [Student] read 99 words per minute with 2 errors, for a total of 97 correct words per minute. This score is at the 11th percentile for fall, which means [Student] read this passage more fluently than 11 7th graders out of 100.

On an iReady diagnostic reading assessment in a special education setting (9/23/21) [Student] scored an overall level 3 (522). [Student's] overall score places [Student] at the 9th percentile, meaning out of 100 students [Student] reads at a higher level than 9 of them. [Student] exhibits a Lexile Measure of 660L in this assessment. Observational data suggests that [Student] may have rushed through the assessment as [Student] completed 70% of the assessment within 20 minutes. [Student] tested out of Phonological Awareness, Phonics, and High Frequency words. These are the 3 foundational domains in the diagnostic assessment. Testing out in these 3 domains demonstrates that

[Student] has the ability to distinguish individual sounds in spoken words, has accuracy in decoding, and accurately recognizes frequently occurring words.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
CCSS.ELA-LITERACY.RF.5.3.A [Student] will use knowledge of letter-sound correspondences to read accurately unfamiliar multisyllabic words out of context with 80% accuracy.	curriculum-based measures	10/10/2022
CCSS.ELA-LITERACY.RF.5.3.A [Student] will use knowledge of syllabication patterns to read accurately unfamiliar multisyllabic words out of context with 80% accuracy.	curriculum-based measures	10/10/2022
CCSS.ELA-LITERACY.RF.5.3.A [Student] will use knowledge of morphology (e.g., roots and affixes) to read accurately unfamiliar multisyllabic words out of context with 80% accuracy.	curriculum-based measures	10/10/2022
CCSS.ELA-LITERACY.RF.5.3.A [Student] will use combined knowledge of all letter-sound correspondences, syllabication patterns, and morphology (e.g., roots and affixes) to read accurately unfamiliar multisyllabic words in context, with 80% accuracy.	curriculum-based measures	10/10/2022

(Ex. D55 at 10-12.)

110. The October 2021 Draft IEP stated the following measurable annual goals in math:

Goal:

6.EE: Expressions and Equations

By the end of the IEP cycle, [Student] can demonstrate an understanding of expressions and equations at the 6th grade level with 75% accuracy.

Present Level:

On an iReady diagnostic math assessment in a special education setting (9/14/21), [Student] scored an overall level 5 (471). In Algebra & Algebraic Thinking, [Student] scored at level 4, and can select the proper operation to solve real-world and mathematical problems, and solve problems involving sharing equal groups, including identifying the remainder.

<u>Mastery Criteria or Short-Term</u>	<u>Measurement</u>	<u>Anticipated</u>
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<u>Objective</u>	<u>Method</u>	<u>Date</u>
6.EE.02a: [Student] can write expressions with numbers and with letters standing for numbers with 75% accuracy.	Curriculum-based measures, iReady, Work Sample	10/07/22
6.EE.06: [Student] can use variables to represent numbers in solving real-world mathematical problems with 75% accuracy.	Curriculum-based measures, iReady, Work Sample	10/07/22

(Ex. D55 at 12.)

111. The October 2021 Draft IEP stated the following measurable annual goals in written language:

Goal:

6.W.04/05/06 Writing-Planning/Editing - By the end of the IEP cycle, [Student] can demonstrate planning and editing at the 6th grade level.

Present Level:

On a timed AIMSWeb writing assessment in the special education setting 9/29/21, [Student] scored 23 correct word sequences per minute, which is the 17th percentile for 6th grade, meaning [Student] scored higher than 17 out of 100 6th grade students on this assessment.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
6.W.04: [Student] can produce coherent writing appropriate to task, purpose, and audience at the paragraph level in 2 out of 3 opportunities.	Curriculum-based measures, Writing sample	10/07/22
6.W.05: [Student] can develop writing by planning, revising, editing, or * * * trying new approach at the paragraph level in 2 out of 3 opportunities.	Curriculum-based measures, Writing sample	10/07/22

(Ex. D55 at 12.)

112. The October 2021 Draft IEP Service Summary provided for 800 minutes per month of specially designed instruction in reading from a special education teacher in a special education setting from October 11, 2021 to June 9, 2022; 600 minutes per month of specially designed instruction in math from a special education teacher in a special education setting from October 11, 2021 to June 9, 2022; 400 minutes per month of specially designed instruction in

written language from a special education teacher in a special education setting from October 11, 2021 to June 9, 2022; 400 minutes per month of specially designed instruction in reading from a special education teacher in a special education setting from August 29, 2022 to October 7, 2022; 300 minutes per month of specially designed instruction in math from a special education teacher in a special education setting from August 29, 2022 to October 7, 2022; and 200 minutes per month of specially designed instruction in written language from a special education teacher in a special education setting from August 29, 2022 to October 7, 2022. (Ex. D55 at 13.) It also provided for the following accommodations: access to a word processor; advance organizers; checking Student's notebook/binder and organizational system; reduced volume of writing and copying tasks; frequent checks for understanding; speech-to-text; text-to-speech; assignments shortened in advance of being given to Student; copy of classroom notes and assignment models when necessary for assignment completion; audio books, including textbooks when available; access to charts and math tools; extra time to complete tasks; repetition, simplification, or clarification of directions; access to word prediction software; a break card for Student to use when overwhelmed; weekly school-to-home email about Student's progress; and encouraging initiation of tasks. (*Id.* at 14-15.)

113. On October 12, 2021, the District sent Parent a Parent/Guardian Consent for Individual Evaluation form, which requested Parent's written request to administer the following assessments to Student: the Wechsler Individual Achievement Test, Third Edition; the Wechsler Intelligence Scale for Children, Fifth Edition; the Behavior Rating Inventory of Executive Functions; and the Multidimensional Anxiety Scale for Children, Second Edition. (Ex. D58 at 1-2.)

114. On October 14, 2021, the District issued a Prior Written Notice implementing specially designed instruction in math and written language per the October 11, 2021, IEP meeting, pending completion of a new IEP. (Ex. D59 at 1.)

115. While Student's IEP remained unfinalized, Ms. Cooke provided monthly reports to Parent of Student's progress on diagnostic evaluations. (Tr. Vol. IV at 1202:22-1203:9, 1260:9-1261:17.)

116. On October 22, 2021, Ms. Cleveland emailed Parent a revised Consent to Evaluate with the following explanation:

- a. Upon review, our school psychologist is seeking consent for portions of the Wechsler Intelligence Scale for Children (WISC), the Wechsler Individual Achievement Test (WIAT), Feifer Assessment of Math (FAM), Becks Depression Inventory (BDI), Multidimensional Anxiety Scale for Children (MASC), and Behavior Rating Inventory of Executive Functions (BRIEF) as we believe this will give the team the most detailed information to support instruction.
- b. The WJ Achievement-IV is not meant to be a progress monitoring tool. These tests are broad, global instruments that were developed to measure a student's skills at a specific point in time for eligibility or diagnostic purposes. They were never designed[,] nor intended, to be used to measure



progress from year to year. They are not sensitive to the small incremental changes that occur during the school year.

(Ex. D205 at 1.) The email also had the following attachments: definitions of accommodations from the IEP; assessment results with grade levels “as applicable;” an agreement for Student’s use of Speechify at school; a laptop checkout form to allow Student to use a District laptop at home for the remainder of the school year; a revised draft of the IEP; and a Prior Written Notice approving Student’s receipt of COVID-19 Recovery Services based on the observation that Student did not achieve expected growth in written language during remote instruction. (*Id.*; Ex. D60 at 1.)

117. On October 28, 2021, Parent returned the signed Parent/Guardian Consent for Individual Evaluation form. (Ex. D58 at 4.) Parent wrote the following on the form after indicating her consent to the requested assessments:

I [consent] to administration of a full WISC[,] not to “portions of the Wechsler Intelligence Scale for Children (WISC)” as described in the email from [Michele] Cleveland on October 22, 2021. I restate my request that [Student] be evaluated with the same evaluation protocols that were used in 2016 and disagree that a five-year gap between administering the Woodcock Johnson Test of Achievement-IV (2016 to 2021) serves as a progress monitoring tool, as asserted by Ms. Cleveland in the October 22, 2021 email.

(Ex. S15 at 3.)

118. On January 18, 2022, Student received a scaled score of 552 on an iReady diagnostic reading assessment, placing student at the fourth-grade level. (Exs. D15 at 2, D124 at 1.) Also during January 2022, Student received a scaled score of 492 on an iReady diagnostic math assessment, placing Student at the sixth-grade level. (Ex. D15 at 5.)

119. Student received the following core-subject grades for the second academic quarter of the 2021 to 2022 school year (Student’s eighth grade year), ending January 20, 2022: F in English, I in Pre-Algebra, F in Social Science, and B in Science. (Exs. D11 at 1, D118 at 1.)

120. On January 21, 2022, the District issued an IEP Progress Report for Student, which indicated that Student was making adequate progress towards IEP goals. (Ex. D124 at 1-2; Tr. Vol. I at 187:9-21.) The Progress Report listed three milestones in Student’s progress towards IEP goals: first, that Student “scored 550 overall on an iReady growth check 4/27/21, growing another 3 points;” second, “[o]n an 8th grade level EasyCBM Comprehension assessment given in the special education setting” on October 20, 2021, Student “placed at the 37<sup>th</sup> percentile;” and third, “[Student’s] overall iReady reading score increased 30 points from [Student’s] fall score on an iReady reading diagnostic test 1/18/22,” with a 33-point improvement in area of Comprehension of Informational Text. (Ex. D124 at 1.) Regarding Student’s iReady performance on January 18, 2022, the IEP Progress Report did not list Student’s scaled score (552), grade level equivalent (fourth grade), or Comprehension of Informational Text score. It also did not list Student’s September iReady score of 522 (third-grade level) from which Student

had made the 30-point improvement. (*Id.*; Ex. D15 at 2.)

121. In February 2022, Student placed in the 26th percentile in an eighth grade EasyCBM Comprehension assessment. (Ex. D125 at 1.)

122. On February 10, 2022, (58 school days from the District's receipt of Parent's signed consent form) District School Psychologist Caitrin Sevcik completed a Multidisciplinary Evaluation Report for Student. (Exs. D33 at 1, D157 at 1.) Ms. Sevcik based the Evaluation upon a review of Student's file; classroom observation on February 3, 2022; the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), administered December 14, 2021; the Wechsler Individual Achievement-Fourth Edition (WIAT-IV), administered December 14, 2021; the Feifer Assessment of Mathematics (FAM), administered January 28, 2022; the Multidisciplinary Anxiety Scale for Children-Second Edition (MASC 2), based on responses from Parent and Student; the Beck youth Inventories for Children and Adolescents – Second Edition (BYI-II), based on responses from Student; and the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF2), based on responses from Parent and two of Student's teachers. (Ex. D33 at 1.) Ms. Sevcik requested medical information from Parent for use in the Evaluation, but parent did not provide any, which prevented a full understanding of Student's disabilities, such as whether the Student has depression, anxiety, ADHD, or autism. (*Id.* at 1-2; Tr. Vol. VI at 1796:14-1797:24, 1800:20-1801:7.) Ms. Sevcik decided which tests to administer based upon her professional judgment; she was not given specific instructions by the District as to what tests or test subsections to administer to Student. (Tr. Vol. VI at 1776:23-1777:13.) When Ms. Sevcik perceives the need for further testing in a certain area, she will ask for parent permission to add additional testing in that area. (*Id.* at 1799:12-1800:6.) At the completion of Student's testing, Ms. Sevcik did not believe any additional testing was required. (*Id.* at 1800:14-19.)

123. The records utilized by Ms. Sevcik for the February 2022 Evaluation Report included Student's attendance records, IEPs, report cards, statewide standardized test scores, and districtwide standardized test scores (iReady), including Student's most recent iReady assessments in reading and math from January 2022. (Ex. D33 at 2-7.) The February 2022 Evaluation Report included graphic representations of Student's iReady progress in reading and math. (*Id.* at 4-6.)

124. The February 2022 Evaluation Report summarized Student's iReady progress in reading to that point of the 2021 to 2022 school year as follows:

According to i-Ready reading diagnostic testing from 09/23/21, [Student] was working at the third grade level overall. [Student] was working on the fourth grade level for vocabulary and the third grade level for comprehension of both literature and informational text. A review of most current assessments administered 1/18/22 indicated better than typical growth with a 30 point gain. [Student] showed strength in vocabulary falling at the 6th grade level. [Student] tested out of basic reading type skills (phonological awareness, phonics and high frequency words). Performance on comprehension type tasks maintained at the 3rd grade level.

(Ex. D33 at 3.)

125. The February 2022 Evaluation Report summarized Student's iReady progress in math to that point of the 2021 to 2022 school year as follows:

According to the [iReady] math assessment from the 2020-2021 school year, [Student] was working at the overall level of 2nd grade. Diagnostic testing from 09/14/21 shows [Student] was working at a 5th grade level overall. On most current iReady math assessments dated 1/20/22, [Student] showed better than typical growth with a 21 point gain. [Student] showed growth in all strand areas and is near grade level in number and operations, algebra and algebraic thinking and geometry.

(Ex. D33 at 5.)

126. For the February 2022 Evaluation Report, Ms. Sevcik only administered the Working Memory and Processing Speed portions of the WISC-V on the following basis:

Due to [Student] having already been administered two other cognitive assessments in 2016 and 2020, only Working Memory and Processing [S]peed were evaluated. This prevents [Student] from having over[-]exposure to assessments and providing a practice effect by administering too many assessments in a short period of time. These areas may change over time, however the other three areas typically are maintained.

(Ex. D33 at 10.) Student received composite scores of 82 ("Below Average") in Working Memory and 76 ("Very Low") in Processing Speed. (*Id.*)

127. The FAM results in an overall index score as well as three targeted index scores, each related to a different type of dyscalculia (math learning disability): a Procedural Index, a Verbal Index, and a Semantic Index. (Ex. D33 at 13, 16.)

128. For the February 2022 Evaluation Report, Ms. Sevcik administered all three sections of the FAM, resulting in the following index scores: Procedural Index score of 78 (very low range); Verbal Index score of 73 (very low range); Semantic Index score of 76 (very low range); Total Index score of 72 (very low range). (Ex. D33 at 15.) The Evaluation Report concluded:

Although [Student's] scores on formal academic assessments display characteristics of a math learning disability (or dyscalculia), [Student's] classroom performance in math are not consistent with learning disability.

According to the FAM, [Student] presents with core overall math skills below grade-level expectations. There was evidence of global math delays, though [Student] does not necessarily present with a specific subtype of dyscalculia. [Student] has potential to make significant strides in math provided [Student] has access to specific targeted math intervention programs.

(*Id.* at 15-16.)

129. The WIAT-IV has 20 subtests covering the subjects of listening, speaking, reading, writing, and math. (Ex. D33 at 16.)

130. For the February 2022 Evaluation Report, Ms. Sevcik administered only the sections of the WIAT-IV related to written language skills. (Ex. D33 at 16-17.) Student achieved the following results: Spelling score of 17 (extremely low category); Written Expression score of 222 (extremely low category); Sentence Composition score of 175 (low average category); and Sentence Writing Fluency score of 62 (low average category). (*Id.* at 16.) Student's Essay Composition was evaluated as fitting the extremely low category. (*Id.* at 16-17.)

131. Based upon the responses provided by Student and Parent, the MASC-2 results for the February 2022 Evaluation Report showed that Student has slightly elevated anxiety overall compared with others Student's age. (Ex. D33 at 17-19.)

132. Based upon Student's responses, the BYI-II for the February 2022 Evaluation Report showed that Student had a much lower than average self-concept, average anxiety, moderately elevated depression, average anger, and average disruptive behavior. (Ex. D33 at 20-21.)

133. The BRIEF2 consists of three index scores: The Behavior Regulation Index (BRI), which relates the child's ability to self-inhibit and self-monitor; the Emotion Regulation Index (ERI), which "represents the child's ability to regulate emotional responses and to shift, set, or adjust to changes in environment, people, plans, or demands;" and the Cognitive Regulation Index (CRI), which "reflects the child's ability to control and manage cognitive processes and to problem solve effectively." (Ex. D33 at 22.) The BRIEF2 categorizes above-average scores (in ascending order) as mildly elevated, potentially clinically elevated, or clinically elevated. (*Id.* at 21.)

