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Liberty Building • 32 North Third Street • Suite 320 • Yakima, Washington 98901
(509) 249-6090 • (800) 843-3491 • FAX (509) 454-7281 • www.oah.wa.gov

June 13, 2015

Parents

██████████
Shelton, WA 98584

Tami Stoutnar, Director of Special Education and
 Early Childhood Education
 Shelton School District
 700 South First Street
 Shelton, WA 98584

Robert W. Johnson, Attorney at Law
 103 South Fourth Street, Suite 200
 PO Box 1400
 Shelton, WA 98584

Jeffrey Ganson, Attorney at Law
 Porter Foster Rorick LLP
 800 Two Union Square
 601 Union St
 Seattle, WA 98101

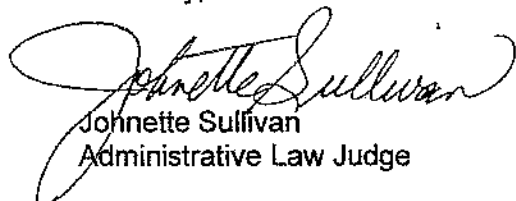
In re: Shelton School District
OSPI Cause Nos. 2015-SE-0011 and 2015-SE-0013
OAH Docket Nos. 02-2015-OSPI-00012 and 02-2015-OSPI-00017

Dear Parties:

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

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

Sincerely,


 Johnette Sullivan
 Administrative Law Judge

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SUPERINTENDENT OF PUBLIC INSTRUCTION
 ADMINISTRATIVE RESOURCE SERVICES

cc: Administrative Resource Services, OSPI
 Michelle C. Mentzer, Acting Senior ALJ, OAH/OSPI Caseload Coordinator

JUN 16 2015

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

OAH SEATTLE

IN THE MATTER OF:

OSPI CAUSE NOS. 2015-SE-0011
2015-SE-0013

SHELTON SCHOOL DISTRICT

OAH DOCKET NOS. 02-2015-OSPI-00012
OAH DOCKET NOS. 02-2015-OSPI-00017

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Johnette Sullivan in Shelton, Washington, on April 20, 23-24, 27, 30, and May 1, 2015. The Parents of the Student whose education is at issue¹ were represented by Robert Johnson, attorney at law. The Shelton School District (District) was represented by Jeff Ganson, attorney at law. The following is hereby entered:

STATEMENT OF THE CASE

Procedural History

On February 4, 2015, the Parents filed a Due Process Hearing Request (Complaint #1) with the Office of Superintendent of Public Instruction (OSPI). OSPI assigned Complaint #1 Cause No. 2015-SE-0011. OAH assigned Complaint #1 Docket No. 02-2015-OSPI-00012. On February 6, 2015, on the District's motion the matter was reassigned to ALJ Sullivan. On February 11, 2015, the District filed its Response to Complaint (District's Response), and also filed with OSPI its own Due Process Hearing Request (Complaint #2). OSPI assigned Complaint #2 Cause No. 2015-SE-0013, and OAH assigned it Docket No. 02-2015-OSPI-00017. On February 19, 2015, the Parents filed a Response to Complaint #2 (Parents' Response). OAH scheduled a one-day hearing for each complaint (Complaint #2 on March 6, and Complaint #1 on March 27, 2015).

At a Prehearing Conference held February 23, 2015, the parties agreed to consolidate the two complaints for hearing. The parties agreed to schedule a five-day hearing April 20-24, 2015. The parties agreed to schedule a second conference to clarify the issues in the Parents' Complaint. At a second Prehearing Conference held March 11, 2015, Parents clarified they were not claiming an exception to the two-year statute of limitations. Most issues were clarified, but Parents were given to March 23, 2015, to clarify in writing three issues. See Second Prehearing Order dated March 16, 2015.

Parents submitted written clarification of issues on March 23, 2015, which were reviewed with the parties at a third Prehearing Conference held March 27, 2015. The parties also

¹In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student."

considered that the ALJ was no longer available for hearing April 21-22, 2015. The parties agreed to a statement of issues, and a four-day hearing with the addition of April 27, 2015, as a hearing date. See Amended Second Prehearing Order dated March 27, 2015.

At hearing on April 24, 2015, the parties agreed to add two days to the hearing schedule: April 30 and May 1, 2015. On May 1, 2015, the parties agreed to submit post-hearing briefs by May 15, 2015.

Due Date for Written Decision

The due date for the written decision in Docket Nos. 02-2015-OSPI-00012 and -00017 was continued to thirty (30) days after the close of the hearing record, pursuant to motion of the District. The Parents did not object. See Prehearing Order dated February 24, 2015. Subsequently, the parties agreed to add two days to the hearing schedule, and to submit post-hearing briefs by May 15, 2015. The record closed on May 15, 2015. Thirty days thereafter is June 14, 2015. The due date for the written decision is therefore **June 14, 2015**.

Evidence Relied Upon

The following documents were exchanged five days before hearing and were admitted into evidence:

Joint Exhibits: J1 through J28
District Exhibits: D1 through D9
Parents Exhibits: P1 through P7, P11 through P22, P25 through P28, P32, P34 through P54, P56, P58 through P68, P69 pp. 4 - 8, P70 through P98

The following documents were not exchanged five days before hearing but were disclosed at hearing and without objection were admitted into evidence:

Joint Exhibits: J21, p. 2: A colored copy of the original
District Exhibits: D10: U.S. Department of Education What Works Clearinghouse: Orton-Gillingham-based Strategies
D11: U.S. Department of Education What Works Clearinghouse: Read Naturally
D12 (Identification 4): Writing Rubric
D13 (Identification 6): WCAP: Measurements of Student Progress in Writing Grade 7
Parent Exhibits: P99 (Identification 7): Ms. Keith's grading of Exhibit P91
P100: April 14-15, 2015 Electronic Mail String: Mother, Ms. Grady, Ms. James, Ms. Keith, and Mr. Conover

Court Exhibits: C1: Washington State Dyslexia Resource Guide (Parents' motion that ALJ take judicial notice of guide on OSPI website was not opposed by District; parties later submitted a copy for the record.)

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

Cindy Dupuy, learning disability specialist
Alicia Roberts-Frank, Lewis & Clark College assistant professor
Elizabeth Parker, Landmark School director of admission
Allison Nelson, District general education teacher
Stacey Ozga, ESD 113 educational advocate
Marcia Rodes, Brightmont Academy Seattle campus director,
Kevin Pendergast, Kildonan School headmaster
The Mother
Brent Conklin, District general education teacher
Elizabeth Grady, District special education teacher
Brian Peterson, District school psychologist
Stacey Adams, District school counselor
John Bryz-Gornia, District assistant principal
Kathy James, District general education teacher
Amber Keith, District special education teacher
Marijo Parsley, District special education teacher
Tami Stoutnar, District director of special education and early childhood education

Exhibits Not Considered

The following documents were withdrawn by Parents and not considered:

P8, P23 and P24, P29 through P31, P33, P55, P57, and P69 pp. 1 through pp. 3.

The following documents were offered by Parents but not admitted and not considered:

P9 and P10

Identification 1: Dupuy's demonstrative Real Words/ Nonsense Words graph

Identification 2: Dupuy's demonstrative trend lines Matthew Effect/ Oral Reading Fluency

Identification 3: Dupuy's demonstrative Bell Curve

Identification 7²: Code Reviser's Notes to RCW 28A.300.530, Finding—Intent

The following document was identified by District but was not offered and not considered:

Identification 5: April 2015 "Picture Prompts" work sample

² This document was not assigned an identification or exhibit number at hearing. For clarity of record on the ALJ's own motion (*sua sponte*), the document is assigned Identification No. 7.

ISSUES

Complaint #1:

1. The issues for hearing in Parents complaint are whether the District violated the Individuals with Disabilities Education Improvement Act (IDEA) and denied the Student a free appropriate public education (FAPE) in the two-year period prior to February 4, 2015, by:
 - a. Failing to appropriately evaluate the Student in all areas of suspected disability including areas of executive functioning, and social and emotional status, and not conducting an assistive technology evaluation, including to address Student's note taking and organizational needs;
 - b. Failing to develop the Student's Individual Education Programs (IEPs) dated November 13, 2013, and November 10, 2014, by:
 - i. Failing to review the 2009 UW Reports regarding the Student's needs, including in areas of executive functioning, and social and emotional needs, when evaluating the Student's need for specially designed instruction and related services;
 - ii. Failing to ensure attendance and participation in IEP team meetings by the Student's general education teachers;
 - iii. Failing to place in the least restrictive classroom setting for special education, due to failure to consider current and accurate data from general education teachers regarding classroom performance, testing and other progress data, teacher observations of the Student's lack of organizational skills and pattern of not handing in or not timely completing assignments, tests, projects, and the like;
 - iv. Failing to consider the Student's progress in 7th and 8th grade U.S. History as evidence of his abilities, and to develop specially designed instruction and related services modeled after those used successfully by the U.S. History general education teacher;
 - v. Failing to train District educators and service providers about how to address the Student's executive functioning deficits, including how to timely and appropriately tailor interventions;
 - vi. Failing its child find/identification duties to identify and evaluate the Student as eligible for special education and related services including the areas of math, literacy, executive functioning and social and emotional status;
 - c. Failing to appropriately implement the Student's IEPs dated November 14, 2012, November 13, 2013, and November 10, 2014, by:
 - i. Failing to ensure that special education, general education and service providers implemented recommendations in the 2009 UW Reports;
 - ii. Failing to ensure that the Student's general education teachers were aware that the Student had an IEP;
 - iii. Failing to ensure that the Student's general education teachers were aware of their responsibilities under the IEPs, including to:
 1. Provide access to assistance technology and training to enable Student to complete assignments and to take notes;
 2. Copy instructional materials in each class to be available for at home use by Student;
 3. Communicate with Parent the preceding week (and throughout subsequent weeks as appropriate) to inform Parent of individual