134. Based upon the responses from Mr. Brown, Mr. Brunner, and Parent, the BRIEF2 for the February 2022 Evaluation Report showed that Student was "seen as experiencing significant challenges across many areas of executive functioning" in the school setting, as well as "significant challenges across some areas of executive functioning" in the home setting. (Ex. D33 at 22.) Student received either potentially clinically elevated or clinically elevated BRI, ERI, and CRI scores in both the home (per Parent) and school (per teachers). (*Id.*) "This suggests difficulties with all aspects of executive function including inhibitory control, self-monitoring, emotion regulation, flexibility, and cognitive regulatory functions including ability to sustain working memory and to initiate, plan, organize, and monitor problem solving." (*Id.*)

135. The February 2022 Evaluation Report contained the following analysis of Student's eligibility for special education:

Standardized reading assessments were administered in 2016 and 2020. Additional standardized reading assessments were not needed to establish educational eligibility and impact at this time. Based on previous standardized

assessments, [Student] demonstrated weakness in basic reading, reading fluency and reading comprehension. This weakness is substantiated by performance on district wide assessments (iReady) that places [Student's] overall reading at the 4th grade level.

Current standardized assessments indicate that [Student] demonstrates a weakness in Written Expression with scores falling in the extremely low range.

Current standardized assessments of math indicate that [Student] demonstrates a weakness in math related processes on the Fiefer Assessment of Mathematics. [Student] demonstrated scores in the below average range in [Student's] ability to count, order, and sequence numbers and [Student's] overall symbolic memory capacity, in automatic fact retrieval and the linguistic components of mathematics, and in nonsymbolic or visuospatial representations of math including estimation skills, magnitude representations among shapes, and visual-spatial working memory skills. Although [Student] demonstrated standardized weakness on these measures, performance on curriculum based measures does not support significant impact in mathematics. The team will need to determine if [Student] needs accommodations and/or specially designed instruction in math calculation and math problem solving.

In order for a student to qualify as a student with a Specific Learning Disability, deficits must exist within an “otherwise normal ability” profile. There is evidence of a pattern of strengths and weaknesses in psychological processing that impact learning as measured by standardized cognitive ability measures. [Student] demonstrates cognitive processing weaknesses that are related to [Student's] weakness in achievement. This cognitive deficit is specific and exists within an “otherwise normal ability” profile. [Student] demonstrates average or better functioning in most broad cognitive abilities, **including those most important to acquiring the academic skills at [Student's] grade level.** This pattern of cognitive strengths suggests at least average overall cognitive ability.

Based on the PSW model, [Student] **will meet** eligibility criteria as a student with a Specific Learning Disability. This information will be shared with [Student's] parents and the McLoughlin Middle School Staff. The team will need to determine educational impact and need for specially designed instruction.

(Ex. D33 at 23-24.)

136. While noting that the evaluation raised concerns about Student's “emotional regulation, anxiety, academic difficulties, depression, and self-concept,” the February 2022 Evaluation Report found Student ineligible for services under the Other Health Impairment

category based upon the lack of medical information provided by Parent. (Ex. D33 at 24.) The Report stated that, “[i]f medical information is provided at a later time, *Other Health Impairment should be* considered. Ultimately, the team will need to review all available information to make their determination.” (*Id.*)

137. The February 2022 Evaluation Report concluded with the following recommendations:

Teaching Strategies:

- Teach to over-learn (several error-free repetitions).
- Build in repeated opportunities to rehearse or practice and review directions and tasks Use think-pair-share, peer tutors, peer note-taker, segmented instruction (technology provides) or study buddy to provide clarifying directions when the teacher is busy.
- Encourage and support use of memory aides such as number lines, step-by-step procedures, journals, visual cues, subvocalization, etc.
- Allow Student Time to Formulate Response: Teacher will allow the student time to formulate responses so the student may be an active participant in class discussions. Teacher may prompt student with the questions to be discussed before class begins and/or give student a copy of the questions.
- Layer the instruction—Always begin with basic knowledge and understanding. Often, students tend to memorize their way through math, so good instruction should also move to a deeper layer—application of knowledge. Once the student understands the applications, move on to the third layer—a critical thinking phase that challenges students to think of novel ways to apply a mathematical concept.
- Provide small group instruction—This allows them to receive more individualized teacher attention, in addition to benefiting from peer models. Exposure to multiple strategies occurs more readily when learning in small group situations.
- Teach depth...not breadth—Teach for depth of learning and understanding by breaking down concepts into definable and understandable parts. The goal should be conceptual understanding of material, not breadth of learning.
- Use graphic representations—Use dice, dominoes, unifix cubes, vertical number lines, an abacus, and other visual representations to help students develop a picture in the mind’s eye prior to introducing symbolic representations and equations. The development of magnitude representations helps foster conceptual understanding.
- Allow student-directed algorithms—Instead of memorizing a singular method for problem solving, students should be taught multiple methods for addition, subtraction, multiplication, and division of whole numbers, fractions, and decimals. In other words, allow students to select their own method, and don’t force them to abide by the teacher’s method.

- Use mnemonics and easy-to-learn rules—For instance, PEMDAS is a great acronym to help remember the order of operations and sequence of steps when problem solving (Parentheses, Exponents, Multiplication, Division, Addition, Subtraction). When doing algebra, FOIL is a useful mnemonic for order of operations (First, Outer, Inner, Last).
- Reduce anxiety in the class setting—Most anxiety surrounding math emerges from the element of time or unexpected test materials. Allow extra time for daily assignments and teach to mastery as opposed to sacrificing depth for breadth. In addition, untimed unit tests are recommended. Anxiety often affects learning by way of hindering working memory.
- [Student] should be encouraged to work quickly rather than accurately, as perfectionism can sometimes interfere with speed. As [Student's] performance improves, both accuracy and speed should be emphasized.

Accommodations/Modifications:

- Provide opportunities for repeated practice and review.
- Provide support to minimize competing inputs or simultaneous demands on memory such as required when a student has to listen and take notes. For example, provide lecture notes and require activation of prior-knowledge before beginning a lecture.
- Provide directions that are short, syntactically simple, and use familiar language so that the task is what is processed not comprehending the directions.
- Provide visual support (e.g., times table) to support acquisition of basic math facts.
- Allow Extra Time to Complete Tasks: Teacher may reduce timed expectations for assignments or tests.
- Calming Space: Teacher will allow [Student] access to a calming space when the student is frustrated or agitated. Teacher will work with the student beforehand to set the rules of use for the calming space.
- Allow [Student] Alternates to Take Home Work.
- Shortened assignments to essential learning targets (in advance of giving to student)
- Frequent checks for understanding
- Use of Text to Speech and Speech to Text
- Audiobooks (including textbooks as available)
- Encourage initiation of tasks

(Ex. D33 at 24-26.)

138. On February 10, 2022, the District convened an ODE-facilitated Eligibility Determination and IEP meeting by video conference, which was attended by Parent, Ms. Cross, Special Education Coordinator Sandra Stack, Ms. Cleveland, Mr. Kirkpatrick, Ms. Sevcik, Ms. Cooke, Ms. Sherman, Mr. Cohn-Lee, and ODE Facilitator Scott Bellows. (Exs. D65 at 1, D67 at 1-2; Tr. Vol. I at 71:10, Vol. IV at 1066:12-14.) Based upon the February 2022 Evaluation

Report, all present agreed that Student was eligible for special education services on the basis of a specific learning disability, but that Student was not eligible for services under the category of other health impairments. (Ex. D65 at 2; Tr. Vol. I at 77:2-20.)

139. During the February 10, 2022, meeting, Parent asked why the evaluation did not contain the requested assessment of Student's reading. Ms. Sevcik explained that no reading assessment was performed because of the concern of over-exposure to reading assessments given the prior two assessments in this area. Parent asked what the point of the meeting was if the District failed to include a reading assessment level and requested an independent educational evaluation (IEE) in reading. (Ex. D67 at 2.)

140. During the February 10, 2022, meeting, the parties present discussed the concerns raised by the BYI-II and the BRIEF2, which suggested the possibility of Student needs in the area of Other Health Impairment. Parent explained that she did not want to share Student's medical records because of the possibility that Student's other needs could shift the focus of the IEP away from Parent's concern that Student receive adequate support in reading. (Ex. D67 at 3-4; Tr. Vol. I at 81:5-82:7.)

141. During the February 10, 2022, meeting, the parties present discussed Student's present levels. Ms. Cleveland explained the difficulty of extrapolating a single iReady score into a full understanding of a student's level, but that a student's overall academic history can help to give an accurate picture of a student's needs. (Ex. D67 at 4.) Ms. Cooke explained how she administered EasyCBM reading assessments to Student. (*Id.*) Other topics raised by Parent included a request that Student's Lexile be translated into a grade level; how the team determines goals and accommodations; and providing assistive technology to Student and instructing Student on its use. Parent also questioned why the same general education teachers did not attend all the IEP meetings. (*Id.* at 2-5.) Contemporaneous meeting minutes taken by Ms. Stack did not record any request by Parent for details of the reading intervention curriculum. (*Id.* at 1-6.) The meeting concluded after approximately three-and-a-half hours without the finalization of an updated IEP. (*Id.* at 5.) The parties present agreed to reconvene on February 24, 2022, to continue the IEP process. (*Id.*)

142. On February 24, 2022, the District convened an ODE-facilitated IEP meeting, which was attended by Parent, Ms. Sherman, Ms. Cleveland, Ms. Stack, Ms. Sevcik, Mr. Bellows, Mr. Kirkpatrick, Ms. Cooke, Mr. Cohn-Lee, and Ms. Cross. (Exs. D67 at 7, D70 at 1.) At the meeting, Parent again raised concerns that the most recent assessments performed for the February 2022 Evaluation Report did not include all subjects and that the Report relied partially upon results from the 2016 at 2021 assessments. Ms. Cleveland and Ms. Sevcik explained that the information in the earlier assessments was still valid and that it was customary to include information from prior assessments. Parent stated that she had not received progress reports since the prior May. Ms. Cleveland advised that they had been provided electronically and agreed to provide future progress reports by mail to ensure their receipt by Parent. Parent also expressed her difficulty understanding the progress information provided by the District and requested that progress data be reduced to a graph to make it easier to understand. Ms. Cleveland agreed to create a graph. (Ex. D67 at 7.) The meeting attendees discussed creating a home-school communication plan to reduce misunderstandings and misapprehensions in the communications



between Parent and District staff. (*Id.* at 8-10.) Both before and after the February 24, 2022, meeting, Parent often misconstrued information provided by the District. Parent asked questions of District employees but then failed to understand the answers provided, even after repeated attempts by District employees to explain in a way that Parent would understand. (Exs. D56 at 4, S76 at 163-71; Tr. Vol VI 1965:10-1968:3, 1979:1-22, 1988:25-1989:14.) In addition, Parent was unable to access online school content without assistance. (Tr. Vol. VII at 2162:24-2163:2.)

143. During the February 24, 2022, IEP meeting, Parent asked that the IEP specify that Student receive “research-based” reading interventions rather than the ineffective “piece-mealed” approach Student was then receiving. Ms. Cleveland answered that teachers tried multiple approaches with Student because of student’s lack of engagement. (Ex. D67 at 10.) Ms. Cleveland listed the research-based reading interventions available to the District: Read Naturally, Read Naturally Live, curriculum-based reading passages, and instructional strategies described in the Evaluation Report. (*Id.*) Ms. Cleveland also agreed to provide monthly Easy CBM reading results to Parent. (*Id.*) The IEP team further discussed the appropriate goals for Student’s IEP, including a request from Parent that the IEP include a specific goal in spelling; Ms. Cleveland agreed to incorporate the meeting’s discussion into another IEP draft to be provided prior to a subsequent meeting, and to discuss with Ms. Sevcik possible anxiety supports for Student. (*Id.* at 10-11.)

144. On March 7, 2022, the District issued a Prior Written Notice, which addressed the specific requests Parent made during the February 24, 2022, IEP meeting:

1. The district will not include “research based” methodology within reading goal statements.
2. The district will not adjust how progress is documented to include “more frequent benchmarking from within the curriculum or methodology being implemented”.
3. The district will not write a goal specific to spelling.

**Explanation of why the district proposes or refuses to take the action:**

1. The district proposes to approach specially designed instruction through a variety of methods to best support the student[’]s progress toward goals. Methodology includes curriculum and \* \* \* research-based materials and strategies as appropriate.
2. The district proposes progress at standard reporting periods to include progress monitoring from consistent tool(s) that will describe overall progress from all curriculum and strategies provided to student.
3. The district proposes a written language goal that supports the students overall written language process, including spelling.

**Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action:**

Comprehensive Evaluations  
Progress Monitoring  
IEP Team Conversations

**Description of other options considered and why those options were rejected:**

The team considered all of the above 3 parent requests and had conversations around each of them with the IEP team, including parent.

**Description of the factors relevant to the actions proposed or refused are:**

[Parent] participated in the discussion. These are her specific requests that the district is denying or proposing alternate solutions.

(Ex. D71 at 1.) Ms. Cleveland provided a copy of the Prior Written Notice to Parent by email and also attached an updated draft IEP for discussion at the next IEP meeting. (Ex. D207 at 1.)

145. On March 10, 2022, the District convened an ODE-facilitated IEP meeting, which was attended by Parent, Student, Ms. Sherman, Ms. Cleveland, Ms. Sevcik, Mr. Bellows, Mr. Miracle, Ms. Cooke, Mr. Cohn-Lee, Ms. Cross, and Kendall Roberts. (Exs. D72 at 1, D73 at 1.)

146. During the March 10, 2022, IEP meeting, the team discussed the proposed IEP Social Emotional Goal and ultimately adopted it as worded with Parent's approval. (Ex. D72 at 1-2.)

147. During the March 10, 2022, IEP meeting, Parent expressed her desire that Student have an IEE including a reevaluation of Student's reading level. Parent explained that she wanted the IEE to compare the results with prior assessments "apples to apples" to track Student's progress. (Ex. D72 at 2-3.) The issue was not resolved in this meeting. Ms. Cleveland informed Parent that the District would respond to the request by the following week. (*Id.* at 3.)

148. During the March 10, 2022, IEP meeting, Mr. Bellows raised the issue of what curriculum the District was using to address Student's dyslexia. (Ex. D72 at 3.) Ms. Cleveland offered to set up a separate meeting for Parent specifically to review the reading interventions used with Student. (*Id.*) Ms. Cooke clarified the use of "hot reads" and "cold reads" in the reading instruction and explained the value of EasyCBM assessments, and Ms. Cleveland proposed that Parent come into Student's classroom to observe the reading instruction. Parent questioned Ms. Cooke's qualifications to help Student with reading. Ms. Cooke responded with her work towards becoming a reading specialist and her training in Read Naturally. (*Id.*) Ms. Cooke acknowledged that she was not trained in Orton-Gillingham. (*Id.* at 4.)

149. During the March 10, 2022, IEP meeting, the team discussed Parent's request that

student's assignments be shortened at the beginning of class, before they are given to Student. Ms. Cross explained that McLoughlin students do not generally receive homework; rather, assignments are generally designed to be completed in class. Both Ms. Cross and Ms. Cleveland noted that it was not always possible to predict how far the class would progress in a given class period, so it was not always practical to provide or shorten assignments prior to instruction. (Ex. D72 at 4.)

150. During the March 10, 2022, IEP meeting, the team also discussed the parameters of a communication plan, including the frequency of school-to-home communications (daily and weekly), the format (to be determined through collaboration between Parent and Ms. Cleveland), and the contents (daily assignments, missing work, and whether assignments have been shortened). (Ex. D72 at 5.)

151. By the conclusion of the March 10, 2022, IEP meeting, the team had not agreed upon a final IEP. The District scheduled another IEP meeting for March 31, 2022, to continue the IEP drafting process. (Ex. D72 at 5.)

152. On March 11, 2022, a draft of the IEP, incorporating some of the changes discussed at the prior day's IEP meeting, was distributed to the IEP team. (Ex. D75 at 1.)

153. During Student's time at McLoughlin Middle School, and prior to the implementation of the March 16, 2022, communication plan, Ms. Cooke spent approximately two hours per week communicating with Parent (responding to emails and phone calls, and providing weekly progress updates). (Tr. Vol. IV at 1143:4-1144:16.) This was significantly more time than Ms. Cooke spent each week communicating with parents of other special education students. (*Id.* at 1143:19-23.)