- classroom targets and assignments, Student progress, and to enable Parent or tutor to review materials with Student prior to addressing material in class;
4. Provide one week prior to lessons the instructional content and assignment details to enable Student to be exposed to the materials prior to first addressing material in class;
 5. Allow alternate note taking methods (including but not limited to use of laptop or other technology, use of recording, obtaining copy of teacher's notes for cross-checking purposes, shared/copied notes) to increase Student's ability to take accurate and legible notes
 6. Provide Student with frequent assistance and encouragement and check in to ensure Student understands all directions;
 7. Establish testing protocols, such as additional time to complete tests/projects, use of computer/technology to record answers on assessments and/or assignments;
 8. Provide Student with a graphic organizer or notes to assure Student's understanding of assignment or task;
 9. Provide and monitor Student's use of monthly calendar to write daily assignments;
- iv. Failing to provide support, accommodations, services or assistive technology by the special education teacher or other special education staff to address the Student's challenges in meeting the requirements of his general education teachers, such as creating legible handwritten reports, calendaring and meeting assignment due dates, understanding the sequence in which assignments or project steps were to be completed, meeting requirements of course rubrics, course syllabus documents;
 - v. Placing the Student in special education classrooms far below his academic potential without adequate supports provided to enable him to succeed in general education classes where he was capable of performing well with supports or accommodations for handwriting and organization, which placement was not the least restrictive environment;
 - vi. Failing of the IEP coordinator to coordinate implementation of the Student's IEPs by general education teachers and appropriate service providers, instead relying on Parent to coordinate and manage communication on Student's behalf, such as obtaining services of Ms. Ozga of ESD 113, arranging transportation to and from Ms. Ozga's office, and arranging the fall 2014 after-school program;
 - vii. Failing to respond to Parent's April 10, 2013, request for ideas for tutors or summer activities for Student;
 - viii. Failing to provide specially designed instruction and related services, instead relying on Parent to seek private tutor;
 - ix. Failing to place the Student in an appropriate 9th grade math class, and instead placing him in a class designed for the "lowest" performing students due to failure to consider the Student's 8th grade MSP math results in spring 2014, and the recommendation of the 8th grade teacher that the Student have "intensified algebra";
 - x. Failing to appropriately respond when the Student exceeded class expectations for the 9th grade math class by placing him in a more

- challenging class better suited to his capabilities, and instead deciding to allow the Student to skip math class and extend swimming class since he was so far ahead of the other students;
- d. Failing to appropriately develop the Student's IEPs dated January 5, 2015, and February 3, 2015, by:
 - i. Proposing that Student will use the after school program (Jump Start) to assist him in getting work organized and completed, which proposal is inadequate based on Student's December 2014 experience in the program;
 - ii. Proposing that District staff will help the Student by constant nudging and by reminders to get his work done and turned in, which proposals are inadequate based on the Student's past record;
 - iii. Proposing that District staff will allow some work to stay in the Student's classroom to avoid it being lost, and that helpful tools for the Student to keep his work in include folders and spirals, which proposals are inadequate based on the Student's past record;
 - iv. Failing to appropriately make an age appropriate transition assessment;
 - v. Failing to propose appropriate transition services and goals tailored to the Student's specific needs to prepare him for post-secondary education and employment;
 - e. Improperly expelling the Student in October 2013 and excluding him from the June 2014 Grade 8 History trip, without being aware the Student had an IEP, without considering the contents of his IEP, without coordinating and communicating with the Student's IEP coordinator or Parents, and without considering the content of the Student's text message in the context of his documented disabilities before determining discipline was necessary;
 - f. Failing to ensure that safe provisions were made for the Student during the expulsion period, regarding Student's daily whereabouts and supervision;
 - g. Failing to convene the IEP team following the October 2013 expulsion to develop a Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP), to appropriately respond to Parents' inquiry about and to provide counseling or other services available to assess the Student's behavior;
 - h. And, whether the Parents are entitled to the requested remedies based on evidence provided by Parents at hearing regarding the Student's specific needs and the appropriateness of the specific remedies, including:
 - i. An independent educational evaluation (IEE) at public expense;
 - ii. Prospective private placement at District expense in Brightmont Academy;
 - iii. One-on-one tutoring for a minimum of 5 hours per week throughout the calendar year until Student reaches age 21, in the areas and by the provider(s) identified in Parents' evidence at hearing;
 - iv. Compensatory education in areas of written expression, math, cognitive areas of memory, executive functioning and problem solving, adaptive skill development, organizational and time management skills, social emotional and anxiety skills development, communications for language, articulation, pragmatics and social skills, for high school, compensatory education, as proven by evidence at hearing which is specific to the type and amount of compensatory education needed by the Student;
 - v. Reimbursement for costs of private tutor from December 2013 to February 4, 2015;

- vi. Reimbursement for other documented costs incurred by Parents for educational, related or supplemental services during the two year period prior to February 4, 2015;
- vii. Educational counseling as well as medical/mental health counseling services to address impulse control, mental well-being and social integration, at public expense; and
- viii. Other equitable remedies, as appropriate.

Complaint #2:

2. The issues for hearing in District's complaint are whether the District's most recent evaluation of the Student (the November 2013 triennial reevaluation and the February 2015 records review) were appropriate, and if not, whether the Parent is entitled to an independent educational evaluation (IEE) at public expense.

See Amended Second Prehearing Order dated March 27, 2015.

FINDINGS OF FACT

Background

1. The Student is 16 years of age and resides with his Parents in the District. He attends the District's junior high school and is in the 9th grade. In 2nd grade, the Student was qualified by the District to receive specially designed instruction (SDI) as a child with a Specific Learning Disability (SLD).
2. The Student's maternal grandparents were District school teachers. His Parents were educated in District schools. His Parents chose to return to Shelton after college. The Student's Parents have been supporters of public education in the District. The Parents have taught the Student to be respectful of teachers and school rules. Testimony of Mother.
3. In November 2008, the Student's 3rd grade teacher, Allison Nelson, wrote of her concerns in reading, math and written language. Ms. Nelson observed the Student's auditory memory was impacting his ability to decode words. He could sound out words in isolation but had difficulty reading words in context. He could sound out the word n/a/p but may read it is nan. He omitted and inserted words at random without realizing it did not make sense. She had concerns about his memory, his inability to generalize rules, inability to organize words, his literal and sequential approach to math and lack of agility with numbers and numbers sense. She expressed concern about fine motor skills. She observed his growing frustration and confusion with conventions (spelling, capitalizations, etc.) Exhibit P25; Testimony of Allison Nelson.

The University of Washington reports

4. Prompted and encouraged by Ms. Nelson, the Parents contacted the University of Washington Medical Center, Child Development Clinic, Center on Human Development and Disability (UW), and were put on the wait list. The UW interdisciplinary team conducted testing of the Student in August 2009. The Student was age 10 and about to enter 4th grade. The results of initial testing prompted the interdisciplinary team to refer the Student for an Occupational Therapy (OT) evaluation. Testimony of Ms. Nelson; Mother.

5. The UW's interdisciplinary evaluation produced two reports dated September 14 and 24, 2009. Exhibit J1. The Student was administered the following tests:

- Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV)
- Wechsler Individual Achievement Test – Second Edition (WIAT-II)
- Comprehensive Test of Phonological Processing (CTOPP)
- Wide Range Assessment of Memory and Learning – Second Edition (WRAML-2)
- Beery Developmental Test of Visual-Motor Integration – 5th Ed. (VMI)
- Rey Complex Figure Test
- Bruininks-Oseretsky Test of Motor Proficiency – Second Edition (BOT-2)
- Test of Visual-Perceptual Skills – Revised (TVPS-R)
- Handwriting Sample

His Mother completed the following assessments:

- Adaptive Behavior Assessment System – Second Edition (ABAS-II)
- Achenbach Child Behavior Checklist (CBCL)
- Behavior Rating Inventory of Executive Function (BRIEF; Parent and Teacher Form)

6. The Student's Mother accompanied him to the first day of testing, where he was observed to be cooperative and engaged. The test results were considered to be an accurate reflection of his current level of functioning. Exhibit J1, p. 5. The Student was accompanied to the OT assessment by Ms. Nelson and her husband, who presented as family friends. Ms. Nelson was not acting on behalf of the District. The Student was observed to be pleasant, cooperative, and quiet. He had difficulty persisting to the end of the time period, secondary to fatigue. The test results were considered a reliable indication of his current abilities. Exhibit J1, p. 20.

7. The UW team diagnosed the Student with Developmental Neurological Disorder, also known as Static Encephalopathy, of unknown cause. The diagnosis was characterized by severe learning disabilities in basic reading (phonological processing, single word reading and decoding), written expression (spelling and composition), math computation skills, variable cognitive skills, visual memory deficits, visual-motor integration and organization deficits, and attention and executive functioning. The neurological profile did not fit neatly into one category. The multiple deficits spanned language and visual domains which adversely impacted his ability to progress at age-expected levels in reading, writing, and math. The Student's strengths included age-appropriate verbal reasoning and verbal memory skills, receptive and expressive vocabulary skills, reading comprehension, and math reasoning skills. Exhibit J1, pp. 11 and 16.