154. On March 16, 2022, the District issued a Prior Written Notice, which implemented the Student's communication plan "[t]o improve and simplify communications between home and school, and to reduce the likelihood of miscommunications." (Ex. D74 at 1.) The communication plan had the following purposes: to organize and track all Parent-District communications, to reduce the need for faculty to provide repeated answers when Parent did not understand and/or accept the answers provided, and to ensure that all Parent inquiries received timely responses. (Tr. Vol. VI at 1987:18-1988:24.) The communication plan funneled all Parent-District communications through the Student's school principal and the District's special education director, who were required under the plan to agree which of them would respond, and then respond within two school days to any Parent emails. The communication plan specified that District responses summarize questions from Parent and then provide separate answers to each question in an "easy-to-read, easy-to-process format." (Ex. D74 at 1.) The communication plan required Student's case manager to continue to provide progress and behavior information to Parent by sending it to the principal and special education director, who would forward the information to Parent. (*Id.*)

155. On March 31, 2022, the District convened an ODE-facilitated IEP meeting by video conference, which was attended by Parent, Ms. Sherman, Ms. Cleveland, Ms. Stack, Ms. Sevcik, Mr. Bellows, Mr. Kirkpatrick, Ms. Cooke, Mr. Cohn-Lee, and Ms. Cross. (Exs. D75 at 1, D77 at

1.) The meeting resulted in the completion of a new IEP. (Ex. D76 at 1.)

156. Near the outset of the March 31, 2022, meeting, Mr. Bellows noted that Parent considered any IEP not supported by the full assessment Parent requested and/or an IEE to be fundamentally flawed. Mr. Bellows stated that the team should nevertheless complete the IEP, which could be amended later based upon new information. (Ex. D75 at 1.) During the meeting, Student's social-emotional goal was reworded to be more specific at Parent's request, and the team discussed ways to support Student's anxiety. (*Id.*) The team also discussed Student's access to assistive technology, and ways to address Student's tendency to avoid using available technology due to social stigma. The team discussed the practical constraints to providing Student with class notes. (*Id.* at 2.) The team discussed how to support Student's organization of schoolwork. (*Id.* at 2-3.)

157. During the March 31, 2022, meeting, Parent asked why the number of hours of SDI in reading had been reduced in the draft IEP. Ms. Cleveland explained that the reduction in reading SDI resulted from the allocation of SDI in written language, which would also support Student in reading. Parent expressed her belief that the emphasis should be on reading and requested that Student receive as many hours of SDI in reading necessary to teach Student to read. (Ex. D75 at 3.) The team did not add additional reading in SDI without reducing SDI in written language because an increase in reading SDI without a reduction in written language SDI would require that Student spend a third class period each day in the special education classroom, impacting Student's ability to attend and complete core classes and potentially impacting Student's engagement in the special education classroom if Student tired of time spent there. Instead, the team reallocated some of the time set aside for written language SDI back to reading SDI. (*Id.*)

158. During the March 31, 2022, meeting, the team agreed to reduce Student's overall annual hours of SDI for the following school year to allow Student to attend more electives. The team agreed that Student would attend two periods per day in the special education classroom during first and second quarters, and only one special education period per day during the third and fourth quarters. The team also agreed to reassess the reduction in SDI based upon Student's progress during the first half of the 2022 to 2023 school year. (Ex. D75 at 3-4.)

159. During the March 31, 2022, meeting, the District offered Recovery Services to Student for the following summer, as well as summer access to iReady, to address unexpectedly slow growth during distance learning. (Ex. D75 at 4.)

160. During the March 31, 2022, meeting, Parent expressed her belief that Student had not made progress during the school year because the grade level gap between Student and Student's peers grew. Ms. Cleveland disagreed, noting that Student's growth should be measured against IEP goals, not against the progress of peers without learning disabilities. (Ex. D75 at 4.)

161. The March 2022 IEP listed the following in the "Strengths of Student" section:

Strengths: [Student] is very social and has many friends at school. [Student] is a hard worker[:] when [Student] puts [Student's] mind to it and is well-

rested[,] [Student] can get quite a bit of work completed during a class period. [Student] is working on ways to be responsible for [Student's] own work. [Student] is regularly checking school assignments and practicing keeping track of [Student's] work for each class. [Student] regularly does well in \* \* \* science class here at MAC, and states that Mr. Miracle is [Student's] favorite teacher.

While standardized assessments show that [Student] has weaknesses in math, [Student's] performance on curriculum based measures supports that this is an academic area of strength for [Student].

According to standardized testing, [Student] demonstrates strengths on measures of Comprehension-Knowledge, Fluid Reasoning, Short-Term Working Memory, and Cognitive Processing Speed and Auditory Processing.

[Parent] states that [Student] tries to help out at home a lot, and sometimes tries to parent [Student's] younger brother.

Interests: [Student] likes science a lot, and is good at and enjoys art. Because [Student] is friendly and social[, Student] has friends [Student] enjoys hanging out with during the day at MAC. [Student] likes to play virtual reality games and visit California.

Preferences: Representing \* \* \* work in an artistic or concrete way, working independently or with a partner, quiet work space, paper and pencil work instead of online assignments. [Student] has also stated that [Student] feels [Student] does best on work when [Student] has one-on-one help.

(Ex. D76 at 3.)

162. The March 2022 IEP listed the following as Parent's concerns:

READING: Parent is concerned that [Student's] dyslexia has not been appropriately addressed. District's March 5, 2020 evaluation by Dr. Jeffrey Fry found [Student] to be moderately or significantly below same-aged peers in several critical reading skills and recommends "using a multi-sensory type of Orton-Gillingham program, coupled with a fluency model such as Read Naturally, and the computerized models of Read 180." District has not provided any evidence that those recommendations have been implemented.

Furthermore, District's "present levels of performance" assertion that [Student] received a "C" in [Student's] 7th grade English class 2nd semester ignores the teacher's statement that the teacher assigned a "C" only because [Student] is on an IEP, and that in fact [Student] had not passed [Student's] English class because [Student] had not completed sufficient work for the teacher to compute a grade. The letter grade of "C" was not "based on a

reduced amount of work.”

Finally, Parent requests that all statements of assessment scores be accompanied with a grade level equivalent so that Parent can understand [Student’s] growth, or lack of growth, over time even if the assessments are not the same over time.

MATH: [Student’s] math skills continue to be measured at below grade level expectations. [Student] scored in the 17th percentile of the Smarter Balanced State math assessment in 5th grade. Medford School district has not assessed [Student’s] full academic achievement levels with a standardized assessment such as the KTEA in more than four years. Parent is concerned that [Student’s] school team is not fully informed on the areas of strengths and weaknesses in [Student’s] math skills and requests a full assessment to occur this school year (2021-2022).

ACCOMMODATIONS: Parent is concerned that needed accommodations, including those accommodations listed in the May 25, 2021 IEP and in Dr. Fry’s March 5, 2020 evaluation report, are not being implemented daily and consistently in all of [Student’s] classes, including reduced workload for classwork. Parent specifically requested that [Student] receive teacher-provided class notes at the beginning of class (a recommendation also made by Dr. Fry); this request for accommodation was refused. Additionally, [Student’s] special education teacher requested that Parent assist [Student] at home with missing math assignments but none of the assignments were accompanied by instructions and examples or class notes. Parent explained that she was unable to help [Student] with the math assignments without those tools. To date, Parent has not received instructions, examples, or the class notes for homework. [Student] has also not received class notes for [Student’s] courses (neither before the class [n]or after). Finally, needed accommodations should be provided by the teachers to [Student] without [Student] needing to request them - teachers or educational assistants should check with [Student] that [Student] understands coursework by asking [Student] to complete a portion of the assignment, or to explain [Student’s] understanding of the assignment rather than requiring [Student] to ask for clarification, or asking simple Yes/No questions (Do you understand the assignment).

Parent statement from 4.5.22:

I, [Parent], agree that I was present at the IEP meeting and provided input. However, I do not agree that my concerns about [Student’s] reading were addressed and I do not agree that this IEP is reasonably calculated to enable [Student] to make progress in light of [Student’s] circumstances. [Student] is a smart young [person]. [Student] is dyslexic.

I do not believe we have accurate and current evaluation data related to

[Student's] areas of disability and deficit.

We specifically requested an evaluation to include assessments of [Student's] dyslexia and its current impact on [Student's] reading, writing, and math skills.

The District asserts that [Student] has made growth in reading, stating that the classroom-based assessments that the District administers shows growth. I disagree. [Student] was close to grade level in reading in second and third grades, and is still reading at about the third-grade level, even though [Student] is an 8th grade student. The gap between [Student's] reading skills and [Student's] classmates' reading skills continues to widen.

In October 2021, in order to better understand [Student's] reading deficits and how those deficits are impacted by [Student's] dyslexia, my attorney and I asked that the district administer the Feifer Assessment of Reading as part of the recent evaluation. We also asked that the District administer the Woodcock-Johnson IV Test of Cognitive Abilities and the Woodcock Johnson IV Test of Achievement.

The District produced an evaluation report on February 10, 2022. The evaluation did not include a comprehensive assessment of [Student's] cognitive or academic achievement. Instead, the District administered only portions of the Wechsler Intelligence Scale, testing only Working Memory and Processing Speed.

Additionally, instead of administering a full and comprehensive assessment of [Student's] academic achievement, the District chose to use the Feifer Assessment of Math and only the Written Expression Skills subtest of the Wechsler Individual Achievement Test. The District did not administer a standardized assessment of [Student's] reading skills as requested in October 2021.

I also requested that the district produce logs of [Student's] response to the reading interventions the District claims [Student] is receiving. Those data would have assisted me in understanding [Student's] reading instruction program and whether the program is showing success. The District has refused to provide data relating to [Student's] response to the reading SDI curriculum or program.

During the IEP meetings (there were four meetings to finalize this IEP), I asked that Spelling be added as a specific goal area. The District's evaluation showed that spelling is an area of deficit -- [Student] scored in the 2nd percentile in spelling, described as "Extremely Low." However, the District refused to include a specific goal for specially designed instruction in spelling.

Therefore, I do not feel that I have the data necessary to fully participate in the creation of [Student's] goals in reading and writing, because I do not know the current impact of dyslexia on [Student's] reading and writing, and I do not know specifically [Student's] current areas of deficit related to phonemic awareness, phonics, fluency, vocabulary, or comprehension.

My attorney and I also requested evaluation into [Student's] anxiety and depression. The February 10, 2022 report included two survey scales of [Student's] social-emotional functioning: the Multidimensional Anxiety Scale for Children Parent Report (MASC 2-PR) and the Beck Youth Inventories for Children and Adolescents (BYI-II). These two scales identified that [Student] experiences anxiety, depression, and a low self-concept. Teachers reported a high level of social anxiety and fears of humiliation. These assessments were not comprehensive enough to develop specially designed instruction around these areas of concerns. Likewise, because [Student] has developed anxiety and depression, and the IEP team is reporting that [Student] does not engage in lessons, or passively resists working in class, I do not know the source of these emotional responses. I do not know if [Student] is refusing to work, or if [Student] is unable to begin the work because the reading and writing tasks are too hard, or if [Student's] delay is related to processing delays.

(Ex. D76 at 3-4.)

163. For present level of academic performance, the March 2022 IEP listed the most recent statewide or districtwide test results as placing Student at the fifth percentile in English Language Arts/Literacy and the 17th percentile in math. (Ex. D76 at 4.)

164. The March 2022 IEP section concerning present level of academic performance contained the following discussion of Student's academic needs:

Reading: Area of concern (goal will be developed)

\*What specific skills can the student do and at what level/rate?:

Strengths: [Student] shows relative strengths in the areas of Vocabulary, Literature Comprehension and oral fluency.

Overall:

On an iReady diagnostic reading assessment in a special education, setting (1/18/22)[, Student] scored an overall level 4 (552). [Student's] overall score[] places [Student] at the 15th percentile. [Student] exhibits a Lexile Measure of 795L (falls in the band of 3rd and 4th grade). [Student] tested out of Phonological Awareness, Phonics, and High Frequency words. These are the 3 foundational domains in the diagnostic assessment. Testing out in these 3 domains demonstrates that [Student] has the ability to distinguish individual sounds in spoken words, has accuracy in decoding, and accurately recognizes frequently occurring words. These 3 foundational domains peak in the test at the end of 3rd grade.



On an iReady diagnostic reading assessment in a special education setting (9/23/21) [Student] scored an overall level 3 (522). [Student's] overall score places [Student] at the 9th percentile, meaning out of 100 students[, Student] reads at a higher level than 9 of them. [Student] exhibits a Lexile Measure of 660L in this assessment. Observational data suggests that [Student] may have rushed through the assessment as [Student] completed 70% of the assessment within 20 minutes.

Comprehension:

On an 8th grade level EasyCBM Comprehension assessment given in February in the special education setting, [Student] placed at the 26th percentile.

On an 8th grade level EasyCBM Comprehension assessment given in October in the special education setting, read by [Student], [Student] placed at the 37th percentile.

[Student] placed at the 45th percentile on the 6th grade level EasyCBM Comprehension assessment given in the same setting in October.

Fluency:

On a 8th grade level Easy CBM passage reading fluency assessment given in February in the special education setting, [Student] read 69 words correct per minute. This places [Student] at the 5th percentile for winter of 8th grade.

On an 8th grade level Easy CBM passage reading fluency assessment 10/21/21 in the special education setting, [Student] read 75 words correct per minute. This was read by [herself/himself]. Any words [Student] did not self-correct the teacher read and marked them incorrect per standard scoring instructions. This places [Student] at the 6th percentile for fall of 8th grade

On a 7th grade level Easy CBM passage reading fluency assessment 10/1/2021 in the special education setting, [Student] read 99 words per minute with 2 errors, for a total of 97 correct words per minute. This score is at the 11th percentile for fall, which means [Student] read this passage more fluently than 11 7th graders out of 100.

The Feifer Assessment of Reading (as written in the evaluation report dated 3/5/2020) indicates findings that [Student] is significantly below average in overall reading speed and rapid recognition of words. [Student] was moderately below average in [Student's] ability to categorize the acoustical properties of words, understand the sequential arrangement of sound properties embedded within words, and deconstruct words into natural syllable breaks. Testing also suggests poor rapid word retrieval skills and deriving meaning from printed material.

Index/Subtest Standard, Score, PR 95%CI, Classification  
Phonemic Awareness 78 - - Below Average  
Nonsense Word Decoding 74 - - Below Average  
Isolated Word Reading Fluency 64 - - Significantly Below Average  
Oral Reading Fluency 61 - - Significantly Above Average  
Positioning Sounds 99 - - Average  
Phonological Index 71 3 66 - 76 Moderately Below Average  
Rapid Automatic Naming 57 - - Significantly Below Average  
Verbal Fluency 82 - - Below Average  
Visual Perception 79 - - Moderately Below Average  
Irregular Word Reading Fluency 50 - - Significantly Below Average  
Orthographical Processing 58 - - Significantly Below Average  
Fluency Index 51 <1 44 - 58 Significantly Below Average  
\* \* \* , 10/15/19, Page 4  
Mixed Index 59 <1 54 - 64 Significantly Below Average  
Semantic Concepts 82 - - Below Average  
Word Recall 78 - - Moderately Below Average  
Print Knowledge - - - -  
Morphological Processing 67 - - Significantly Below Average  
Silent Reading Fluency Comp 89 - - Average  
Comprehension Index 73 4 65 - 81 Moderately Below Average  
FAR Total Index 60 <1 55 - 65 Significantly Below Average

Instructional strategies to support [Student] include:

- listening previewing
- repeated reading
- simultaneous or choral reading
- stop and start technique
- directional questions
- narrative retelling
- read aloud
- classroom discussions

As reported on the evaluation report by Dr. Fry, “If these results are commensurate with typical, daily reading performance, then the findings suggest mixed dyslexia, which involves a combination of poor phonological processing skills, slower rapid and automatic word-recognition skills, inconsistent language comprehension skills, and odd error patterns during reading. Although [Student] demonstrated overall difficulty on the comprehension index, [Student] was able to score only slightly below average on the silent reading comprehension task, which may suggest that [Student] used semantic cues to facilitate passage-comprehension skills.”

\*What specific skill does the student need to learn?:

6.RL: Reading-Literature - Given specially designed 6.RL: Reading-Literature  
- Given specially designed instruction, by the end of the IEP cycle, [Student]

can ask and answer questions and identify elements of literature that [Student] reads [herself/himself] at the 6th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures and district assessments.

Phonics and Word Decoding:

CCSS.ELA-LITERACY.RF.5.3

Given specially designed instruction, by the end of the IEP cycle, [Student] will know and apply 5th grade-level phonics and word analysis skills in decoding words, with 80% accuracy of unfamiliar multisyllabic words, as measured by curriculum-based assessments.

Math: Area of concern (goal will be developed)

Strengths: [Student] demonstrates strengths in areas of Number and Operations, Algebra and Algebraic Thinking, and Geometry, as represented in districtwide assessments.

\*What specific skills can the student do and at what level/rate?:

On an iReady diagnostic math assessment in a special education setting (1/20/22), [Student] scored an overall level 6 (492). [Student] placed at the 7th grade level in Number and Operations, Algebra and Algebraic Thinking, and in Geometry, and a level 6 in Measurement and Data.

On an iReady diagnostic math assessment in a special education setting (9/14/21), [Student] scored an overall level 5 (471). In Algebra & Algebraic Thinking, [Student] scored at level 4, and can select the proper operation to solve real-world and mathematical problems, and solve problems involving sharing equal groups, including identifying the remainder.

On an Easy CBM Basic Math-Algebra assessment, given in February in the special education setting, [Student] placed at the 4th percentile for winter of 8th grade. 8th graders just started learning Algebra.

The Feifer Assessment of Math (as written in the evaluation report dated 2/10/2022) indicates findings that [Student] displays characteristics of a math learning disability (or dyscalculia).

Procedural Index: Percentile Rank 7

Verbal Index: Percentile Rank 4

Semantic Index: Percentile Rank 5

As reported in the evaluation report on 2/10/22, ["Student] presents with core overall math skills below grade-level expectations. There is evidence of global math delays, though [Student] does not necessarily present with a specific subtype of dyscalculia. [Student] has potential to make significant strides in [math] provided [Student] has access to specific targeted math intervention programs."

Instructional strategies to support [Student] include:

Memory Aides

Layer the Instruction

Graphic Representations

Student-Directed Algorithms

Use Mnemonics and Easy-to-Learn Rules

\*What specific skill does the student need to learn?:

7.EE: Given specially designed instruction, [Student] can demonstrate an understanding of Expressions and Equations concepts at the 7th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures and district assessments.

Written Language: Area of concern (goal will be developed).

Strengths: [Student] is very creative and writes interesting stories for open-ended activities. Sentence Building evaluates the ability to write a meaningful sentence using specific given words. According to the Wechsler Individual Achievement, [Student] performed in the low average range. This area was a relative strength for [Student].

\*What specific skills can the student do and at what level/rate?:

On a timed AIMSWeb writing assessment in the special education setting 9/29/21, [Student] scored 23 correct word sequences per minute, which is the 17th percentile for 6th grade, meaning [Student] scored higher than 17 out of 100 6th grade student on this assessment.

In addition, [Student] can have trouble with the amount of writing that is expected at the middle school level; the time [Student] needs to decode information can tire [Student]. [Student] is able to write longer and more complete responses when using a word processor or a speech-to-text app.

The Wechsler Individual Achievement Written Expression assessments were administered to assess [Student's] written language skills. Written language skills, as measured by this assessment, appear to indicate that [Student's] skills fall well below peer expectancy.

Spelling: Extremely Low

Essay Composition: Extremely Low

Written Expression: Extremely Low

Spelling: Extremely Low

Sentence Composition: Low Average

Sentence Writing Fluency: Low Average

\*What specific skill does the student need to learn?:

6.W.04/05/06 Writing-Planning/Editing - Given specially designed instruction, by the end of the IEP cycle, [Student] can demonstrate planning

and editing at the 6th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures.

Recovery Services: Area of concern

[Student] participated in comprehensive distance learning and was provided services as outlined on [Student's] IEP, along with additional supports in completion of work. As [Student] has started this school year, the team has noticed that [Student] may not have reached expected growth in the area of written language. This may be related to access to general education curriculum during comprehensive distance learning. [Student] will receive recovery services as a related service.

In the fall, the team noticed that [Student's] math levels had dropped, however as [Student] has moved into third quarter, [Student's] progress in mathematics has brought [Student] near grade level. Recovery Services are not needed in this area[.]

(Ex. D76 at 5-7.)

165. The March 2022 IEP section concerning present level of developmental and functional performance contained the following discussion of Student's needs:

Social-Emotional Skills: Area of concern (goal will be developed and accommodations provided)

Strengths: [Student] is very social and has many friends at school.

\*What specific skills can the student do and at what level/rate?:

[Student] displays appropriate social communication and social interaction skills. [Student] has an age[-]appropriate sense of humor. Current psychological findings, based on behavioral ratings, teacher report, reviewed records, observations, interviews, and parent report, indicate that [Student] displays many more concerns than are typically reported for adolescents [Student's] age with regard to emotional regulation, anxiety, academic difficulties, depression, and self-concept. Teachers note [Student's] high level of social anxiety and fear of humiliation as being particularly problematic, so that [Student] often avoids social situations and refuses to participate in activities in which [Student] must speak/perform in front of others. [Student] also shows anxiety when separated from family or familiar people. [Student] was observed during testing to change topics, try to negotiate less work, and avoid tasks [Student] didn't feel comfortable completing.

\*What specific skill does the student need to learn?:

Given strategies and specially designed instruction, [Student] will reduce instances of passive non-compliance (becomes purposely and increasingly distracted through ignoring tasks, demands, or staff directives) with a success rate of 7 out of 10 opportunities, across all educational environments, as

measured by self[-]assessments, teacher checklists, or observational data.

Study Skills: Area of concern (accommodations will be provided)  
[Student] requires accommodations paired with related services in social-emotional skills to support the area of study skills. Accommodations will include: Binder and Organizational System, Frequent Checks for Understanding, Shortened Assignments, Extra Time to Complete Tasks, Repeat/Simplify/Clarify Directions, Encourage Initiation of Tasks, and Allowing Alternate Options to Take Home Work.

\* \* \* \* \*

Parent Training: Related Service will be provided  
Parent training will be provided 2 times a year to review progress and support understanding of progress monitoring tools, reporting methods, and curriculum being used for specially designed instruction.

(Ex. D76 at 7.) The March 2022 IEP asserted no other areas of concern for Student. (*Id.*)

166. The March 2022 IEP contained the following response regarding how Student's disability affects involvement and progress in the general education curriculum:

[Student] experiences specific learning disabilities in the areas of reading (basic reading, reading fluency, and reading comprehension), Written expression, and math (math calculation and math problem solving).

[Student] demonstrates cognitive strengths in the areas of: Verbal Comprehension, Visual Spatial, and Fluid Reasoning.

[Student] demonstrates cognitive weaknesses in the areas of: Working Memory and Processing Speed[.]

[Student] also displays higher than average concerns in areas including emotional regulation, anxiety, academic difficulties, depression, and self-concept.

[Student] requires specially designed instruction in the area[s] of reading, written language, and mathematics, as well as accommodations, in order to make adequate progress toward the core curriculum.

(Ex. D76 at 7.)

167. Regarding statewide standardized testing, the March 2022 IEP provided for Student to take the tests in a separate setting with text-to-speech. A calculator and multiplication table would also be provided for math testing. Regarding districtwide standardized testing, the March 2022 IEP provided for small group of students in a familiar location separate from the general education classroom. (Ex. D76 at 11.)

168. The March 2022 IEP stated the following measurable annual goals in reading:

Goal:

6.RL: Reading-Literature - Given specially designed instruction, by the end of the IEP cycle, [Student] can ask and answer questions and identify elements of literature that [Student] reads [himself/herself] at the 6th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures and district assessments.

Present Level:

On an iReady diagnostic reading assessment in a special education, setting (1/18/22) [Student] scored an overall grade level 4 (552). [Student's] overall scores places [Student] at the 15th percentile. [Student] exhibits an overall Lexile Measure of 795L (3rd grade level).

On an 8th grade level EasyCBM Comprehension assessment given in February in the special education setting, [Student] placed at the 26th percentile. [Student] placed at the 45th percentile on the 6th grade level EasyCBM Comprehension assessment given in the same setting in October.

On an 8th grade level EasyCBM Comprehension assessment given in October in the special education setting, read by [Student], [Student] placed at the 37th percentile.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
6.RL.03: [Student] can describe how a story's plot unfolds as it moves towards resolution 2 out of 3 opportunities.	6th grade level Curriculum-based measures, iReady Comprehension	03/30/23
6.RL.10: [Student] can read and comprehend literature with scaffolding as needed 2 out of 3 opportunities.	7th grade level Curriculum-based measures, iReady Comprehension	03/30/23

Goal:

Phonics and Word Decoding:

CCSS.ELA-LITERACY.RF.5.3

Given specially designed instruction, by the end of the IEP cycle, [Student] will know and apply 5th grade-level phonics and word analysis skills in decoding words, with 80% accuracy of unfamiliar multisyllabic words, as measured by curriculum-based assessments using the same tool over time.

Present Level:

On an iReady diagnostic reading assessment in a special education, setting (1/18/22) [Student] scored an overall level 4 (552). [Student's] overall scores places [Student] at the 15th percentile compared to grade level peers. [Student] exhibits a Lexile Measure of 795L. [Student] tested out of Phonological Awareness, Phonics, and High Frequency words. These are the 3 foundational domains (to the 3rd grade level) in the diagnostic assessment. Testing out in these 3 domains demonstrates that [Student] has the ability to distinguish individual sounds in spoken words, has accuracy in decoding to the 3rd grade level, and accurately recognizes frequently occurring words to the 3rd grade level.

On a[n] 8th grade level Easy CBM passage reading fluency assessment given in February in the special education setting, [Student] read 69 words correct per minute. This places [Student] at the 5th percentile for winter of 8th grade.

On an 8th grade level Easy CBM passage reading fluency assessment 10/21/21 in the special education setting, [Student] read 75 words correct per minute. This was read by [herself/himself]. Any words [Student] did not self-correct the teacher read and marked them incorrect per standard scoring instructions. This places [Student] at the 6th percentile for fall of 8th grade[.]

On a 7th grade level Easy CBM passage reading fluency assessment 10/1/2021 in the special education setting, [Student] read 99 words per minute with 2 errors, for a total of 97 correct words per minute. This score is at the 11th percentile for fall, which means [Student] read this passage more fluently than 11 7th graders out of 100.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
CCSS.ELA-LITERACY.RF.5.3.A [Student] will use knowledge of syllabication patterns to read accurately unfamiliar multisyllabic words out of context with 80% accuracy.	curriculum-based measures	03/30/23
CCSS.ELA-LITERACY.RF.5.3.A [Student] will use knowledge of morphology (e.g., roots and affixes) to read accurately unfamiliar multisyllabic words out of context with 80% accuracy.	curriculum-based measures	03/30/23



CCSS.ELA-LITERACY.RF.5.3.A [Student] will use combined knowledge of all letter-sound correspondences, syllabication patterns, and morphology (e.g., roots and affixes) to read accurately unfamiliar multisyllabic words in context, with 80% accuracy.	curriculum-based measures	03/30/23
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(Ex. D76 at 13-14.)

169. The March 2022 IEP stated the following measurable annual goals in math:

Goal:

7.EE: Given specially designed instruction, [Student] can demonstrate an understanding of Expressions and Equations concepts at the 7th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures and district assessments.

Present Level:

On an iReady diagnostic math assessment in a special education setting (1/20/22), [Student] scored an overall level 6 (492). [Student] placed at the 7<sup>th</sup> grade level in Number and Operations, Algebra and Algebraic Thinking, and in Geometry, and a level 6 in Measurement and Data.

On an iReady diagnostic math assessment in a special education setting (9/14/21), [Student] scored an overall level 5 (471). In Algebra & Algebraic Thinking, [Student] scored at level 4, and can select the proper operation to solve real-world and mathematical problems, and solve problems involving sharing equal groups, including identifying the remainder.

On an Easy CBM Basic Math-Algebra assessment, given in February in the special education setting, [Student] placed at the 4th percentile for winter of 8th grade. 8th graders just started learning Algebra.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
7.EE.01: [Student] can add, subtract, factor, and expand linear expressions with rational coefficients with 80% accuracy.	Curriculum-based measures, iReady, Work Sample	03/30/23
7.EE03: [Student] can solve real-life mathematical problems posed with + and - rational numbers with	Curriculum-based measures, iReady, Work Sample	03/30/23

80% accuracy.		
7.EE.04: [Student] can use variables and simple equations to solve real-world mathematical problems with 80% accuracy.	Curriculum-based measures, iReady, Work Sample	03/30/23
7.EE.04a: [Student] can solve equations of the forms $px+q=r$ and $p(x+q) = r$ fluently with 80% accuracy.	Curriculum-based measures, iReady, Work Sample	03/30/23

(Ex. D76 at 14.)

170. The March 2022 IEP stated the following measurable annual goals in written language:

Goal:

6.W.04/05/06 Writing-Planning/Editing - Given specially designed instruction, by the end of the IEP cycle, [Student] can demonstrate planning and editing at the 6th grade level in 2 out of 3 opportunities, as measured by curriculum-based measures.

Present Level:

On a timed AIMSWeb writing assessment in the special education setting 9/29/21, [Student] scored 23 correct word sequences per minute, which is the 17th percentile for 6th grade, meaning [Student] scored higher than 17 out of 100 6th grade students on this assessment.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
6.W.04: [Student] can produce coherent writing appropriate to task, purpose, and audience at the paragraph level in 2 out of 3 opportunities.	Curriculum-based measures (to measure correct word sequence, words spelled correctly, total words written), Writing sample	03/30/23
6.W.05: [Student] can develop writing by planning, revising, editing, or a trying new approach at the paragraph level in 2 out of 3 opportunities.	Curriculum-based measures, Writing sample	03/30/23

(Ex. D76 at 15.)

171. The March 2022 IEP stated the following measurable annual goals in social/emotional development:

Goal:

Given strategies and specially designed instruction, [Student] will begin work on task or ask clarifying questions within 30 seconds of receiving instruction with samples provided in 7 out of 10 opportunities, across all educational environments, as measured by self[-]assessments, teacher checklists, or observational data.

Present Level:

Teachers note [Student's] high level of social anxiety and fear of humiliation as being particularly problematic, so that [Student] often avoids social situations and refuses to participate in activities in which [Student] must speak/perform in front of others. [Student] also shows anxiety when separated from family or familiar people. [Student] was observed during testing to change topics, try to negotiate less work, and avoid tasks [Student] didn't feel comfortable completing.

\* \* \* \* \*

Goal:

Given specially designed instruction in a social emotional curriculum, [Student] will be able to self[-]identify when [Student's] anxiety is increasing and be able to use a tool to regulate or calm down in 6 out of 10 opportunities as measured by self[-]assessments, teacher checklists, or observational data.

Present Level:

Teachers note [Student's] high level of social anxiety and fear of humiliation as being particularly problematic, so that [Student] often avoids social situations and refuses to participate in activities in which [Student] must speak/perform in front of others. [Student] also shows anxiety when separated from family or familiar people. [Student] was observed during testing to change topics, try to negotiate less work, and avoid tasks [Student] didn't feel comfortable completing.

<u>Mastery Criteria or Short-Term Objective</u>	<u>Measurement Method</u>	<u>Anticipated Date</u>
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[Student] will access assistive technology in the general education setting or ask to/accept the offer to move to an alternate setting to access assistive technology in 6 out of 10 opportunities.	Teacher Observation and/or student self[-]assessment	03/30/23
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(Ex. D76 at 15.)

172. The March 2022 IEP committed the District to provide IEP goal progress reports at the same time as Student's regular report cards. (Ex. D76 at 12.)