8. *Cognitive.* The WISC-IV focused on narrow domains of cognitive functioning.

Composite Scores Summary

Scale	Composite Score ³	Percentile Rank	95% confidence Interval	Qualitative Description
Verbal Comprehension	96	39	89-103	Average
Perceptual Reasoning	71	3	66-81	Borderline

³ Composite Scores have a mean of 100 and a standard deviation of 15, based on age norms.

Verbal Comprehension Subtest Score Summary

Subtests	Scaled Score ⁴	Percentile Rank
Similarities	10	50
Vocabulary	8	25
Comprehension	10	50

Perceptual Reasoning Subtest Score Summary

Subtests	Scaled Score	Percentile Rank
Block Design	9	37
Picture Concepts	3	1
Matrix Reasoning	4	2

Exhibit J1, pp. 5-6.

9. The UW interpreted the Student's cognitive results and found a significant discrepancy between verbal and nonverbal reasoning abilities. His verbal reasoning and concept formation measured in the average range, whereas his nonverbal fluid reasoning and perceptual organization measured in the borderline range. He performed better on tasks involving two-dimensional replicas and geometric patterns, compared to tasks requiring abstract categorical reasoning without verbal expression and abstract visual perceptual pattern reasoning.

10. *Academic.* In reading, the Student performed much better on tasks which assessed his ability to comprehend what was read, than on tasks that required him to correctly read printed words and correctly apply phonetic decoding rules when reading nonsense words. In mathematics, the Student's ability to add and subtract one- to three-digit numbers and multiply and divide two-digit numbers was in the borderline range. His performance was in the low average range regarding tasks which required him to understand number, consumer math concepts, geometric measurement, basic graphs, and one-step work problem solving. The testing revealed an area of significant weakness in written language skills, with the Student's current skill level in the extremely low range.

Summary of WIAT-II Subtest Scores

SUBTESTS ⁵	Standard Score	95% Confidence Interval	Percentile
Word Reading	79	75-83	8
Reading Comprehension	90	84-96	25
Pseudoword Decoding	70	66-74	2
Numerical Operations	76	65-87	5
Math Reasoning	85	78-92	16

⁴ Verbal Comprehension Scaled Scores have a mean of 10 and a standard deviation of 3.

⁵ WIAT-II Standard Scores have a mean of 100 and a standard deviation of 15, based on age norms.

Spelling	74	67-81	4
Written Expression	74	53-79	1

Exhibit J1, p.6

11. The Student's pre-reading abilities were in the borderline range in phonological awareness (analysis and synthesis of phonemes) and phonological memory (coding information phonologically for temporary storage in working or short-term memory). The Student performed in the extremely low range for efficient retrieval of a series of names of digits and letters from long-term memory. Overall, he demonstrated significant difficulty holding phonological information in his memory and quickly processing phonological information. Exhibit J1, p. 7.

12. *Visual/Spatial.* The Student demonstrated skills in the extremely low range on visual-motor integration, visual perception, and a motor-free task, and in borderline range on the motor coordination task. His attempt to copy complex shapes and symbols was grossly inaccurate and distorted to the point of being unscorable, and indicated severe visual/perceptual-motor deficit for complex visual information. Exhibit J1, pp. 7-8.

13. *Memory/Learning.* The Student's verbal recognition memory score was in the average range, but visual recognition memory measured low average. Verbal memory also measure in low average range, while he was in the borderline range for visual memory, attention/concentration, and general memory cores. He performed better on verbal than visual recognition tests, and significantly better when tasks involved pictured scenes than abstract designs. Exhibit J1, p. 8.

14. *Executive Function.* The Student exhibited difficulty with his ability to adjust to routine or task demands, initiate problem solving or activity, sustain working memory, and plan and organize his environment and materials. Exhibit J1, p. 9.

15. *Adaptive Function.* There was a great deal of variability in his Conceptual skills which overall fell within the borderline range. An area of significant weakness for the Student, in the extremely low range, was self-direction abilities. These are skills needed for independent, responsibility, and self-control, including starting and completing tasks, keeping a schedule, following time limits, following directions, and making choices. His overall Social functioning skills fell within the average range, with his leisure skills in the low average range (skills needed for engaging in and planning leisure and recreational activities, including playing with others, and following rules in games). The Student's Practical functional skills overall measured in borderline range. These skills relate to functioning in the community, basic care of a home or living situation, protection of health and response to injury, and personal care. Exhibit J1, p. 10.

16. *Behavioral and Social-emotional.* Overall, the CBCL results suggested the Student had clinically significant attention problems (e.g., fails to finish work, day dreams, and inattentive) and at-risk behaviors in areas of anxiousness, withdrawal, somatic complaints, social difficulties, and thought processing. Exhibit J1, p. 10.

17. *Occupational Therapy.* The Student demonstrated challenges in all areas of motor performance compared to other boys his age, including areas of fine manual control, manual coordination, body coordination and strength and agility. He performed below average in all areas, with high deficits in ball handling skills and in precision in using a pencil, including copying forms. Significant deficits were observed on a test that measured visual perceptual

development in which motor responses were not required. The OT opined that these significant deficits have been an ongoing problem and are strongly impacting the Student's ability to learn at school. The Student's handwriting sample intermixed upper and lower case letters. Writing numbers 1 to 10, his 4 was illegible, his 9 was produced incorrectly but decipherable as a 9. He proudly wrote his name in legible cursive when asked, except for the first letter of his last name. He had forgotten what that capital letter looked like. He substituted another letter in lower case in its place. The Student told the OT test administrator that he had some opportunity for using a computer for classroom work, but had not yet participated in any formal keyboarding training at home or at school. Exhibit J1, p. 24.

18. The UW reports included recommendations for the Student's education:

- a. Receive special education services as a student with Health Impairment;
- b. Requires specially designed instruction (SDI) in basic reading (phonological processing, single word reading and decoding, as well as orthographic coding), written expression (spelling and composition), math computation skills and adaptive behavior (organization and planning).
- c. Requires systematic, intensive and evidence-based interventions; multi-modal teaching strategies (verbal, tactile, visual, demonstrations) to accommodate memory and visual/perceptual deficits; high structure and routine; repeated practice to master basic skills; and utilizing his strengths and interests to motivate learning and teach new skills.
- d. Be exempt from the standard WASL and be provided a portfolio or alternative assessment.
- e. Be eligible to receive special education services until 21 years of age.
- f. Receive occupational therapy at school primarily to support his writing progress.
- g. Begin formal keyboarding instruction, preferably using the same program at home and school to maximize practice in a consistent fashion.
- h. Requires significant modification of curriculum materials for general education content classes (e.g., science, social studies) and accommodations for his various learning deficits;
 - i. Given Student's age-appropriate verbal reasoning and vocabulary, he should be able to learn at or slightly below grade-level material, but will need to learn content in alternative ways to traditional teaching methods (e.g., teach the big picture first, then categories and links between categories; provide real-life examples and hands-on experience; books on tape or books that are considered high interest/lower reading level; videos of novels or plays to help establish a schema or structure to which he can attach details).
 - ii. Student will need alternative ways to express his ideas and answers (e.g., oral methods such as dictating his responses to a scribe or using voice recognition software such as Dragon Naturally Speaking; use a word processor/computer to type instead of write, which may also include features such as word recognition and spell-check).
- i. Requires accommodations for his attention and executive functioning difficulties to include:
 - i. Preferential seating
 - ii. Extra time to complete tasks
 - iii. Concrete and simple instructions
 - iv. Repetition of instructions

- v. Provision of organizational structure/strategies, large projects/ assignments broken down into more manageable components that are turned in over time
- vi. Tape recording lectures to facilitate note taking and study skills;
- vii. Teachers, parents and Student may need to work closely together initially to monitor his ability to make use of his planner, follow through with directions/ instructions, and turn in his completed work
- viii. Daily or weekly communication via email often facilitates this process
- j. Permit access to the school counselor to obtain support and develop coping strategies for his learning differences, as Student's anxiety and withdrawal symptoms are likely related to his disappointment and frustration with learning
- k. Parents may wish to obtain private counseling for Student to assist with anxiety management and coping strategies as well as social skills
- l. Involvement in extracurricular activities, such as boy scouts and the YMCA youth programs, to facilitate Student's self-esteem and confidence in non-academic areas;
- m. Increase at home and school multiple physical breaks throughout the day involving vigorous movement;
- n. Teach techniques to regulate self-arousal, including an internet link for the Student's teacher to a program that related the human body to the engine of a car to teach ways to recognize when to either begin form speed up or slow down body arousal to the "just right" level;
- o. Consider allowing Student to sit on a therapy ball in school while working at a table as a means to promote good arousal while doing longer activities;
- p. OT intervention therapy at school, particularly in regard to support Student's writing in the classroom, in consultation with Student's teacher and aide to provide specific strategies to use with writing and offer recommendations to assist Student in self-regulation;
- q. Through a classroom aide or parent volunteer guided by the Student's OT, give individual instruction and practice of the common playground activities of the Student's classmates, to boost skills and confidence in engaging with peers in these settings

The OT report recommended the Parents in the home environment continue to engage the Student in physical activity such as swimming, martial arts, bicycle riding, hiking, etc. Exhibit J1, pp. 16-17 and pp. 25-26.

Acceptance of UW reports

19. The UW reports provided the Parents specific information to understand the scope of the Student's health impairment, and the diagnoses helped to understand his strengths and his weaknesses. They accepted the results and encouraged the Student to persevere and not give up, and to learn new skills in stages and with repetition. For example, the Parents repeatedly encouraged the Student to learn new skills in manageable parts, until step-by-step he gained the skills necessary to run, swim, and ride a bicycle. He runs cross country now for the District. He took up martial arts and fishing and other outdoor sports. He grew up to be a polite and respectful teenager. Testimony of Mother, RP 385-386.

20. The Parents gave the District a copy of the UW Reports. Brian Peterson reviewed the UW reports. He had just completed his internship at another district in the 2009-2010 school year,

and was hired as a school psychologist by the District in fall 2010. The Student was in 5th grade at the District's middle school. Mr. Peterson considered the UW results to be accurate. He agreed with the UW recommendation that the Student's qualifying category for SDI should be Health Impaired (HI). Exhibit J2, pp. 2 and 11.

Parents' perspective

21. The Mother described herself as fairly laid back, and it was not until the end of 5th grade that she became more proactive in the Student's education. RP 370, 476. She checked Skyward, the District's online system to access classroom information about completed or missing assignments and quiz and test grades, find out what the Student missed, get copies of the material and taking it home, monitor the Student's completion of homework, and then try to make sure he turned it in. RP 376-78. In 7th grade, just prior to the period at issue here, at the October 2012 parent-teacher conference Parents were surprised when Mr. Parnell, the math teacher, expressed concern about the Student's difficulties and was surprised when Parents informed him the Student was on an IEP. RP 379. Subsequently, Mr. Parnell and three other general education teachers attended the November 2012 IEP meeting. Exhibit J3, p 14. Other than Mr. Parnell, the Mother did not identify a specific general education teacher who was unaware the Student had an IEP. The Mother described Student's written work in math as a debacle, and she asked about tutors. A District teacher suggested Stacey Ozga at the Educational Service District (ESD), whom the Mother contacted. Tutoring in math and help with homework completion started shortly before the time period at issue. RP 380-381. Ms. Ozga's tutoring continued for the remainder of 7th grade, but due to scheduling conflicts and ESD funding issues, the Mother explained the tutoring stopped. RP 417. During the portion of 7th grade at issue here, the two general education math and literacy teachers began to provide materials electronically. RP 413. At end of 7th grade, the Mother wrote District officials to commend all the 7th grade teachers, including the IEP coordinator, and cited for specific praise the general education teachers. Exhibit J4.

22. The Mother tried to arrange a meeting in spring 2012 between middle school teachers familiar with the Student, and the junior high school teachers who would be responsible for his IEP at start of 8th grade. One junior high teacher responded internally about the Mother already "pestering" him, but the evidence shows that a meeting with the Mother and the junior high school 8th grade teachers did occur just prior to the start of 8th grade. The Mother felt she had done a thorough job informing junior high teachers in advance of her son's needs. RP 392, 419; Testimony of Mr. Conklin, RP 561. The Mother sat back as 8th grade year began but soon observed general education teachers marking F or missing on Student assignments, so she resumed being proactive. She recalls that for two 8th grade general education projects, science and one other, she contacted Ms. Ozga who agreed to help the Student. RP 417-419. The Student was in a corrective math class in 8th grade with a first-year teacher whom Mother believed was still learning the curriculum. Parents enrolled the Student in an online one-on-one live tutoring program which focused on math. RP 429. By end of 8th grade, the Mother believed the teacher would be advocating for a high placement in 9th grade. RP 422. The Mother had asked for SDI placement and a more management homework load for the Student for reading and writing. In hindsight, she is concerned the result was placement with student's lower functioning than the Student. She observed from the beginning of 8th grade that in special education classes, the Student had no homework and earned A grades. She described the special education classroom as self-contained, and coursework based on predetermined worksheets not specially designed. Her concerns covered the same 9th grade placement, too. RP 420, 423-424; Exhibit P90.

23. *Emergency Expulsion.* On October 30, 2013, the District removed the Student from the junior high school on an emergency expulsion basis while it investigated a text message threat to do harm. The notice requested that Parents meet with the principal the following week, and of their right to a hearing. Exhibit J10, p. 4-5. The assistant principal who made the expulsion decision did so without knowledge of the Student's diagnosis or that he had an IEP. When safety is an issue, the procedure is to immediately expel until more information can be attained. On November 6, 2013, the expulsion was converted to a five-day short-term suspension (October 30, 31, November 4-6). The Student was free to return to school on November 7, 2013. Exhibit J10, p. 9. Testimony of Mr. Bryz-Gornia, RP 820-824. The Parents provided a comprehensive summary of the Student's diagnosis and difficulties during the disciplinary process, including asking about a functional behavioral analysis. The school psychologist agreed to keep his ears and eyes on the Student, remarking with regret about the lack of resources in the community, but otherwise there was no further response about social-emotional behavior or counseling. RP 440-444.

24. The October 2013 emergency expulsion is the Student's only disciplinary event. The District did not convene the IEP team for a manifestation determination since the student was not out of school for more than ten days.

25. By electronic mail dated November 30, 2013 (after the November 13, 2013 IEP meeting), the Mother reported to the school counselor and the assistant principal that the Student broke down sobbing that morning saying it was not going well at school. He reported some friends now avoided him, and some said hurtful things upon his return following the suspension. The Mother forwarded the information to the school psychologist. Exhibit P71, pp. 38-39.

26. *Washington D.C. trip.* The U.S. history teacher explained that long before he started teaching at the District, there was a tradition of an annual extracurricular trip at the end of the 8th grade year. The trip is a five-day, four-night event through historic sites in Virginia and Washington D.C., coordinated and arranged through a private tour vendor not associated with the District. The trip is a pay-to-go trip event which departs the day after school ends each June. The District's last day of instruction for students was June 17, 2014. The trip dates were June 18-22, 2014. It is open only to District's 8th grade students, and attendance is conditioned on compliance with junior high code of conduct: no in-school suspension, or long term suspension, no more than 5 detentions in the school year. Exhibit J7.

27. The Student signed up for the trip, and Parents had made partial payment toward the trip's cost, prior to the expulsion/suspension. The history teacher did not allow the Student to do on the trip on account of the suspension. He did not follow through on his initial plan to simply place the Student on probation and give him a second chance by maintaining good behavior the remainder of the school year. He did inform Parents of the possibility of a second chance. Exhibit P71, p. 40.

28. For 8th and 9th grade, Ms. Grady has been the Student's IEP coordinator. She has been very involved with the Mother, who felt badly that Ms. Grady seemed overwhelmed, often apologetic for lack of resources. For example, the Mother recalled Ms. Grady did not have a goal database or bank from which to pull to create a more robust IEP. The special services director was new to the position, hired a year ago, and had less involvement with Parent until fall 2014. Mother wrote a letter to the November 2014 IEP team summarizing her concerns. An example is her frustration that the science teacher did not provide her with a copy of his PowerPoints presentations. She was concerned the Student would not be prepared to transfer

to the high school campus for 10th grade. The Student's confidence decreased and she told District staff he did not feel challenged in the lowest classes. Mother testified more than once about the Student wanting to be with the smart kids. He is bright and able, with a good memory to recite to his parents details he heard about Greek mythology, but with accommodations the Mother believes he will fail. RP 422, 434-434, 444-445, 449-50. Mother believed of the 8th and 9th grade general education teachers, that U.S. history teacher, Mr. Conklin, best followed the IEP instructional strategies and accommodations. The 9th grade Pacific Northwest history teacher never, never, never provided materials or implemented the IEP, even after Parent met with the IEP coordinator. RP 499-500.

29. The Student continued to receive mental health counseling at least through December 2014. Parents removed his access to social media to protect him from posting inappropriate content. RP 508. The Student loves to fish, runs with a local running group lead by one of the coach's, and is social. He is not engaged in team ball sports which the Mother thought might limit some avenues for friendships with peers. RP 547. The Mother recalled finding a crumpled up note in his backpack in fall 2014 "Novemberish", in which he asked a female student to kick him in the groin. She spoke to the school counselor, but ultimately did not share the information further because she believed nothing positive would result. RP 541-542. The only other school record is from October 2012, prior to the time period at issue. The Student is alleged to have been overheard at lunch talking about killing himself. There evidence does not show how the matter was resolved or if the matter was brought to Parents attention, or that it was ever discussed at any meetings. RP 492; Exhibit P44.

30. In November 2014, the Parents enrolled the Student in on online one-on-one tutoring with live talk, to address help with math homework. They were provided with weekly progress reports with detailed information about math concepts and the scope of the math work covered, which had been received from the teacher via the Mother. The invoice is about \$199 per month for twice weekly sessions. Through February 2015, they have spent \$3,280. Exhibits P2, 93. There is no evidence regarding the qualifications of the tutor, but for the weekly reports. They incurred all the transportation costs related to the Student's meetings with the ESD educational advocate, and related to taking him to Olympia for mental health counseling through their Group Health provider.