173. The March 2022 IEP Service Summary provided for 900 minutes per month of SDI in reading from a special education teacher in a special education setting from April 11, 2022 to June 9, 2022, with 10,000 minutes per year of SDI in reading from a special education teacher in a special education setting from August 29, 2022 to March 30, 2023; 250 minutes per month in of SDI in math from a special education teacher in a special education setting from April 11, 2022 to June 9, 2022, with 3,500 minutes per year of SDI in math from a special education provider in a general education setting from August 29, 2022 to March 30, 2023; 450 minutes per month of SDI in written language from a special education teacher in a special education setting from April 11, 2022 to June 9, 2022, with 8,000 minutes per year of SDI in written language from a special education provider in a special education setting from August 29, 2022 to March 30, 2023; and 200 minutes per month of social-emotional SDI from a special education provider in a special education setting from April 11, 2022 to June 9, 2022, with 3,000 minutes per year in social-emotional SDI from August 29, 2022 to March 30, 2023. (Ex. D76 at 16.)

174. The March 2022 IEP Service Summary also provided for 300 minutes per year of special education Recovery Services in a special education setting by a special education provider from June 13, 2022 to August 22, 2022; 300 minutes per year of general education Recovery Services in a general education classroom by a general education or special education provider from June 13, 2022 to August 22, 2022; and 90 minutes of parent training from a special education provider between April 11, 2022 and March 30, 2023. (Ex. D76 at 16.)

175. The March 2022 IEP provided for the following accommodations: preferential seating; separate setting for access to text-to-speech or speech-to-text; word processor; reinforcement of Student's notebook organization; frequent checks for understanding; reducing volume of writing and copying tasks, with access to lesson notes, slides, and samples; text-to-speech; speech-to-text; assignments shortened to essential learning targets to demonstrate mastery; daily communication sheet tracking work completed and assignments due; audiobooks and textbooks; access to charts, math tools, and calculator; extra time to complete tasks; repetition, simplification, and/or clarification of directions; word prediction software; encouraging initiation of tasks; repeated practice and review; and the communication protocol outlined in the March 16, 2022, Prior Written Notice. (Ex. D76 at 17-18.)

176. On March 31, 2022, the District issued a Prior Written Notice implementing the new

IEP. (Ex. D80 at 1.)

177. On March 31, 2022, the District also issued a Special Education Placement Determination, which provided for Student to spend one to two class periods in a special education setting daily through the rest of middle school and into the following year at high school. (Ex. D78 at 1-2.)

178. On March 31, 2022, the District issued a Prior Written Notice approving Student for COVID-19 Recovery Services in the area of written language. (Ex. D79 at 1.) This was based upon the IEP team's comparison of Student's progress in written language prior to COVID-19 with Student's progress during comprehensive distance learning. (Tr. Vol. I at 109:9-110:8.) Parent elected not to enroll Student in Recovery Services during the summer of 2022. (*Id.* at 108:4-10.) Parent believed that Student should receive Recovery Services in the area of reading rather than in written language. (*Id.* at 108:15-109:2; Ex. D79 at 2.)

179. Following implementation of the new communications plan, Ms. Cleveland sent Parent weekly emails with updates on Student's progress, including graphs showing trends in Student's test results. (Ex. D76 at 149-62.)

180. On April 4, 2022, the District issued a Prior Written Notice approving Parent's request for an IEE to assess Student in the areas Parent felt had been neglected in the preparation of the February 2022 Evaluation Report. (Ex. D81 at 1.)

181. Student received the following core-subject grades for the third academic quarter of the 2021 to 2022 school year (Student's eighth grade year), ending April 7, 2022: C in English, F in Pre-Algebra, C in Social Science, and C in Science. (Exs. D12 at 1, D118 at 1.)

182. On April 8, 2022, the District issued an IEP Progress Report, which reviewed the new goals from Student's March 31, 2022, IEP and indicated that no progress had been made on the goals given that they had not been introduced to Student yet. (Ex. D125 at 1-3.)

183. On May 16, 2022, the District convened a meeting to discuss various special education topics with Parent, including progress monitoring tools, Student's SDI, Student's organization system, dyslexia resources, and high school diploma options. (Ex. D195 at 1; Tr. Vol. I at 176:19-177:22, Vol. III at 751:2-753:13.) Parent, Ms. Cleveland, Ms. Sevcik, Ms. Cooke, and District Special Education Teacher on Special Assignment (TOSA) Krista Kohler attended the meeting. (Tr. Vol. III at 751:2-23, Vol. VI at 1897:24-1899:14.) Ms. Cooke provided information about specially designed instruction materials, such as Read Naturally Live, and progress monitoring tools. (Tr. Vol. VI at 1898:2-1899:8.) The District employees present answered questions raised by Parent. (Tr. Vol. III at 753:5-8.)

184. During the last academic quarter of Student's eighth grade year (April to June 2022), Student demonstrated increased effort and engagement with a focus on getting good grades. (Tr. Vol. IV at 1236:7-13.) McLoughlin Middle School has a two-week grading window after the end of the quarter during which students can still submit any missing assignments for full credit. Student turned in enough missing assignments by the end of this grading window to greatly

improve Student's grades. (Ex. D13 at 1; Tr. Vol. III at 851:110-852:2.) In math, Student's assignments showed "mastery-level work." (Tr. Vol. III at 873:13-875:7.)

185. Throughout Student's time at McLoughlin Middle School, Mr. Brunner implemented the accommodations identified in Student's IEP. For example, Mr. Brunner provided Student advanced organizers, shortened assignments before giving them to Student, regularly checked with Student for comprehension of subject matter, and allowed Student to access a Chromebook for text-to-speech and other assistive technology. (Tr. Vol. III at 846:3-22, 847:11-848:6, 848:19-21, 859:23-860:3, 860:10-13, 863:16-23, 864:10-17.) All math assignments, and all visual math instructions, were available on Canvas, where Student could utilize the Chromebook's text-to-speech capabilities to read back assignments. (*Id.* at 863:2-8, 864:3-9.)

186. During Student's time at McLoughlin Middle School, Student's learning disability impacted Student's ability to engage with the English curriculum. Mr. Brown observed that when assignments involved any extended, long-form writing responses, Student was less likely to turn in a response. (Tr. Vol. III at 898:5-13.) Mr. Brown provided examples and sentence frames (fill-in-the-blank or partially completed sentences) in some cases to make the assignments more accessible to students with writing difficulties. (*Id.* at 898:14-899:14.)

187. During Student's time at McLoughlin Middle School, Student's reading disability and difficulty with written language did not impede Student's ability to engage with the social science curriculum in Mr. Kirkpatrick's classroom. (Tr. Vol. III at 937:24-938:12.)

188. Throughout Student's time at McLoughlin Middle School, Mr. Brown shortened Student's assignments before giving them to Student. (Tr. Vol. III at 901:3-20.) Mr. Brown posted assignments to Canvas at the end of the school day, not before class, to ensure that students in later periods did not access the assignments before receiving relevant instructions. (*Id.* at 902:24-904:3.)

189. On one or more occasions during Student's time at McLoughlin Middle School, Ms. Cooke asked Mr. Kirkpatrick to shorten an assignment that had already been provided to Student. (Tr. Vol. III at 942:13-22.) Ms. Cooke also asked for Mr. Kirkpatrick to provide class notes for Student on occasions with Student either missed class or lost the notes. (*Id.* at 942:24-943:9.)

190. During Student's time at McLoughlin Middle School, social science classes occasionally utilized a textbook that was available to students in audio format. (Tr. Vol. III at 941:18-24.) Mr. Kirkpatrick generally uploaded paper social science assignments to Canvas, the exception being assignments related to in-class discussion, which absent students were not expected to complete. (*Id.* at 941:9-17, 945:5-947:5.) Mr. Kirkpatrick expected students to take notes of core concepts discussed in class but provided Student with copies of the class notes on days that Student attended social science class. (*Id.* at 947:21-948:22, 949:8-11.)

191. During Student's time at McLoughlin Middle School, the science curriculum did not use a textbook; all assignments were posted on Canvas. (Tr. Vol. IV at 1155:6-21.) Mr. Miracle

tended to utilize visual representations rather than text in the assignments posted to Canvas. (*Id.* at 1155:12-17.)

192. During Student's time at McLoughlin Middle School, Ms. Cooke assisted Student with keeping track of any assignments in need of completion as listed in Canvas. (Tr. Vol. IV at 1221:20-1223:9.)

193. During Student's time at McLoughlin Middle School, Ms. Cooke shortened some assignments after they were received by Student from other teachers. (Ex. D76 at 18.)

194. Throughout Student's time at McLoughlin Middle School, Student occasionally missed school. (Exs. D1 at 1, D2 at 1, D3 at 1; Tr. Vol. I at 135:3-136:16, Vol. II at 520:22-521:12.) Some absences related to disciplinary actions by the District. (Tr. Vol. I at 231:16-25.) Where Student missed school due to a disciplinary action by the District, the District first made a manifestation determination and determined that Student's actions resulting in discipline were not a manifestation of Student's disability. (Ex. D111 at 1-2; Tr. Vol. I at 231:16-232:21.)

195. Throughout Student's time at McLoughlin Middle School and North Medford High School, Student had access to text-to-speech, speech-to-text, word processor, and word prediction software on the school-assigned Chromebook (Tr. Vol. II at 349:14-351:7, Vol. III at 901:21-902:4, Vol. VI at 1913:13-1915:23.) Student knew how to utilize the Chromebook's text-to-speech extension, Snap & Read. (Tr. Vol. IV at 1156:20-1157:13.) Student was so skilled with the word prediction software, Co:Writer, that Ms. Cooke had Student demonstrate this application to the rest of the special education classroom during Student's seventh grade year. (Tr. Vol. IV at 1139:14-24.) Student eventually became unwilling to use Co:Writer, which impeded Student's ability to efficiently engage with the general education curriculum. (*Id.* at 1139:25-1140:7, 1220:17-23.)

196. By the end of Student's eighth grade year, Ms. Cooke observed that Student could independently read and comprehend some eighth- and ninth-grade texts, though Student could not read them with grade-level fluency. (Tr. Vol. IV at 1201:11-1203:19.)

197. Student received the following core-subject grades for the fourth academic quarter of the 2021 to 2022 school year (Student's eighth grade year), ending June 9, 2022: A in English, A in Pre-Algebra, A in Science. (Exs. D13 at 1, D118 at 1.)

198. On June 10, 2022, Douglas Col, Ph.D., completed an IEE of Student at Parent's request. Dr. Col based the IEE on the administration of the WISC-V, the FAR, the Adaptive Behavior Assessment System, Third Edition (ABAS-3), the Gilliam Autism Rating Scale, Third Edition (GARS-3), the Social Responsiveness Scale, Second Edition (SRS-2), a review of the February 2022 Evaluation Report; and a clinical interview of Student. (Ex. D38 at 1.)

199. On Dr. Col's administration of the WISC-V, Student received a Verbal Comprehension Index score of 89 (Low Average range), a Visual Spatial Index score of 119 (High Average range), a Fluid Reasoning Index score of 106 (Average range), a Working Memory Index score of 85 (Low Average range), and a Processing Speed Index score of 83

(Low Average range). (Ex. D38 at 2-4, 17.) Because the Working Memory and Processing Speed portions of the WISC-V had been administered less than a year earlier, these scores were less reliable than the other scores. (Tr. Vol. V at 1566:1-15.) Student received a Full Scale IQ score of 95 and a General Ability Index score of 101 (both in the Average range). (Ex. D38 at 4, 17.)

200. On Dr. Col's administration of the FAR, Student received a Phonological Index score of 71 (Borderline range), a Fluency Index score of 59 (Extremely Low range), and a Comprehension Index score of 84 (Low Average range). (Ex. D38 at 6-8, 17.) The FAR is an age-normed test. (Ex. D38 at 5; Tr. Vol. V at 1569:5-11.) Dr. Col noted that Student performed significantly better on three of the subtests in this administration of the FAR than in 2020—the Nonsense Word Decoding subtest (part of the Phonological Index), the Orthographical Processing subtest (part of the Fluency Index), and the Morphological Process subtest (part of the Comprehension Index). (Ex. D38 at 6-8, 17.) Dr. Col also noted that Student "has made some very significant strides in the development of [Student's] vocabulary." (*Id.* at 8.) Dr. Col noted that Student performed significantly worse on the Positioning Sounds subtest (part of the Phonological Index) than in the 2020 administration of the FAR. (*Id.* at 5, 17.) Based upon Student's FAR results, Dr. Col concluded that Student experiences challenges in distinguishing individual phonemes ("the *auditory* form of dyslexia" or "*dyslexic dyslexia*") as well as in visually decoding written language ("the visual or *eidetic* realm" or "*dyseidetic dyslexia*"). (*Id.* at 6-7; Tr. Vol. VII at 2275:4-21.) Dr. Col termed the coincidence of these two challenges "double dyslexia." (Ex. D38 at 7; Tr. Vol. VII at 2275:20-21.) Regarding the Total Index score on the FAR, Dr. Col stated,

The fact that [Student's] Total Index score was almost two standard deviations below [Student's] WISC-V Full Scale IQ \* \* \* score, and more than two full standard deviations below [Student's] WISC-V General Ability Index \* \* \* score, made it very clear that [Student] is suffering from a Specific Learning Disability with Impairment in Reading.

(Ex. D38 at 9.)

201. On the ABAS-3, which was based upon questionnaire responses provided by Parent, Student received a Conceptual Domain Score of 75 (Borderline range), a Social Domain Score of 78 (Borderline range), a Practical Domain Score of 81 (Low Average range), and a General Adaptive Composite Score of 77 (Borderline range). (Ex. D38 at 9-10, 17.)

202. The ABAS-3 results showed that Student's adaptive functioning was significantly lower than Student's intellectual potential as measured by the WISC-V. (Ex. D38 at 9-10; Tr. Vol. VII at 2274:6-8.) Because a discrepancy between adaptive functioning and intellectual ability can be the result of an underlying autism spectrum disorder, Dr. Col then administered the GARS-3 to screen Student for autism. (Ex. D38 at 11; Tr. Vol. VII at 2274:8-12, 2295:11-19.) The GARS-3 involved a questionnaire completed by Parent. (Ex. D38 at 11.)

203. On the GARS-3 questionnaire, Parent did not report any autism-spectrum symptoms on the Restricted/Repetitive Behaviors or Maladaptive Speech subscales, and only one "autism-like trait" on the Social Interaction subscale. (Ex. D38 at 11.) Student showed more signs of



autism on the Social Communication subscale “because [Student] is not able to anticipate what can happen in social interactions, cannot understand what might cause other people not to like [Student], and is not always aware when \* \* \* being ridiculed.” (*Id.*) Student also had behaviors “much like those of an autism spectrum individual” in the areas measured by the Emotional Responses and Cognitive Style subscales. The data collected for Emotional Responses showed that Student is easily upset by minor setbacks or irritations and requires “excessive levels of reassurance and support if anything is changed or goes wrong.” (*Id.*) Regarding Cognitive Style, student’s concrete, precise use of language and tendency to become obsessive about specific subjects was also consistent with autism. (*Id.* at 11-12.)

204. Because the GARS-3 results were further indicative of autism spectrum disorder, Dr. Col administered the SRS-2 by asking Parent to complete its related questionnaire. (Ex. D38 at 12.) On the SRS-2, Student received a 54 (Normal range) in Social Awareness. (*Id.* at 12, 18.) Student received slightly elevated, but still normal-range, results in Social Cognition (59) and Social Motivation (62). (*Id.* at 12, 18.) Student received a Social Motivation score of 62, which fell in the Mildly Impaired range. (*Id.* at 12, 18.) Student’s Restricted Interests and Repetitive Behaviors score of 69 fell in the Moderately Impaired range. (*Id.* at 12, 18.) Student’s total SRS-2 score of 62 placed Student in the Mildly Impaired range. (*Id.* at 12, 18.)

205. As a result of Student’s test results, Dr. Col diagnosed Student with a Specific Learning Disability with Impairment in Reading and added a rule-out diagnosis of Autism Spectrum Disorder, stating that an analysis of Parent’s questionnaire responses “overall seemed to suggest that [Student] might be on the mild end of the autism spectrum.” (Ex. D38 at 13-14.)

206. Dr. Col’s IEE included the following recommendations: further testing to verify the autism spectrum disorder diagnosis, further testing to determine the brain mechanisms involved in Student’s learning disability and autism-related symptoms, evaluation by a speech-language therapist, and more targeted reading interventions to address the specific deficits shown in the FAR. (Ex. D38 at 15-16.) Regarding this last recommendation, Dr. Col criticized Ms. Sevcik’s failure to specify what reading interventions have been suggested or implemented for Student, and stated,

Because it seems obvious that the school system does not have either the intention of the resources to offer more targeted interventions for [Student], it is suggested that [Parent] might try to find a private reading specialist who could review [Student’s] current testing results and hopefully come up with a more targeted tutoring program for [Student’s] reading difficulties.

(*Id.*)

207. On July 11, 2022, Parent emailed Ms. Stack to request that an IEP meeting be scheduled, indicating that Dr. Col would attend. (Ex. D211 at 5.)

208. On July 14, 2022, Parent provided a copy of Dr. Col’s IEE to the District. (Ex. D88 at 1.)

209. On July 26, 2022, Ms. Stack responded to Parent's request for an IEP meeting. Ms. Stack agreed to schedule an IEP meeting and stated that the earliest possible times were 3:00 p.m. on September 6, 7, 8, or 9, 2022. (Ex. D211 at 4.) After Parent asked whether an IEP meeting could be scheduled before the start of school, Ms. Stack explained that the dates she provided were the earliest dates where all the necessary parties from the district could attend, and that a meeting scheduled any earlier would make it difficult for all to review the IEE in advance of the meeting. (*Id.* at 3-4.) By August 1, 2022, no agreement had been reached as to the time to schedule the IEP meeting; Parent stated she was not available until after 4:30 p.m. once school started, which was after business hours for the District (7:30 a.m. to 4:30 p.m.). (*Id.* at 1.)

210. On August 5, 2022, the District issued a Prior Written Notice approving Parent's request for an IEP meeting, noting that Parent had not provided a viable time to meet within District business hours. (Ex. D88 at 1.) The District also issued a Notice of Team Meeting, which scheduled an IEP meeting for 3:00 p.m. on September 7, 2022. (Ex. D87 at 1.)

211. On August 8, 2022, Parent filed a written request for a special education complaint investigation with ODE. (Ex. D115 at 1.) ODE conducted an investigation, including interviews with Parent, Ms. Sherman, and District staff and a review of relevant documents during August and September 2022. (*Id.* at 1-5; Tr. Vol. I at 152:6-154:6.)

212. Classroom instruction in the District for ninth-grade students in the 2022 to 2023 school year began on August 29, 2022. (Exs. D156 at 1, D211 at 3.) Student did not report for school as expected at North Medford High School and was not enrolled in public school throughout the first academic quarter of the 2022 to 2023 school year. (Exs. D4 at 1, D91 at 1, D115 at 22; Tr. Vol. I at 163:18-165:7.)

213. While Student was not enrolled in public school at the beginning of the 2022 to 2023 school year, Student accessed educational content online through a web-based learning platform, IXL, for approximately five to seven hours per day. (Tr. Vol. VII at 2151:13-2152:1.)

214. On August 30, 2022, the District issued a Notice of Team Meeting, which scheduled an IEP meeting for 1:00 p.m. on September 9, 2022. (Ex. D89 at 1.)

215. On September 13, 2022, the District issued a Notice of Team Meeting, which scheduled an IEP meeting for 11:00 a.m. on September 23, 2022. (Ex. D90 at 1.)

216. Neither Parent nor her attorney attended the IEP meetings scheduled by the District for September 7, 9, or 23, 2022. (Ex. D115 at 22; Tr. Vol. I at 158:16-159:8.)

217. On September 19, 2022, the District issued a Prior Written Notice, which stated that Student's IEP would not be changed because Student had been withdrawn from the District; Student was still not attending school and was not accessing special education through the District. (Ex. D91 at 1.)

218. On October 6, 2022, ODE issued a Findings of Fact, Conclusions, and Final Order related to Parent's August 8, 2022, investigation request. (Ex. D115 at 1-28.) ODE concluded

that all of Parent's allegations were unsubstantiated and did not impose any corrective actions upon the District. (*Id.* at 5-8, 28; Tr. Vol. I at 154:14-21, 160:21-163:14.) Parent did not appeal this determination. (Tr. Vol. I at 163:7-14.)

219. On November 1, 2022, the first day of the second quarter, Student began attending ninth grade classes at North Medford High School. (Exs. D4 at 1, D156 at 1; Tr. Vol. I at 163:25-164:7.) Student's special education case manager and special education teacher was Aaron Breswick. (Tr. Vol. II at 338:24-339:6, 342:11-14, 360:1-3.) Student had the following general education teachers: Hunter Foulon for English, Jessica Cook for math, and Katie D'Errico for social studies. (*Id.* at 563:21-564:7, 603:25-604:12; Tr. Vol. VIII at 2568:14-18.)

220. When Student started at North Medford High School, Student received a math proficiency exam, which showed that Student was proficient in the math concepts covered in the first quarter of the school year. (Tr. Vol. II at 365:20-366:17.)

221. Prior to Student's enrollment at North Medford High School, Mr. Breswick met with Ms. Cooke and Ms. Stack to discuss Student's IEP, familiarize himself with Student's goals and accommodations, and review the interventions previously utilized with Student. (Tr. Vol. II at 342:19-343:17, 503:14-504:8.) Mr. Breswick met with all of Student's general education teachers to review the service summary, goals, and accommodations set forth in Student's IEP. (*Id.* at 343:18-344:1, 565:9-23, 609:9-18, 610:14-21.) Mr. Breswick also met with Student's math teacher, Ms. Cook, to discuss how to provide the SDI in math that, per Student's most recent IEP, was to be provided in her classroom. (*Id.* at 347:5-348:13, 513:1-514:4, 607:5-13.) Mr. Breswick remained available to answer questions regarding Student's IEP and discussed Student's progress with Student's general education teachers throughout the quarter. (*Id.* at 344:2-14; 565:24-566:4, 609:19-610:7.)

222. Between November 1, 2022 and December 19, 2022, Mr. Breswick implemented the accommodations required by Student's IEP and received no information to suggest that any of Student's teachers at North Medford High School were failing to implement any of the accommodations required by Student's IEP. Mr. Breswick also observed the implementation of accommodations in Student's general education classes. (Tr. Vol. II at 344:15-345:2, 346:4-6, 443:4-455:5, 456:2-462:17, 521:13-523:1, 524:19-534:23.)

223. Between November 1, 2022 and December 19, 2022, Mr. Breswick provided Student with one to two periods per school day of SDI in the areas of reading and written language. He also assisted Student with general education assignments. (Tr. Vol. II at 345:6-346:3, 353:23-357:5; 482:21-484:15.) Student was particularly engaged with general education assignments. (*Id.* at 356:22-357:1.) Mr. Breswick assisted Student with English assignments by adding sentence frames and asking follow up questions to prompt Student to provide more thorough answers. (*Id.* at 354:4-355:4.) Student appeared capable of engaging with the curriculum in Student's general education classes (*Id.* at 355:5-18.) The SDI included District-provided programs such as Spectrum Writing, Step Up to Writing, and PALS for Reading. (*Id.* at 355:19-356:1, 502:20-503:5.) However, Student showed little engagement with assignments not directly related to general education curriculum. (*Id.* at 356:10-357:5, 503:6-13.)

224. Between November 1, 2022 and December 19, 2022, Ms. Foulon implemented the accommodations identified in Student’s IEP, except that she was, on occasion, unable to post certain copyrighted materials to Canvas. (Tr. Vol. II at 566:5-567:14, 571:8-24, 582:8-586:1.) Student often forgot to bring Student’s assigned Chromebook to class, or forgot to charge its battery, and therefore did not always have access to all of the assistive technology available through the District-provided Chromebook. (*Id.* at 571:25-572:9, 591:18-24.) Moreover, even when Student had access to a Chromebook, Student elected not to use it. (*Id.* at 582:5-8, 588:23-589:7.) Ms. Foulon did not assign any homework. (*Id.* at 569:15-21.) During that time, the English class studied Shakespeare’s Romeo and Juliet, which the class read aloud together during class. (*Id.* at 567:23-568:13, 578:4-15.) For the summative at the end of the quarter, Students had to read Act V silently to themselves and respond to questions. (*Id.* at 578:9-15, 593:7-593:25.) Based upon Student’s performance on this task, Ms. Foulon observed that, with accommodations, Student appeared capable of engaging with the English curriculum. (*Id.* at 564:15-565:1, 568:23-570:25, 594:22-596:3.)

225. Between November 1, 2022 and December 19, 2022, Ms. Cook implemented the accommodations called for in Student’s IEP. (Tr. Vol. II at 610:22-613:13.) On one occasion, Student had to remind Ms. Cook to provide class notes, and on another occasion, Ms. Cook had to supply notes some days later after she had finalized them. (*Id.* at 1-11.) Ms. Cook observed that, with accommodations, Student was capable of engaging with the math curriculum. (*Id.* at 613:17-23, 614:23-615:7.)

226. Between November 1, 2022 and December 19, 2022, Ms. D’Errico implemented the accommodations called for in Student’s IEP. (Tr. Vol. VIII at 2568:19-2570:3.)

227. At North Medford High School, Student is on a standard diploma track, not a modified diploma track. (Tr. Vol. III at 754:1-4.) Special education students on a standard diploma track may receive accommodations but are expected to complete all required courses and do not receive modified grading (*i.e.*, expectations lowered to below grade level). (*Id.* at 752:12-25.)

228. Between December 2020 and December 2022, approximately 993 emails were exchanged between Parent and District employees. (Tr. Vol. VI at 1904:10-24.) This is much higher than the typical amount of email exchanges between parents and District employees. (*Id.* at 1904:25-1905:7.)

229. On April 20, 2023, Parent had Student evaluated at the Lindamood-Bell Learning Center in Portland, Oregon, for Student’s “present levels of sensory-cognitive processing and learning skills” and to receive a recommendation for tutoring services to be provided to address any of Student’s deficits. (Ex. S91 at 1.) Lindamood-Bell Learning Center is a private, for-profit business providing educational interventions in reading and math for children with disabilities. (Tr. Vol. VII at 2344:12-2346:6, 2352:19-21, 2373:13-20.) Based upon the results of Student’s evaluation, the Center Director, Sruti Raghavan, recommended “an initial period of sensory-cognitive instruction at a Lindamood-Bell Learning Center—4 hours per day, five days per week—for 10-12 weeks,” with an expected “long-term intervention” totaling “500 to 800 hours” of instruction in Lindamood-Bell “Sensory-Cognitive Programs.” (Ex. S91 at 2 (emphasis

removed); Tr. Vol. VII at 2368:6-19.) For the initial 10 to 12 week period of instruction, Lindamood-Bell Learning Center would charge Parent between \$31,000 (for 10 weeks) and \$37,200 (for 12 weeks), with a total expense of between \$77,500 (for 500 hours) and \$124,000 (for 800 hours) for the long-term intervention, with some discounts available for paying a larger initial deposit. (Ex. S91 at 24.)

230. According to the most recent scientific studies, the faithful implementation of programs consisting of “systematic, explicit, phonics-based instruction, training coupled with phonemic awareness training to \* \* \* [advanced] levels,” and providing frequent opportunities for reading decodable text and encoding text (in other words, including both reading and writing) to practice learned skills, are the most effective reading interventions for individuals with reading disabilities. (Ex. S94 at 18-19, 30-33; Tr. Vol. V at 1454:21-1455:12, 1455:25-1456:6, 1459:2-1460:18, 1475:12-1476:4, 1479:23-1480:12.) This type of program includes the repeated reinforcement of basic phonics skills and the explicit instruction of phonics rules to the point where the individual can automatically sound out words, which in turn facilitates the requisite orthographic mapping in the brain to allow the individual to read fluently without the need to expend effort decoding each word presented. (Tr. Vol. V at 1460:21-1463:5.) Without the ability to automatically recognize words, an individual’s comprehension and ability to engage with the reading material is hampered by the fatigue of having to separately decode each word. (*Id.* at 1471:19-1472:16.) A number of factors can affect the ability of a student with a reading disability to benefit from such a program, such as other disabilities, mental illnesses, health conditions, adverse life events, family challenges, school absences, and lack of engagement or interest. (*Id.* at 1494:18-1495:23.) With the use of such a program, teachers “should be able to meet the needs of 95 to 97 percent of readers,” *i.e.*, all except those with “pronounced reading disabilities[,] \* \* \* regardless of \* \* \* some of the other factors that may come into play.” (*Id.* at 1503:2-19.) Programs that include systematic phonics instruction combined with reading practice, but containing only basic phonemic awareness instruction, are moderately effective, but not as effective as programs “using more challenging phonemic manipulation activities.” (Ex. D94 at 29-30.) Ideally, students with reading disabilities should receive both an effective reading intervention (including the targeting of writing and spelling) and accommodations such as assistive technology to allow the student to continue to engage with other curriculum. (Tr. Vol. V at 1489:21-1490:9.)

231. An individual’s decoding skills and reading accuracy are generally best assessed by examining the individual’s ability to read real words and nonsense words, both in isolation and in timed settings, along with measuring the individual’s oral fluency and phonemic proficiency. (Tr. Vol. V at 1464:21-1465:20, 1466:22-1467:23, 1469:18-8.) There are multiple valid standardized tests that have been devised to assess an individual’s reading vocabulary, including the FAR and the vocabulary subtest on the Woodcock Johnson Test of Achievement. (*Id.* at 1470:10-1471:1.)

232. Specially designed instruction in reading often also remediates deficiencies in writing, especially in lower grades, even without the inclusion of a separate goal for writing in the IEP. (Tr. Vol. V at 1548:23-1549:10.)

## CONCLUSIONS OF LAW

1. The District did not deny Student FAPE by failing to identify and evaluate Student's educational needs in math and writing during the 2020 to 2021 school year.
2. The District did not deny Student FAPE by failing to identify and evaluate Student's educational needs in math and writing during the 2021 to 2022 school year.
3. The District did not fail to effectively track Student's progress in reading during the 2020 to 2021 school year.
4. The District did not fail to develop or implement an appropriately ambitious IEP during the 2020 to 2021 school year.
5. The District did not fail to develop or implement an appropriately ambitious IEP during the 2021 to 2022 school year.
6. The District did not deny Student FAPE by failing to implement educational accommodations called for in Student's IEP during the 2020 to 2021 school year.
7. The District did not deny Student FAPE by failing to implement educational accommodations called for in Student's IEP during the 2021 to 2022 school year.
8. The District did not prevent Parent's meaningful participation in the special education process during the 2020 to 2021 school year by failing to provide data showing Student's progress.
9. The District did not prevent Parent's meaningful participation in the special education process during the 2021 to 2022 school year by failing to provide data showing Student's progress.
10. The District did not prevent Parent's meaningful participation in the special education process during the 2020 to 2021 school year by failing to provide specifics regarding the reading intervention curriculum.
11. The District did not prevent Parent's meaningful participation in the special education process during the 2021 to 2022 school year by failing to provide specifics regarding the reading intervention curriculum.
12. The District did not fail to implement Student's IEP during the 2022 to 2023 school year.

## OPINION

Parent's Complaint, filed on behalf of Student, alleges several procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA), 20 USC section 1400 *et*

*seq.* Parent argues that the District’s failures resulted in the Student’s denial of FAPE, and that Student should therefore receive redress in the form of compensatory education and/or District-funded private evaluation and placement at a third-party Orton-Gillingham or Lindamood-Bell program, along with related travel and equipment costs, reasonable attorney’s fees, and the reimbursement of other costs associated with the Complaint process. Parent also requests that the District be mandated to provide biennial diagnostic assessments to guide the scope of third-party instruction.

In due process proceedings alleging violations of the IDEA, the party seeking relief has the burden of proof. *Schaffer v. Weast*, 546 US 49, 58 (2005). As the party seeking various kinds of relief in the present matter, Parent bears the burden of establishing a violation of the IDEA and denial of FAPE entitling Student to relief, as well as the propriety of the remedies sought. ORS 183.450(2); *see Harris v. SAIF*, 292 Or 683, 690 (1982) (stating that the general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position).

In administrative hearings, a party who bears the burden of proof must establish each fact or position by a preponderance of the evidence. *Cook v. Employment Div.*, 47 Or App 437, 441 (1980). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

Under the IDEA, all children deemed eligible for special education have a right to a FAPE. 20 USC § 1412(1)(A). The IDEA defines FAPE as special education and related services that: (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (c) include an appropriate preschool, elementary, or secondary school education in the state involved; and (d) are provided in conformity with the IEP required under section 1414(d) of the IDEA. 20 USC § 1401(9).