District reevaluations

31. Two District reevaluation reports are at issue here: the November 13, 2013, report written by Mr. Peterson, and the February 3, 2015, report written by school psychologist Jeannette Holuk. The November 2010 reevaluation is not at issue. It was considered for context to understand the information known to the District at the time the later reevaluations were developed, as they were the basis upon which IEPs were developed and implemented to address the needs identified. The 2010 evaluation was in effect for the portion of 7th grade at issue here. Exhibits J2, J11, and J23. Findings are not made regard every element of each reevaluation report. Findings are limited to the contents of the reevaluation reports which are relevant to the issues presented.

32. *Reevaluation: Cognitive testing.* The Student's full scale intelligence quotient (FSIQ) is not known. The full cognitive assessment administered in 2nd grade was rejected by the test administrator. The UW reports did not include an FSIQ score. Mr. Peterson did not administer a full cognitive assessment in 2010 because it was not required to qualify the Student as eligible for SDI under the HI category.

33. In fall 2013, Mr. Peterson administered the Stanford-Binet Intelligence Scales, Fifth Edition Abbreviated Battery (ABIQ). The ABIQ measures the areas of Nonverbal Fluid Reasoning and Verbal Knowledge and he reported it included two of the most important abilities predictive of academic and vocational advancement. Mr. Peterson reported that the ABIQ was useful to provide a quick yet reliable assessment to verify an individual's general cognitive status. Exhibit J11, p. 2. His purpose was to confirm that the Student had not experienced a precipitous drop in cognition. He interpreted the Student's ABIQ score of 91 as in the average range when compared to his same-age peers. The Student's reasoning skills were well within the average range while his verbal knowledge skills were in the below average range. Mr. Peterson interpreted the split between the Student's verbal and nonverbal cognitive abilities as consistent with the UW assessment. He opined that the split suggested the Student may have a harder time working with language concepts such as reading books, written assignments, and research. He recommended the Student's IEP include accommodations to help compensate for lower verbal skills, such as extended time to complete tests and homework, access to computer for written work, and being able to get a copy of the teacher's class notes. Exhibit J11, pg. 2.

34. The 2013 ABIQ results were re-scored in 2015 by the Parents' learning disability specialist, Cindy Dupuy, Ph.D. Her re-scoring increased the ABIQ to 100 due to an increase in the verbal score from 6 to 9. Mr. Peterson stands by his ABIQ score of 91, but admits his handwriting is nearly illegible. He believes the scores written concurrently with the test administration are more accurate than scores reported in his transcription. If the ABIQ was 100, Mr. Peterson reasoned it would be good news for the Student and his Parents but a 9-point increase would not significantly impact IEP development or implementation or change the provision of SDI. He explained the ABIQ was not presented to help the team develop the IEP or interventions, or to help teachers develop instruction for the Student. He doubted that a lower IQ score might lead teachers to lower expectations for the Student, absent some instruction from him.

35. Dr. Dupuy believed that an FSIQ score has cultural connotations and teachers may inadvertently pigeonhole a child if they feel they don't have the same level of potential as another child. From a diagnostic standpoint, an accurate IQ informs whether or not a student is making progress appropriate to their potential. From a clinical standpoint, the score helps to make sure a student is being provided the best opportunity to attain an education that meets their needs. RP 34.

36. The District did not do cognitive testing for the February 2015 reevaluation. Exhibit J23.

37. *Reevaluation: Academic testing.* District evaluations in 2008, 2010, and 2013, reported results of academic testing of the Student using the Woodcock-Johnson III Form B and Test of Academic Achievement (WJ-III). The areas tested were reading, math, and written language, with some variation in the subtests administered. In 2013, Mr. Peterson selected qualified persons to administer the test; he scored the writing component, and interpreted all results. Exhibit J2, pp. 3-4; J11, p. 3.

38. Mr. Peterson considered the WJ-III results to be valid when he reported them to the IEP team in November 2013. Exhibit J11, p. 4. He now acknowledges he made scoring errors. He agrees with the re-scoring by Dr. Dupuy. He incorrectly reported the writing fluency standard score as 89. The correct score was 82. He incorrectly reported the writing sample score as 78, when the correct score was 75. The corrected subtest scores place the Student's performance

in the borderline delayed range. The corrections decreased the Written Expression cluster standard score from 82 to 78, in the very severely delayed range or 1st percentile. RP 719-720.

39. Mr. Peterson was of the opinion that his incorrect reporting of the WJ-III scores was not significant. He reasoned the District already knew the Student had difficulty writing and knowledge of the correct scores would not have impacted the development of the IEP or the provision of SDI. He does not believe the IEP team's lack of correct achievement score data in 2013 would have had any impact on development of the IEP or provision of SDI.

40. The WJ-III reports standard scores in comparison to the Student's same-age peers. The scores, including the corrected 2013 scores, were as follows:

CLUSTER/Test	Standard Score 2008	Standard Score 2010	Standard Score 2013
BROAD READING	78	88	--
BASIC READING SKILLS	78	93	86
READING COMPREHENSION	72	89	84
Reading Fluency	92	85	81
Word Attack	75	93	87
Reading Vocabulary	85	--	91
Passage Comprehension	69	89	81
Letter-Word Identification	82	93	88
Sound Awareness	78	--	--
BROAD MATH	83	91	--
MATH CALC SKILLS	86	83	82
MATH REASONING	81	93	99
Calculation	86	91	--
Math Fluency	85	67	76
Applied Problems	80	99	98
Quantitative Concepts	84	86	101
BROAD WRITTEN LANGUAGE	74	77	--
WRITTEN EXPRESSION	74	78	78
Writing Samples	74	86	75
Writing Fluency	82	75	82
Spelling	79	80	--
Editing	83	--	--
Punctuation & Capitals	82	--	--

Exhibit J2, pp.3-4; Exhibit 11, pp. 3-4; Testimony of Peterson, Dupuy.

41. The WJ-III Form B reported cluster scores by age- and grade-level equivalency. In reading and written language, the performance gap between the Student's actual age- and grade-level and his equivalent performance level increased from 2008 to 2010. The performance gap remained about the same in the area of math, which shows some Student progress since the tests are age-normed. Exhibit J2, pp. 3-4.

42. The WJ-III administered in 2013 did not report cluster scores by age- and grade-level equivalency. It reported results of percentile rankings compared to same-age peers. The corrected 2013 percentile rankings of Student compared to same-age peers were as follows:

BASIC READING	18 th	percentile
READING COMPREHENSION	14 th	percentile
Reading Fluency	10 th	percentile
Word Attack	19 th	percentile
Reading Vocabulary	27 th	percentile
Passage Comprehension	11 th	percentile
Letter-Word Identification	21 st	percentile
WRITTEN EXPRESSION ⁶	11 th	percentile
Writing Samples	1 st	percentile
Writing Fluency	11 th	percentile
MATH CALCULATION	11 th	percentile
MATH REASONING	48 th	percentile
Math Fluency	6 th	percentile
Applied Problems	45 th	percentile
Quantitative Concepts	53 rd	percentile

43. *Reading and Written Language.* Mr. Peterson recommended the Student qualified for SDI in areas of reading and written language continue for the Student in the November 2013 reevaluation. The February 2015 Reevaluation made no change to this eligibility determination.

44. *Math.* Mr. Peterson did not recommend the Student qualified for SDI in the area of math. He admits the 2010 reevaluation report contained inconsistent statements regarding math. RP 755-756. The "Discussion" section of the evaluation report states that under state and federal law the Student qualified for SDI in math. The same report states the Student does not qualify in math, and makes SDI recommendations only in areas of reading and written language. Exhibit J2, pp. 4, 7. Mr. Peterson explained he failed to delete language in his draft report from the final report. His initial draft reflected his mistaken belief the Student was already receiving SDI in math. The Parents have not shown they were misled by the inconsistent statement and mistakenly believed the District provided SDI services in math under the IEPs developed based on the reevaluation. The IEPs developed based on the 2010 reevaluation covered the period at issue in winter/spring 2013 of 7th grade and fall 2013 of 8th grade.

45. In October 2013, to prepare for the next triennial reevaluation the Mother replied to Mr. Peterson's request for additional information. She stated the Student needed special education services in every general education class which required reading and writing. Mr. Peterson's 2013 reevaluation report is silent about her concerns as they related to reading and writing components of math. Exhibit J11, p. 8.

46. As in 2010, Mr. Peterson continued to interpret the 2013 WJ-III math achievement scores as largely in the average range, consistent with his nonverbal cognitive abilities. His report

⁶ See Finding of Fact 27 regarding Mr. Peterson's scoring errors.

noted the Student struggled with long division concepts and did not attempt them during the math calculation subtest. He did not discuss that struggle in context of his 2010 report when, as a 5th grader, the Student was reported to be doing well with long division. Exhibit J2, p. 4.

47. Mr. Peterson's concerns about the Student's low WJ-III scores in math calculation cluster and math fluency test were lessened by teacher reports that the Student was doing well in general education math class. He explained that class room grades are an important factor in determining how a student is doing in the real world and not just in the testing world. He felt reassured when he saw the Student received passing grades in math. In fall 2013, the Skyward system showed the Student received a 1st quarter grade of "A". Mr. Peterson repeatedly testified to his belief that if a student is doing well in the general education classroom, then he errs in favor of the least restrictive environment and does not qualify the student for SDI in that area. For these reasons, he determined the Student still did not qualify for SDI in the area of math in 2013. RP 715-716.