As expressed by the United States Supreme Court, “the IEP is the centerpiece” of the IDEA’s “education delivery system for disabled children.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 US \_\_\_, 137 S Ct 988, 994 (2017) (quoting *Honig v. Doe*, 484 US 305, 311 (1988)) (internal quotes omitted). For an IEP to be deemed sufficient to meet IDEA’s stated goals, it must be reasonably calculated to enable the child to receive educational benefits that are appropriately ambitious in light of the child’s unique needs and circumstances. *Id.* at 999. To this end, 20 USC sections 1414 and 1415 set forth the procedures school districts must follow when crafting an IEP.

All of Parent’s claims arise out of Student’s IEPs during the period in issue and fall into three general categories: (1) procedural violations of provisions controlling the IEP process; (2) failures to implement portions of Student’s IEPs; and (3) failure to craft IEPs that were appropriately ambitious considering all of Student’s needs and circumstances. These three categories are addressed below.

The first two categories of Parent’s claims, even if proven, may or may not constitute a denial of FAPE, depending on the specific circumstances. *See, e.g., Doug C. v. Hawaii Dep’t of*

*Educ.*, 720 F3d 1038, 1043 (9th Cir 2013) (“Harmless procedural errors do not constitute a denial of FAPE.”); *Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J*, 502 F3d 811, 826 (9th Cir 2007) (requiring that failures to implement an IEP be “material” to constitute a denial of FAPE). If proven, the failure to implement an appropriately ambitious IEP constitutes a denial of FAPE without the need for further analysis. *Andrew F.*, 137 S Ct at 1000.

Pursuant to the requirements of the IDEA, the United States Department of Education promulgated regulations for state use of funds used to carry out the provisions of the Act. 34 CFR § 300 *et. seq.* OAR Chapter 581 Division 015, promulgated under ORS Chapter 343, mirrors, for the most part, the requirements set out in the federal regulations. The opinion below cites to the relevant OARs as the implementing rules for Oregon with which school districts are required to comply.

Finally, in evaluating Parent’s claims that Student was denied a FAPE, the District’s actions are not to be considered in retrospect. Rather, they must be evaluated based upon what was objectively reasonable at the time the District took action or failed to act. *Adams v. State of Oregon*, 195 F3d 1141, 1149 (9th Cir 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F2d 1031, 1041 (3d Cir 1993)).

#### A. *Procedural Claims*

Parent claims that the District violated the procedural requirements of the IDEA (and related state laws and regulations) in the following ways: (1) the District failed to assess Student in all areas of suspected disability; (2) the District denied Parent the opportunity to meaningfully participate in the IEP process; and (3) the District failed to effectively track Student’s progress towards IEP goals.

34 CFR section 300.513 identifies the necessary criteria for a procedural violation to constitute a denial of a FAPE and provides, in pertinent part:

**(a) *Decision of hearing officer on the provision of FAPE.***

(1) Subject to paragraph (a)(2) of this section, a hearing officer’s determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

(i) Impeded the child’s right to a FAPE;

(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or

(iii) Caused a deprivation of educational benefit.



(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.

Each of Parent's procedural claims are examined in turn, first as to whether the evidence established the violations as alleged, and second, whether any proven violations constituted a denial of FAPE.

1. *Assessment in all areas of suspected disability*

Parent maintains that the District failed to timely assess Student in the areas of math and writing, and that this resulted in the denial of FAPE during the 2020 to 2021 and 2021 to 2022 school years. OAR 581-015-2105 addresses a school district's obligation to evaluate students with disabilities and states, in pertinent part:

(4) *Reevaluation:*

(a) The public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (b) and OAR 581-015-2110(2):

(A) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(B) If the child's parents or teacher requests a reevaluation.

(b) A reevaluation for each child with a disability:

(A) May occur not more than once a year, unless the parent and public agency agree otherwise; and

(B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.

OAR 581-015-2110, addressing evaluation procedures, states, in relevant part:

(1) *Evaluation planning.* Before conducting any evaluation or reevaluation of a child, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.

\* \* \* \* \*

(3) *Conduct of evaluation.* In conducting the evaluation, the public agency must:

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

(A) Whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180; and

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

(b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

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

(4) Other evaluation procedures. Each public agency must ensure that:

\* \* \* \* \*

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

\* \* \* \* \*

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

(e) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and

(f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(5) Evaluation timelines:

(a) Initial. An initial evaluation must be completed within 60 school days from

written parent consent to the date of the meeting to consider eligibility.

(b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent \* \* \* to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.

Finally, OAR 581-015-2115 regulates the evaluation planning process and states, in relevant part:

(1) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the child's IEP or IFSP team, and other qualified professionals, as appropriate, must:

(a) Review existing evaluation data on the child, including:

(A) Evaluations and information provided by the parents of the child;

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

(C) Observations by teachers and related services providers; and

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

(A) Whether the child is, or continues to be, a child with a disability;

(i) For a school-age child, under OAR 581-015-2130 through 581-015-2180; or

(ii) For a preschool child, under OAR 581-015-2780 or 581-015-2795;

(B) The present levels of academic achievement and related developmental needs of the child;

(C) Whether the child needs, or continues to need, EI/ECSE or special education and related services; and

(D) For reevaluation, whether the child needs any additions or modifications to special education and related services or, for a preschool child, any additions or modifications to ECSE services:

(i) To enable the child to meet the measurable annual goals in the child's IEP or IFSP; and

(ii) To participate, as appropriate, in the general education curriculum or, for

preschool children, appropriate activities.

(2) Conduct of review. The team described in subsection (1) may conduct this review without a meeting. If a public agency holds a meeting for this purpose, parents must be invited to participate in conformance with OAR 581-015-2190 or, for parents of preschool children, with OAR 581-015-2750.

(3) Source of data. The public agency must administer tests and other evaluation materials as may be needed to produce the additional data identified under subsection (1)(b).

(4) Requirements if additional data are not needed.

(a) If the child's IEP or IFSP team determines that no additional data are needed to determine whether the child is or continues to be a child with a disability, and to determine the child's educational and developmental needs, the public agency must notify the child's parents:

(A) Of that determination and the reasons for it; and

(B) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability, and to determine the child's educational and developmental needs.

(b) The public agency is not required to conduct an assessment of the child unless requested to do so by the child's parents.

To summarize the above regulations, under OAR 581-015-2105(4)(a), the District must reevaluate a student's special education needs if there is a request from a parent or teacher, or if the District determines that a reevaluation is warranted based upon the student's needs. However, under OAR 581-015-2105(4)(b)(B), reevaluations are only required every three years, and cannot occur more frequently than once per year unless both the District and the parent agree that a reevaluation is necessary. Under OAR 581-015-2110(4)(d), the reevaluation must cover all areas of suspected disability, as determined by the evaluation planning process, which involves a review of evaluation reports, teacher observations, and other records. OAR 581-015-2110(1), OAR 581-015-2115.

a. The 2020 to 2021 school year

Parent failed to demonstrate that, more likely than not, math and/or writing were areas of suspected disability for Student that should have been the subject of reevaluation during the 2020 to 2021 school year. Student received a reevaluation from Dr. Fry in March 2020, which detailed Student's reading disability. As set forth in Student's IEPs during this period, both Parent and the District regarded math as an area of strength, and not disability, for Student, despite Student's lack of engagement and poor class performance. A review of Student's IEPs during this school year also shows that both Parent and the District understood Student's writing difficulties

derived from Student's reading disability rather than a separate disability requiring specific interventions in the area of written language. Because of the March 2020 reevaluation from Dr. Fry and the lack of evidence suggesting Student had additional learning disabilities in the areas of math or written language, I find that the District had no obligation to evaluate Student for disability in math and writing during Student's seventh grade year.

b. The 2021 to 2022 school year

The evidence shows that at the outset of Student's eighth grade year Student did not have special needs in math and did not have a writing disability unrelated to the learning disability in reading. At the August 24, 2021, IEP meeting, Parent acknowledged Student's strength in math and no one present at the meeting suggested that Student needed a separate goal in math or written language. The first request for a reevaluation of Student specifying the inclusion of assessments in the areas of math and written language came either at or in the lead up to the October 11, 2021, IEP meeting. Therefore, Parent has not established that the District should have been "on notice" about a suspected disability in either math or writing prior to this specific request.

Although the District's special education director, Ms. Cleveland, asserted at the October 11, 2021, meeting that no reassessment of Student was necessary, the District nevertheless mailed a consent for reevaluation form to Parent the following day. On October 14, 2021, the District began implementing SDI in math and written language, even without an evaluation showing Student's disability in these areas. Over the next four months, the IEP team continued to meet to finalize Student's IEP while school psychologist Sevcik administered assessments to Student and obtained the necessary information from Parent and Student's teachers to complete a reevaluation including math and written language.

At the February 10, 2022 IEP meeting, Ms. Sevcik presented the completed Evaluation Report, which included assessments in math and written language. Because February 10, 2022, was within 60 school days of Parent's October 28, 2021, submission of the evaluation consent form, the District met the deadline set by OAR 581-015-2110(5)(b). The subsequent IEP relying on this assessment, completed and implemented on March 31, 2022, included SDI in math and writing and had specific goals in each of these areas. The District also offered Student Recovery Services in written language due to Student's unexpectedly slow progress in this area during the COVID-19 remote instruction. This evidence is persuasive that the District acted on Parent's stated concerns about Student's math and written language skills and reevaluated Student as required by OAR 581-015-2105 and OAR 581-015-2110. Thus, the District did not fail in its obligation to evaluate Student in all areas of suspected disability during the 2021-2022 school year.

2. *Parent's meaningful participation in the IEP process*

Parent next alleges that, during the period in issue, the District prevented Parent's meaningful participation in the IEP process in two ways: (1) by failing to provide data showing Student's progress; and (2) by failing to provide specific information about the reading interventions District staff utilized with Student. Parent alleges that the District committed these

procedural violations during both the 2020 to 2021 and the 2021 to 2022 school years (Student's seventh and eighth grade years), constituting four separate claims in the Complaint.

Several subsections of the governing laws and rules relate to this set of Parent's claims. 20 USC section 1414(d)(1)(B)(i) requires that the parents of a student with a disability be included in the team that develops the student's IEP. 20 USC section 1415(b)(1) requires that states under the IDEA establish procedures providing

[a]n opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

In accordance with this requirement, both OAR 581-015-2190 and OAR 581-015-2195 require that Oregon school districts take steps to ensure parent knowledge of, and participation in, IEP meetings. Although these rules do not quantify the information school districts must provide to parents, the sum effect of these procedural protections, as noted by the United States Supreme Court, is to "guarantee parents \* \* \* an opportunity for meaningful input into all decisions affecting their child's education." *Honig*, 484 US at 311.

Regarding Student's progress information, the record is replete with examples of the District's efforts to keep Parent informed of Student's current levels of achievement. As of Dr. Fry's reassessment on March 5, 2020 (prior to the relevant period), the District provided Parent information regarding the profundity of Student's reading disability, "mixed dyslexia, which involves a combination [of] poor phonological processing skills, slower rapid and automatic word-recognition skills, inconsistent language comprehension skills, and odd error patterns during reading." (Ex. D32 at 6.)

Student's IEPs required that the District provide progress reports with Student's report card. There is no allegation or evidence that the District failed in its obligation to provide Parent progress reports or report cards during the relevant period. Rather, the evidence demonstrates that Parent was unable to access some progress reports due to her lack of skill with the District's online platform. Once Parent informed the District of this difficulty, the District agreed to provide subsequent progress reports by mail. There is no evidence that the District failed to mail these reports to Parent.

Parent received information regarding Student's educational progress by other means as well, such as during IEP meetings and through Student's IEPs. Parent attended the IEP meeting held on September 22, 2020. There, the IEP was shared visually and included information about Student's most recent reading diagnostic results from approximately March 19, 2020, showing that Student was reading at a third grade level in sixth grade. The IEP provided a long list of accommodations that the District conceded Student needed to keep up with grade-level curriculum.

Parent attended the IEP meeting held on May 25, 2021. The IEP discussed at that meeting included Student's receipt of a passing "C" grade in English and most recent, fourth-grade level reading diagnostic results, along with Student's third-grade level result in the specific area of reading informational text. The May 2021 IEP again included an extensive list of accommodations necessary for Student to keep abreast of grade-level curriculum.

Parent next attended an IEP meeting on August 24, 2021, this time with two cousins present to assist her. The Amended IEP that resulted from this meeting obligated the District to send Parent a weekly email updating Student's progress. At some point after this meeting, but still near the beginning of the 2021 to 2022 school year, Parent also began sending a daily progress form to school with Student, which required Student's teachers to provide updated daily information on Student's assignments.

On October 11, 2021, Parent attended another IEP meeting, this time accompanied by an attorney. During the meeting, Ms. Cleveland agreed to provide information on Student's progress in graph form, and later did so. The Draft IEP resulting from this meeting listed Student's most recent standardized test (and subtest) scores and curriculum-based measures, along with the associated grade level (third grade equivalent in reading, fifth grade equivalent in math). It also contained Student's low-percentile performance on multiple EasyCBM reading assessments of varying grade levels. It listed all of Student's subtest scores from the FAR, as well as Dr. Fry's conclusion about Student's severe reading disability. It again listed many accommodations deemed necessary to allow Student to engage with grade-level curriculum.

The District released the requested Evaluation Report prepared by Ms. at the February 10, 2022, IEP meeting, which Parent and counsel attended. Ms. Sevcik, included details of Student's reading benchmarks throughout that school year. The Evaluation Report included the results of all the assessments Ms. Sevcik administered to Student—the FAM, MASC 2, BYI-II, and BRIEF2, as well as portions of the WISC-V and WIAT-IV. The IEP that was finalized on March 31, 2022, included the same detailed information about Student's progress as was listed in the October 2021 Draft IEP, now supplemented by the results of Ms. Sevcik's assessments.

In addition to all the above, Parent was in regular contact with Student's special education teacher and/or the District's Special Education Director throughout Student's seventh and eighth grade years. The District provided Parent with weekly updates on Student's class progress and, for at least a time, monthly updates on Student's performance on various diagnostic evaluations.

Granted, the January 21, 2022 Progress Report appeared to omit important information necessary to interpret Student's growth. However, the omitted information had already been provided to Parent in the October 2021 Draft IEP. Parent also complains that the District failed to label the grade equivalent of Student's Lexile measure on some of Student's IEPs. In the context of the large amount of progress information shared by the District, however, this was, at most, a trivial omission. The omission did not impede Parent's ability to meaningfully participate in Student's education.

Parent also contends that the information provided by the District was flawed in that it did not include a school psychologist's reevaluation of Student in the area of reading, despite Parent's requests for such a reevaluation near the beginning of the 2021 to 2022 school year. However, as explained above, the purpose of reassessment is to determine whether the child has a disability and the appropriate educational program for the child. Reevaluation only proceeds after a planning process to determine whether, considering all of the information known, further evaluation is needed. OAR 581-015-2110(1), (3)-(4); OAR 581-015-2115. It is not a progress measure. Moreover, such evaluations are typically administered only every three years under OAR 581-015-2105(b). Some of the assessment tests commonly used become unreliable if administered more than annually and are therefore unsuited for charting student progress on a day-to-day, week-to-week, or month-to-month basis, as would be expected of the special education staff. For all these reasons, reevaluations have limited utility in the wording of any specific, measurable goals. Where, as here, all parties agree that a student has a disability in the area of desired reevaluation, the value of such a reevaluation becomes even more speculative. Thus, Parent has not shown that the District provided her flawed or incomplete information.

Once Parent received the hoped-for reevaluation of Student in reading in the IEE completed by Dr. Col in June 2022, that IEE did not reveal any progress issues not already shown in the progress measures provided to Parent by the District. The age-normed assessments administered in the IEE showed that while Student had made progress, with Dr. Col noting particular growth in Nonsense Word Decoding, Orthographical Processing, Morphological Process, and vocabulary, Student remained roughly as behind same-aged peers as Student was in 2020. The progress measures used and shared by the District reflected the same reality of Student's reading difficulties: that Student remained well below grade level in reading overall, with areas of relative strength and weakness. For example, the District provided Parent with Student's iReady results from January 29, 2021 (during Student's seventh grade year), which showed an overall fourth-grade level reading score, with a fifth-grade level vocabulary score, a fourth-grade level literature comprehension score, and a third-grade level informational text comprehension score. Therefore, the District's failure to provide reevaluation information in the area of Reading until the June 2022 IEE did not represent a failure to provide progress information. Parent has not established that the District failed to provide progress information during the 2020 to 2021 or 2021 to 2022 school years as alleged.

By contrast, the hearing record showed few instances in which the District shared specific information about the reading intervention curriculum it utilized with Student. One instance was during the August 24, 2021, IEP meeting, where Ms. Cooke provided an explanation of the SDI she was providing to Student in reading. At that meeting, Ms. Cooke also informed Parent that Student's curriculum was available for Parent's review on Canvas. During the October 11, 2021, IEP meeting, Ms. Cleveland explained iReady and Learning Ally as components of Student's SDI. And during the February 24, 2022, IEP meeting, Ms. Cooke reviewed with Parent the method of administering EasyCBM reading assessments.

The most thorough explanation of the District's reading interventions came on May 16, 2022, at a meeting attended by Parent, Ms. Cleveland, Ms. Cooke, and District TOSA Kohler. The District arranged that meeting specifically to educate Parent on various special education topics, including both progress monitoring tools and Student's SDI. At that meeting, Ms. Cooke



explained the Read Naturally Live program. But that meeting did not take place until virtually the end of Student's eighth grade year.

As noted above, there is no statutory or regulatory requirement quantifying the information the District is obligated to share with Parent about its reading interventions. In other words, even though the District apparently did not share detailed information about its reading interventions during the 2020 to 2021 or 2021 to 2022 school years, it was under no specific obligation to do so.

That being said, Parent is correct that any omission by the District that prevented her meaningful participation in the IEP process would constitute a denial of FAPE and warrant redress. And although the District provided some information about the reading interventions, it did not provide detailed or comprehensive information about all of the programs and methodologies employed.

However, to the extent that the District failed to provide detailed information to Parent about reading interventions, there is no evidence that this failure hampered Parent's ability to participate in the IEP process. The records of the various IEP meetings and the communications between Parent and the District show that Parent actively participated in the IEP process. Parent was not prevented from advocating for herself or for Student, either before or after she engaged the services of an attorney. It is unclear how the provision of detailed reading intervention information would have improved Parent's ability to participate in crafting the IEP, and Parent has given no specific instance when the District's failure had a negative effect on her participation. Therefore, to the extent that the District's failure may have impeded Parent's "opportunity to participate in the decision-making process regarding the provision of a FAPE," the evidence did not establish that it did so to any significant degree. 34 CFR § 300.513(a)(2)(ii). Furthermore, there is no evidence that the failure to provide Parent with detailed reading intervention information otherwise denied Student FAPE or deprived Student of an educational benefit. Therefore, Parent did not meet the criteria of 34 CFR section 300.513(a)(2). These claims do not entitle Student to relief under the IDEA.

### *3. Measurement of IEP progress*

The last procedural claims raised by Parent allege that the District had an obligation to track Student's progress and that the District failed in this obligation during the 2020 to 2021 and 2021 to 2022 school years.

There are no rules specifying the method by which Oregon schools must track student progress. However, there are multiple rules placing a general requirement of progress measurement. For example, the reevaluation rules discussed above require that the District consult existing student data in preparing the reevaluation. OAR 581-015-2115(1). Similarly, OAR 581-015-2200(1)(c) requires that the IEP provide for the collection and sharing of student progress data with the parents. However, as described above, the District collected numerous data points on Student's progress during Student's seventh and eighth grade years, which were shared with Parent. Inasmuch as Parent contends that the failure to reassess Student in reading until the June 2022 IEE constitutes a failure to measure Student's progress, it must be reiterated

that reassessments provide poor instruments of progress measurement, and that the IEE did not provide any revelations about Student's reading level or disability. Therefore, Parent failed to show that the District did not effectively track and measure Student's progress during the 2020 to 2021 or 2021 to 2022 school years.

### B. *Implementation of Student's IEPs*

Parent alleges that the District failed to fully implement Student's IEPs during Student's seventh, eighth, and ninth grade years. More specifically, Parent alleges that the District failed to provide all of the IEPs' required accommodations. A failure to implement an IEP will constitute a violation of a student's right to a FAPE only if the failure was material. There is no statutory requirement that a district perfectly adhere to an IEP, and, therefore, minor implementation failures will not be deemed a denial of FAPE. *Van Duyn*, 502 F3d at 822. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Id.* A party challenging the implementation of an IEP must demonstrate that the school district failed to implement "an essential element of the IEP that was necessary for the child to receive an educational benefit." *Id.* at 821-22 (quoting *Neosho R-V Sch. Dist. v. Clark*, 315 F3d 1022, 1027 n3 (8th Cir 2003)) (internal quotes omitted). However, although evidence of the child's educational progress is probative of whether the omission was, in fact, material, "the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." *Id.* at 822.

Here, there is scant evidence that the District failed to implement Student's accommodations, despite the extensive list of accommodations in Student's IEPs. Parent's testimony, and the information provided in Student's exhibits, amounted essentially to bare allegations. Other than Student,<sup>9</sup> the firsthand witnesses testified that, with very few exceptions, Student received all of the accommodations listed in the IEP. Because of the broad corroboration of the District's witnesses, and the fact that Student's memory appeared less than reliable (for example, Student did not remember whether or not the class read portions of *Romeo and Juliet* silently to themselves, and initially did not remember the class reading *Romeo and Juliet* aloud),<sup>10</sup> Student's testimony regarding accommodations was accorded less weight than the District's witnesses. The testimony about accommodations presented by the District was given preference in the Findings of Fact above where Student's testimony disagreed.

That said, the District's witnesses conceded some lapses in implementing certain measures. In most cases, the District's failures amounted not to the denial of accommodations but to their delay. For example, the evidence showed that Ms. Cooke and Mr. Kirkpatrick shortened some of Student's assignments after they had already been provided to Student. Mr.

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<sup>9</sup> Student testified that assignments in Ms. D'Errico's social studies class were not shortened before Student received them and that Ms. D'Errico did not provide class notes. Tr. Vol. VII at 2184:3-13. Additionally, Student's demonstration of the District's assistive technology appeared to be intended to show barriers to its use. However, Student's unfamiliarity with the features of the Chromebook, apparently from lack of practice, made it difficult to conclude that Student's inability to use some features equated with their unavailability. Tr. Vol. VII at 2154:16-2169:12.

<sup>10</sup> Tr. Vol. VII at 2191:17-25.

Brown did not post assignments before class, preferring to wait until the end of the school day to prevent students in his later periods from accessing assignments prior to receiving class instruction. Ms. Cook provided class notes late in one instance because she had not yet finalized them. None of these instances appear in any way material. Student received the accommodations, albeit not necessarily on Student's preferred timetable, and it is difficult to conclude that these circumstances resulted in the deprivation of any educational benefit to Student.

The most serious omissions of accommodations were the failures to provide some reading materials in audio format. Mr. Brown testified that some shorter reading materials read in class were not uploaded to Canvas and so would not have been available for students who missed class to access these materials in audio format using the Chromebook's assistive technology. Similarly, Ms. Foulon testified that some copyrighted materials were not uploaded to Canvas, presenting the same inability to apply text-to-speech. However, I am not persuaded that the occasional failure to provide reading materials in audio format was material. In context, these appeared to be the rare exceptions to the rule that materials were available in audio form (read aloud in class and/or available in audiobook form or using text-to-speech). Moreover, there was no evidence of any specific instances in which Student missed school and later was unable to access classroom materials in audio format. This makes the question of the educational effect of these failures speculative at best. Therefore, the evidence failed to establish, more likely than not, that the District materially failed to implement the accommodations required by the IEP.

### *C. The Propriety of Student's IEP Goals*

Parent's last set of claims allege that the District failed to develop and implement an appropriately ambitious IEP during the 2020 to 2021 and 2021 to 2022 school years. This represents Parent's core contention: that Student's reading goals and the educational plan supporting those goals were fundamentally flawed, and that the District could and should have implemented a different set of reading interventions, with IEP goals calibrated to bring Student to grade level in reading.

The United States Supreme Court initially addressed the issue of IEP goals and educational progress in *Board of Education of Hendrick Hudson Central School District, Westchester County v. Rowley*, 458 US 176 (1982). *Rowley* involved a first grade student with a hearing disability. *Id.* at 184. To address the student's hearing disability, the student's IEP called for an FM wireless hearing aid to amplify the words of the student's teacher and peers, as well as some SDI from a tutor and a speech therapist. *Id.* The student's school district refused a request by the student's parents that the student also receive the services of a sign language interpreter in her classes, and the parents requested a hearing on this issue. *Id.* at 185. The evidence at hearing showed that, although the student achieved above-average academic performance with the IEP's provisions, the student's hearing disability still prevented her from perceiving a great deal of the communications that went on in the classroom, which would be remedied by a sign language interpreter. *Id.* Based upon this evidence, the federal district court and the Second Circuit Court of Appeals agreed with the parents that the student should receive a sign language interpreter. *Id.* at 186. The courts reasoned that the district should provide all of the services necessary for the student to reach her "full potential" and achieve what she could achieve in the absence of a disability, and that the district's failure to do so constituted a denial of FAPE. *Id.*

The Supreme Court overturned this outcome. The Court analyzed the IDEA’s definition of FAPE in the context of the IDEA as a whole and the IDEA’s legislative history and concluded that “the intent of the [IDEA] was more to open the door of public education” to children with disabilities “than to guarantee any particular level of education once inside.” *Id.* at 192. The Court interpreted the substantive educational standards of the IDEA to require only that the IEP be “reasonably calculated to enable the child to receive educational benefits.” *Id.* at 207. The student’s above-average academic performance showed that the IEP provided an adequate education; this established that the student’s educational needs had been met and that the IEP conformed to the IDEA without providing for a sign language interpreter. *Id.* at 209-10.

The Supreme Court later distinguished the *Rowley* holding in *Endrew F.* In contrast to the relatively high-achieving student in *Rowley*, the student in *Endrew F.* experienced much more serious disabilities—the student’s autism resulted in student screaming in class, running away from school, and experiencing serious fears about ordinary items such as flies, spills, and public restrooms—that had a more profound effect upon the student’s education. *Endrew F.*, 137 S Ct at 996. The student experienced little or no progress towards IEP goals, as shown by goals being recycled year-to-year in the student’s IEPs. *Id.* Because the IEP drafted by the district for the student’s sixth grade year did not show any substantive changes to the district’s approach to the student’s behavioral issues, the parents moved the student to a private placement at a school specializing in children with autism. *Id.* The private school implemented a new behavioral support plan that resulted in a vast improvement in the student’s school performance and academic achievement. *Id.* at 996-97. When the parents approached the school district to develop a new IEP to allow student to return to public school, the district proposed behavioral interventions consistent with what it had previously employed with the student, despite the proven efficacy of the methods used in private placement. *Id.* at 997. The parents requested a hearing under the IDEA, alleging that the district-proposed IEP constituted a denial of FAPE and seeking reimbursement for the student’s private placement. *Id.*

Applying the precedent of *Rowley*, the federal district court and Tenth Circuit Court of Appeals found in the school’s favor. *Id.* According to the prevailing interpretation of *Rowley*, an IEP that was reasonably calculated to confer even minimal educational benefit (as opposed to zero benefit) would not constitute a denial of FAPE. *Id.* Under this interpretation, because the student was making yearly nonzero improvement, the IEP met the IDEA’s requirements and the parents’ claim could not prevail. *Id.*

Upon review, the Supreme Court vacated the decision of the lower courts. *Id.* at 1002. The Supreme Court clarified that the IDEA requires that “a school must offer an IEP reasonably calculated to enable a child to make progress *appropriate in light of the child’s circumstances.*” *Id.* at 999 (emphasis added). That being said, “[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* (citing *Rowley*, 458 US at 206-07). The Supreme Court noted the limited applicability of *Rowley* given the vastly different disabilities in the two cases:

*Rowley* had no need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on

grade level. That case concerned a young girl who was progressing smoothly through the regular curriculum. If that is not a reasonable prospect for a child, [his/her] IEP need not aim for grade-level advancement. But [her/his] educational program must be appropriately ambitious in light of [his/her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.

*Id.* at 1000. The *Andrew F.* decision did not set a bright-line rule for determining the propriety of the IEP program and goals, instead adopting the following standard:

The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.

*Id.* at 1001 (quoting *Rowley*, 458 US at 206) (internal quotes omitted).

Here, Parent asks that the IEPs developed and implemented by the District during the 2020 to 2021 and 2021 to 2022 school years be rejected as not reasonably calculated to confer academic benefits in light of Student's specific circumstances. In support of this request, Parent presented expert testimony regarding the current state-of-the-art in reading instruction under the most recent research.<sup>11</sup> Parent also points to the recommendations made by Dr. Fry and Dr. Col, suggesting that a different reading program could have brought student to grade level in reading.

Student's serious reading disability appears to compare more aptly with the circumstances in *Andrew F.* than with *Rowley*. However, a more thorough examination shows that Parent's case contains fatal deficiencies. Unlike in *Andrew F.*, there is no direct evidence that an alternative program of study with more ambitious IEP goals would have resulted in greater progress for Student. The evidence showed that the SDI implemented by Ms. Cooke contained at least elements of the ideal program described by Parent's expert—Ms. Cooke had student read passages aloud and instructed Student in phonics strategies. The Read Naturally and Read Naturally Live programs offered to Student by the District both appear to meet the definition of a systematic, explicit, phonics-based system consistent with the most recent research. The evidence showed that Student's failure to close the gap with Student's peers' could

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<sup>11</sup> Dr. Storie's testimony regarding the most effective reading interventions for individuals with dyslexia according to the most recent research raised the possibility that a different reading intervention would have been better suited to Student's needs. However, because Dr. Storie evaluated neither Student nor the District's reading curriculum (e.g., she was unfamiliar with Read Naturally Live, Tr. Vol. V at 1518:15-17), her testimony did not eliminate other plausible explanations (such as lack of engagement) for Student's slow growth. Similarly, although Dr. Col evaluated Student, there was no evidence that Dr. Col evaluated the District's curriculum or SDI, and there was no evidence that Dr. Col observed Student in the classroom setting to evaluate whether other behaviors were not factors in Student's education. Therefore, Parent's theory that the IEP was not appropriately ambitious remained only one possible explanation. Parent did not establish the allegations regarding Student's IEPs by a preponderance of the evidence.

be attributed as much to Student's lack of engagement with school as to deficiencies in the IEP. The belated rule-out autism diagnosis could also have been a factor, and Parent has not alleged that the District should have evaluated Student for autism earlier in Student's educational history. Also, unlike *Andrew F.*, Student's IEP goals, while arguably modest, were not recycled year-to-year. Although Student did not close the reading gap on same-aged peers, the evidence also did not show a serious widening of that gap. As noted in *Andrew F.*, the District was not obligated to offer the ideal program in reading; it was only obligated to offer a program reasonably calculated to confer educational benefits commensurate with Student's specific circumstances. Given all the circumstances, Parent has not shown that, more likely than not, the District failed to do so. Student's IEP was appropriately ambitious, the District did not deny Student FAPE, and Student is not entitled to relief.

### ORDER

The District did not deny Student a FAPE during the period December 19, 2020 through December 19, 2022.

Parent's request for relief, pursuant to the due process hearing request dated December 19, 2022, is DENIED.

Bradley A. Schmidt  
\_\_\_\_\_  
Administrative Law Judge  
Office of Administrative Hearings

### APPEAL PROCEDURE

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

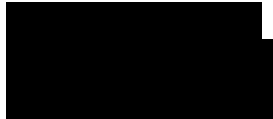
### SERVICEMEMBERS' CIVIL RELIEF ACT

Unless otherwise stated in this order, the Office of Administrative Hearings (OAH) has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a party to this proceeding is a servicemember who did not appear for the hearing, within the servicemember's period of service, or 90 days after their termination of service, that party should immediately contact the agency to address any rights they may have under the SCRA.

**CERTIFICATE OF MAILING**

On July 27, 2023, I mailed the foregoing FINAL ORDER issued on this date in OAH Case No. 2022-ABC-05754.

By: First Class and Certified Mail



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