48. Mr. Peterson's response was inadequate to explain his reliance on class room grades for an eligibility determination when the report card noted the grades were based upon an IEP, an indication the grade was not based on standard general education criteria. He was not aware the Student likely would have received failing grades if teachers used the general education grading standards. Exhibit J13, p.1; RP 747. Mr. Peterson knew the Student had attended the District's daily math academy in middle school because he needed extra support in math. In fall of 8th grade, the District placed the Student in the "corrective" general education math class. Regarding the weight given to the classroom grade, Mr. Peterson did not adequately explain his consideration that the grade was earned in a less challenging course.

49. The February 2015 Reevaluation made no change regarding math. The 2015 reevaluation made no reference to the fact that the Student had received private tutoring for over two years. It continued to state the Student did not qualify for SDI in the area of math. Exhibit J23, p. 24.

50. *Reevaluation: Social, Emotional and/or Behavior.* Mr. Peterson relied on his education and training in psychology to interpret the UW's reports of deficits related to executive function delays. The IEP middle school team members looked up the "static encephalopathy" diagnosis in 2010, to gain common understanding. RP 701. There is no evidence that the 2013 junior high school team members followed the example of the 2010 middle school team and looked up or discussed the "static encephalopathy" diagnosis to gain common understanding. Mr. Peterson observed the Student and found him to be disorganized in the way that a lot of 8th-grade boys are disorganized. RP 782.

51. Mr. Peterson admits the same editing errors he made as in the 2010 report about math were also made regarding the area of social-emotional functioning. Some sections of the report state the Student was qualified for SDI in social-emotional functioning while other parts state that he was not qualified for SDI in that area. His explanation of the editing error is credible, and the report includes the discussion of the Student's progress in that area (the Student was doing much better in his social relationships, according to his Mother, and that his teachers expressed that he had friends). The Parents have not shown they were misled by the inconsistent statements and mistakenly believed the District provided SDI services in social-emotional functioning under the IEPs developed based on the 2010 reevaluation for the period at issue in winter/spring 2013 of 7th grade and fall 2013 of 8th grade. Exhibit J2, pp. 4, 7.

52. In fall 2013, Mr. Peterson did not seek parental consent to reevaluate or test in the area of social/emotional or adaptive behavior. Exhibit J8. The Mother reported that the Student had difficulty maintaining close friendships although he sought out friends. She reported the Student had very serious learning/social problems and needed special education services in every general education class which required note taking and organization. Exhibit J11, p. 8. He also learned of the Student's October 2013 emergency expulsion. The Mother's report and the expulsion event did not prompt Mr. Peterson to expand the scope of assessments to include social/emotional or adaptive behavior.

53. Mr. Peterson was taken aback when he heard the news about the emergency expulsion because the Student was a jovial, good kid. His 2013 report included under "other evaluation" a conversation he had with the Student about the text messages. Mr. Peterson perceived the text messages to be a failed attempt at flirting and not a threat. He talked to the Student about appropriate ways to "let off steam." He noted the Student expressed a desire to be able to talk to a school counselor if he felt stressed. Mr. Peterson agreed the Student should be able to take a few minutes to regroup and talk to Mr. Peterson, the school counselor, or a behavior specialist. Exhibit J11, p. 4. Mr. Peterson did not believe the behavior which triggered the emergency expulsion should define the Student, and did not believe it merited additional evaluation. The evidence does not show that anyone, including Parents, responded to the expulsion by advocating for additional social-emotional or behavior services at the evaluation meeting. Regarding the issue of lack of friends, Mr. Peterson gave weight to the Student's assertion that he had friends he was able to identify by name. The District did not qualify the Student as eligible to receive SDI in the area of social-emotional and behavior during the November 2013 reevaluation.

54. Mr. Peterson was unaware in November 2013 of an email report made in October 2012 by the middle school literacy teacher, to the effect that someone overheard the Student in lunch stating he wanted to kill himself. The evidence does not indicate the outcome of the October 2012 report. Exhibit P56; RP 762-763. Mr. Peterson was also unaware the Student and a female student had exchanged handwritten notes in which the Student asked to be kicked in the groin. The Parent discovered the note crumpled up in the Student's backpack, and talked about it to the school counselor, Ms. Adams. Neither can recall the date in fall 2013, and Ms. Adams had little recall of the context or if she actually saw the note. She recalls the Parent raised the issue with her, and she recall knowing the Student was receiving mental health counseling, which she felt was a good place for him to address these types of issues. The Parent decided not to ask for Ms. Adams to take action after discussing whether anything positive would come from formally including the document in his school record. Testimony of Mother, RP 541-542; Testimony of Ms. Adams, RP 806; Exhibit P71, p. 41. There is no evidence the Parents or any other team member mentioned the October 2012 email report or the fall 2013 handwritten note during the November 2013 reevaluation.

55. The February 3, 2015 reevaluation did not include additional social-emotional or behavior assessments or testing. It consisted of a "file review." Ms. Holuk was the school psychologist who authored the 2015 reevaluation report. Exhibit J23. The District did not present her testimony.

56. *Reevaluation: Related services OT.* The District administered OT assessments to the Student in 2008 and 2010, but not thereafter. The 2010 report contains an observation relevant to the issue of keyboarding. The District's OT reported the Student alternated between using his two index fingers and all 10 fingers to type. She reported the Student said he practiced

using keyboarding programs once weekly at his grandparents' home. She recommended that the Student "focus on improving his keyboarding skills with daily practice in order for this to become the primary method for completing lengthy written work." Exhibit J2, pp. 5-6. The 2010 reevaluation report listed as Student goals to increase basic physical coordination of fine and gross motor skills, and to increase eye-hand coordination with ability to track. Exhibit J2, p. 2. However, it recommended no related services for OT. Exhibit J2, p. 7.

57. The Mother reported in October 2013 that the Student had very poor abilities in writing and note-taking and needed SDI in every general education class that required note taking. The 2013 reevaluation report noted the Student had difficulty with handwriting but the report did not include OT goals similar to those in the 2010 report or which otherwise addressed the Mother's concerns. Exhibit J11, p.1. The 2015 reevaluation did not address OT.

58. *Reevaluation: Related services counseling or psychological services.* Mr. Peterson determined no related services for counseling or psychological services were indicated in 2010. Following his conversation with the Student about the October 2013 expulsion, Mr. Peterson's November 2013 reevaluation added a related service for "social-emotional function" without other detail or explanation. The 2015 reevaluation repeated the 2013 recommendation. Exhibit J2, p. 7; Exhibit 11, p. 5; J23, p.5.

59. *Reevaluation: Supplemental Aids and Services.* Each reevaluation report in 2010, 2013, and 2015, stated under supplemental aids and services that none were indicated at the time. Exhibit J2, p. 7; Exhibit J11, p. 5; Exhibit J23, p. 5.

60. *Reevaluation: Assistive Technology.* Each reevaluation report in 2010, 2013, and 2015, stated under assistive technology that none was indicated at the time. Exhibits J2, p. 7; J11, p. 5; J23, p. 5.

61.

62. *November 26, 2014 Parent consent to reevaluation.* The Mother disagreed but signed the IEP on November 10, 2014, noting the need of further examination of support options. Exhibit J20, p. 12. She provided the team a letter outlining her concerns, which the IEP coordinator forwarded to the special services director, school psychologist, and school counselor, as well as principal and assistant principal. In a November 12, 2014, internal emails addressed that the Student's next triennial reevaluation was not due before November 2016, and the special services director thought that unless what the Mother was requesting was in his current evaluation they "can't really do much about it." She wondered if a reevaluation was needed. The special education reading teacher also thought about it, but noted that some things would still be hard to build into an IEP. She would talk to Mr. Gregg, the general education Pacific Northwest History (PNW) teacher about the need to be more organized, noting the Student seemed to have a lot of trouble keeping his work in a tidy and ready format, with work not turned in and marked as missing. She hoped if the Student stayed after school he would continue to get the specific help he needs in Jump Start, or working with her. The school counselor replied the Parent wanted the best for her son, who was a great kid. "Maybe if we all put our heads together we can find something that works for him. If it wasn't for all the work she is doing, [Student] would not be able to make it." Exhibit P79, pp. 9-11.

63. In the days after the November 2014 IEP meeting, the Mother continued her efforts to persuade the District IEP team members that the IEP was incomplete in that it failed to address goals related to organization and executive functioning skills. She expected the team would

meet again to further discuss her concerns. On November 24, 2014, the IEP coordinator emailed the Mother and reported she had consulted the school psychologist and "we are going to pursue adding a couple goal areas (work completion and organizational skills) to his IEP." The IEP coordinator explained we will "have to do this as a re-evaluation and we will need permission" to proceed. She wrote there would be paperwork to sign and the school psychologist and Karen Hulbert would have it. Exhibit P82. The Mother expected a reevaluation entailed testing and assessment similar to the District's prior reevaluations. She went to the junior high to sign the required paperwork, but learned that the school psychologist and Ms. Hulbert were at the main administrative office. The Mother knew the school psychologist, but did not know Ms. Hulbert or that she was the special services record clerk.

64. On November 26, 2014, the IEP coordinator emailed the school psychologist, the special services director, and the record clerk, to alert them that Mother would be in the main office to sign the "re-eval/file review papers" for "adding a couple more goals" to the Student's IEP. This appears to be the first reference to "file review". The mother was not copied on the email. It was the Wednesday prior to the 2014 Thanksgiving holiday.

65. The Mother arrived at the main office and learned the school psychologist was not available. The Mother was unwilling to return after the holiday, as she was frustrated and keenly aware of the passage of time. The District protocol is that only the school psychologist completes the form which gives prior written notice of reevaluation for parental consent. The Mother was intent on giving her consent to start the reevaluation without further delay. A woman not known to the Mother tried to help, contrary to District protocols. The woman was Ms. Hulbert, who later told her supervisor (the special services director) of her vain attempts to access the computer to print an evaluation consent form. In lieu, Ms. Hulbert retrieved a paper copy of the consent form previously used in the District. It identified the Mason County Special Services Cooperative in its heading. Using a pen with black ink, the Mother signed and dated the form. Exhibit J21.

66. After the holiday, the IEP coordinator wrote to the Parent to explain that she was working with the school psychologist to develop goals for the IEP. The school psychologist subsequently wrote the IEP coordinator about a conversation with the Mother, who was consulting with an expert to help draft goals to be added to the IEP. The school psychologist wrote that she had shared with the Mother that "evaluation wise we would not be repeating any of the testing" and it was "just a file review reevaluation." Exhibit P95, pp. 1-4.

67. The Mother, a practicing lawyer, testified she signed a blank consent form to start the reevaluation process. She was familiar with the form because it was the same form previously presented to her prior to reevaluations. See Exhibit J8. She denies knowing prior to signing that the reevaluation would be limited in scope to only of a file review.

68. The District concedes that the top and third section of the consent form were blank when presented to the Mother. Those sections include the Student's identifying information, and the signature and date of the school psychologist. However, the District contends the middle bordered section was filled in before it was presented to Mother for signature. The District contends the Mother was on notice that the District only planned to conduct a file review.

69. To resolve the disputed evidence, the ALJ viewed the original consent form of which Exhibit J21 is a copy. The fourth section contains the Mother's signature. Above the Mother's black-inked signature is a check mark made in blue ink:

I have been made aware of my rights in my primary language and:

I give my consent to conduct the re-evaluation described above.

I DO NOT give my permission to conduct the re-evaluation described above.

With the exception of Mother's signature and date and two small strike-throughs in the header, all other handwritten entries on the form are written in one shade of blue ink.

70. The ALJ considered the content of the middle bordered section, the demeanor and motivation of the witnesses, the logical persuasiveness of the testimony of Mother and the special services director, the lack of reference to "file review" in the IEP coordinator's November 24th email to Mother, and the lack of rebuttal testimony from the school psychologist or the records clerk. The special services director investigated the breach in protocol, as direct supervisor of the records clerk. The special services director testified the records clerk explained that she had been intimidated by the Mother's insistence on filing a request for reevaluation. The ALJ has drawn no inferences from the testimony of the special services director to make a finding about the identity of the person who filled in the middle bordered section. The special services director did not expressly name a person in her testimony.

71. The middle bordered section describes the reason for proposed action. The obvious option for "Parent" request is not checked. The reason checked is "Other" followed by the handwritten phrase, "Additional areas/goals." More check marks indicate selected options and factors, which the ALJ finds likely required specific knowledge of the reevaluation process and of the Student. The middle bordered section ends with the statement:

The areas of re-evaluation will include a review of file, current records and classroom performance and may also include standardized testing in the following areas as determined necessary:

The circle was hand drawn around words "review of file." The District's evidence does not show what the District intended to convey to the Mother by the lack of a circle drawn around "current records and classroom performance." The statement is followed by nine identified test areas and an "other." None of the options are checked. The District did not present a witness who admitted to having made the entries to the middle bordered section. It is found that it is highly improbable that the records clerk made the above-described manual entries to the middle bordered section.

72. After considering the totality of circumstances described in the above findings, the ALJ finds that the Parent's testimony is more logically persuasive than the District's. Based on the preponderance of evidence it is found that the Mother signed a blank form.

73. It is found that the Parents reasonably expected the District would conduct a full evaluation to include assessment of the Student's organization, executive functioning, and social/emotional skills, if that was what was necessary in order to consider addressing the Parent's concerns about the inadequacy of the IEP. The Parents were not given advance notice of the District's plan to conduct an abbreviated reevaluation in the form of a file review.

74. *February 3, 2015, reevaluation meeting.* The school psychologist presented the reevaluation report at a meeting scheduled February 3, 2015. The report referred to unspecified "recent events" and a Student "interview" to support the belief he would benefit from related

services in the area of social-emotional functioning. Exhibit J23, p. 4. The reevaluation recommended the Student met eligibility requirements to identify him as a student in need of SDI in two additional areas: organization, and work completion. The Mother objected to the limited scope of the file review and was displeased with the brevity of the goals. The Mother did not believe the District understood the Student's needs and was willing to agree to extend the due date for completing the reevaluation in order for additional testing to occur. The Mother asked a series of three questions to the effect of whether everyone in the room agreed about the District's lack of services, lack of specially designed instruction, and lack of resources for accommodations, with respect to the executive functioning component of the Student's Static Encephalopathy diagnosis. She interpreted the others' silence as agreement. Testimony of Mother, RP450-451. The Mother signed the reevaluation but noted that she needed clear, tangible content to address all issues in context of executive functioning, such as note taking, organization, task completion. J23, p. 6.

75. Prior to the February 3, 2015, meeting, the District knew the Mother felt the District did not listen to her, had failed to take into account her concerns, and was considering filing a due process hearing complaint. The special services director instructed team members that they were to listen at the meeting because the Mother really needed to be heard. Some understood that discussion or action would occur at a later meeting. The day following the meeting, the Mother sent an email summary which included in bold print that "everyone agreed" the District had failed to meet the Student's executive functioning needs. Exhibit P965. Some District members testified they were surprised when they read the Mother's email, but there is no evidence that any contacted her to correct her mistaken impression of their silence at the meeting. Testimony of Ms. Adams, RP 812-813; Testimony of Ms. Keith, RP 951-952;

76. On February 6, 2015, the school psychologist issued a one page letter to Mother providing notice of the final results. The team agreed to Parents' request to add organization and work completion goals to the areas needing SDI in the Student's IEP. Exhibit J24.

77. *IEE request.* The Parents responded same day by filing a request on for an IEE at public expense by a qualified examination not employed by the District. Exhibit J25.

IEP Development

78. The development of the IEPs in November 2013 and November 2014 are considered. There is no record of a February 3, 2015 IEP. The Parents' reference to an IEP dated January 5, 2015, is addressed below. Exhibits J12, J20⁷, D6. Findings are not made regarding every element of each IEP. Findings are limited to the content relevant to the issues presented.

79. The Parents dispute the process by which the final draft of the November 10, 2014, IEP, was developed. At the meeting, the District gave the Mother an IEP at which the top center box for "Final" was checked. The first page incorrectly stated the Student was in 8th grade. The PLP for reading progress referenced November 2013 and had underlined sections left blank for

⁷ The record contains three versions of the November 2014 IEP. For ease of reference, most citations to the November 2014 IEP will refer to Exhibit J20. This is merely a choice of convenience. No inferences should be drawn from the choice for purposes of analyzing the alleged procedural and substantive violations addressed here.

the reading level. Exhibit P77, pp. 1 and 4. The Mother signed the IEP noting her disagreement.

80. In an envelope postmarked January 5, 2015, the Mother received from the District a copy of an IEP which contained the signature page from the November 10, 2014 meeting. However, the content on PLP for reading performance had been completed on this version. It still referenced November 2013, but had been re-typed to remove the underlined sections and input reading level data: [Student] is reading at 5.8 level at 150 words per minute, and also, that he averages 80% percent on the comprehension. Exhibit P80, pp. 2 and 5. In the document exchange for hearing, the Parents received from the District a third copy of the IEP, on which the first page reference to Grade 8 had been manually struck through and replaced with a handwritten "9." Exhibit J20, p. 1.

81. Ms. Grady has a master's degree in education with a special education endorsement. She has taught nearly a dozen years in the District. She described that IEP content is driven by the evaluations. She was responsible for implementing IEPs as the Student's case manager/coordinator. She wrote the reading PLPs and goals, while the special education English teacher wrote the writing goals. They were based on statewide curriculum standards for English language learning requirements (EALR). RP 589-590.

82. At each annual IEP meeting the participants included one or both Parents, a special education teacher, a general education teacher, and a local educational agency representative (such as a school psychologist, building administrator, or the special education director).

83. Other participants at IEP meetings included the second special education teacher (2012, 2014, 2015), more general education teachers (three more in 2012; two more in 2013, one more in 2014, and two in 2015), the school counselor (2014), and the Student (2014). Exhibits J12, p. 10, J20, p.12, D6, p. 13.

84. The minutes for the November 2014 IEP meeting record it began early at 7:15 a.m., ahead of the 7:30 a.m. time on the invitation, and ended at 8:20 a.m. The participants included the Mother, Student, the IEP coordinator/special education reading teacher, the general education math teacher, and the school counselor. They were joined by the written language special education teacher, and later the general education science teacher. The science teacher left after his presentation, and next math teacher exited after her presentation. The minutes report that no general education teacher was present during the final 25 minutes of the meeting. In was that part of the meeting the Mother related her continued concern that the District was not teaching the Student skills to address his executive functioning and organizational deficits, including in general education settings. The after school Jump Start program was suggested. The math teacher who left the meeting is the math tutor for the Jump Start program. Exhibit J20, pp. 14-16; Testimony of Ms. James, RP 834. Nevertheless, the evidence is that she received the IEP, and by December 2014 was working with the Student in the after-school program.

85. *Present Levels of Performance (PLP) in reading.* The November 2013 IEP was developed when the Student was in 8th grade. It recited the PLP reading data from the last year's 7th grade IEP. It contained no current PLP data for reading performance. Exhibit J12, pp. 1-2.

86. The IEP reviewed at the November 2014 meeting did not contain current PLP data. Current performance data was not presented in a team meeting. Information was added to an

IEP provided to the Parent in January 2015. The data is confusing because it referenced November 2013, and did not state the date and method of assessment, or the time period and number of scores over which an average was calculated. See Finding of Fact No. 66 above. Exhibit J20, p. 3.

87. *PLP in written language.* The November 2013 IEP in 8th grade reported that results of a September 2013 Brigance Writing Assessment. The Student was writing at 7th grade level, and could write a complete sentence with consistent punctuation. Data from an essay writing at grade level (8th) in general education literacy class was considered, where he scored 1.5 score in the area of conventions, sentencings, and layered. The score was said to show partial knowledge of the simpler details and processes with major errors or omissions in the more complex ideas and processes. In the area of organization, he scored a 1.0, below the typical 8th grade peer score of 3.0. A score of 1.0 indicated that with help, he demonstrated a partial knowledge of the simpler details and processes and some of the more complex ideas and processes. The context in which the scores were calculated, including the total scale and identity of the scoring rubric, are not stated. Exhibit J12, pp. 2-3.

88. The November 2014 IEP developed in 9th grade reported September and October 2014 assessments of writing performance. The Student was writing 9 correct words per sentence with 85% accuracy, while typical peers would write 16-20 correct words per sentence. He needed to continue to develop the skills of writing complex sentences that included a subject and a predicate with varied sentence length. An essay score of 1.0 on conventions showed lack of consistent grammar and punctuation. He was able to stay in the correct tense but was inconsistent with capitalizing proper nouns. His organization area score was 1.5, showing he needed assistance with elaboration of ideas and details. His writing was straight to the point and he struggled to add details that fit with the topic. A typical 9th grade student would score overall 4.0, while the Student's overall total was 2.5. Information about the scale used and the identity of the scoring rubric was not provided. Exhibit J20, p. 3.

89. Ms. Grady explained students can be at various levels of reading, so she the students read enough stores to determine comfort levels and that is the starting point. She tries to write goals for one year reading growth in one year's time. Her ultimate goal is for students to read at grade level at 150 words correct per minute (wcpm), but comprehension at grade level is the ultimate target. She did not believe the annual goals set for the Student in 8th or 9th grade were too low. RP 593-596, 600. She used a curriculum combination of Reading Naturally, a nationally known reading program, and the District's own Bust Out, both of which have imbedded model reads and re-reading as teaching tools. Bust Out is a program created by one of the District's junior high school teachers. RP 596, 602-603.

90. *PLP in math.* The November 2012 IEP developed in 7th grade considered the Student did not pass the spring 2012 Measurement of Progress (MSP) in math. The MSP rated proficiency as advanced (level 4), proficient (level 3), basic (level 2), and below basic (level 1). Level 3 or 4 were passing scores, except a student in special education passed at basic level 2. The Student scored at basic level 2, but was not in special education. The team also considered he received support in a daily math academy class, but no current classroom performance data was included. Exhibit J3, p. 3.

91. The November 2012 PLP for math was repeated in the 2013 and 2014 IEPs without any update. Exhibits J12, p. 2, J20 p. 3.

92. *PLP in social, emotional & behavioral.* There was no PLP data in the area of social, emotional and behavioral prior to 2015. The IEP team in February 2015 added a third area of SDI qualification: organization and work completion. However, no PLP statement regarding this area is included in the IEP. D6-3. The IEP states goals and objectives described in the findings below.

93. *Annual goals in reading.* Each year, the IEPs stated two annual reading goals stated as a range of measures. It is unclear whether the low range counting words correct per minute (wcpm) is the present level of performance from which annual growth starts, or whether the low range is an interim goal, or an attainable end goal.

94. Since the effectiveness of the District's reading program is at issue, the November 2012 IEP reading goals set in 7th grade are considered, as follows:

Reading – [Grade 7 EALR 1] 1.4 Apply word recognition skills and strategies to read fluently

[Student] will read an unpracticed grade-level passage from 137 wcpm at 7th grade level to 160 wcpm at 8th grade level as measured by the following evaluation methods; one-minute times tests by 11/13/2013.

Reading – [Grade 7 EALR 2] 2.1 Demonstrate evidence of reading comprehension

[Student] will answer comprehension questions after reading a grade-level reading selection from 65% at 7th grade level to 80% at 8th grade level as measured by the following evaluation methods: Work Samples, easyCBM comprehension assessments by 11/13/2013

Exhibit J3, p. 3.

95. One year later, the November 2013 IEP restated the last year's 7th grade reading goals with only minor changes. The reading fluency goal range changed to 150 wcpm at 7th grade level to 150 wcpm at 8th grade level (with no explanation why the lower end increased from 137 wcpm, while the upper range end decreased from 160 wcpm). The reading comprehension goal range changed to 70% at 7th grade level (up from 65%) to 80% at 8th grade level (same as prior year's upper goal range). The measurement methods were unchanged. Exhibit J12, p. 2.

96. In 9th grade year, the November 2013 IEP changed the goals and assessment methods, but referenced the goals were for Grade 8:

[Student] will apply word recognition skills and strategies to read fluently [Component 1.4] from 80% to 90% as measured by the following evaluation methods: State Assessments, Observation, Informal, Work Samples by 11/9/2015.

[Student] will demonstrate evidence or reading comprehension [Component 2.1] from 80% to 90% as measured by the following evaluation methods: State Assessments, Observation, Informal, Work Samples by 11/9/2015.

Exhibit J20, p. 3.

97. *Annual goals in written language.* Each year, the IEPs stated three annual written language goals.

98. Since the effectiveness of the District's written language program is at issue, the November 2012 IEP writing goals set in 7th grade are considered, as follows:

Writing – [Grade 7 EALR 3] 3.1: Develop ideas and organize writing

[Student] will select a manageable topic, elaborate using specific, relevant details, and use transitions [sic] to show relationships among ideas from writing rubric score of 1.0 to writing rubric score of 2.5 as measured by the following evaluation methods: Informal, Work Samples by 11/13/2013.

Writing – [Grade 7 EALR 3] 3.3: Demonstrate an understanding of and apply writing conventions

[Student] will spell accurately in final draft [3.3.2] from writing rubric score of 1.5 to writing rubric score of 2.5 as measured by the following evaluation methods: Informal, Work Samples by 11/13/2013.

[Student] will apply capitalization and punctuation rules from writing rubric score of 1.5 to writing rubric score of 2.5 as measured by the following evaluation methods: Informal, Work Samples by 11/13/2013.

Exhibit J3, p. 4.

99. One year later, the November 2013 IEP restated the 7th grade annual written language goals unchanged and verbatim from the November 2012 IEP. Only the annual end-date was updated to measure through November 2014. Exhibit J12, pp. 2 to 3.

100. The November 2014 IEP continued to refer to Grade 7 EALR for the annual written language goals, although the Student was in 9th grade. The capitalization goal was unchanged except for end-year date. The other goals were remarkably similar to the 2012 IEP goals, even repeating the same misspellings, although the paragraph ordering changed:

Writing – [Grade 7 EALR 3] 3.1: Develop ideas and organize writing

[Student] will select a manageable topic, elaborate using specific, relevant details, and use transitions [sic] to show relationships among ideas from 1.5 on the COS rubric to 2.5 or better on the COS rubric as measured by the following evaluation methods: Informal, Work Samples by 11/9/2015.

Writing – [Grade 7 EALR 3] 3.3: Demonstrate an understanding of and apply writing conventions

[Student] will apply capitalization and punctuation rules from writing rubric score of 1.5 to writing rubric score of 2.5 as measured by the following evaluation methods: Informal, Work Samples by 11/13/2015.

[Student] will spell accurately in final draft [3.3.2] from a 1 out of 2 on the CON rubric to a 1.5 out of 2 on the CON rubric as measured by the following evaluation methods: Informal, Work Samples by 11/9/2015.

Exhibit J20, p. 4.

101. *Annual goals in social, emotional & behavioral.* The IEPs did not include any goals in this area until February 26, 2015. That IEP is not at issue, but considered here for the purpose of the District's response to remedies and prospective private placement. It is the first IEP to describe goals under the category Special Education – Learning Strategies, subtitled goals and objectives:

Annual Goal: [Student] will demonstrate effective cognitive and problem solving skills to fill out check in/check out forms to track classroom work and to track completing homework. (sic) from 0% to 80% as measured by the following evaluation methods: Work Samples, Skywark (sic) (to track missing assignments), and daily tracking forms. (sic) by 11/9/2015.

Objective: Given a small group setting, materials prepared by his teacher, and verbal prompting, [Student] will monitor and evaluate performance regarding self-monitoring of classwork and homework. (sic) from 0% to 80% as measured by the following evaluation methods: Work Samples every grading period by 11/9/2015

Goal: [Student] will demonstrate effective study skills and work completion. Using Skyward to track classwork and homework missing assignments. [Student] would work on reducing any possible missing classroom and/or homework assignments from 5 missing assignments in general education classes to 2 or less missing assignments. (sic) from 0% to 80% as measured by the following evaluation methods: Work Samples by 11/9/2015.

Objective: Given a small group setting, materials prepared by his teacher, and verbal prompting, [Student] will use organization strategies, e.g., outlining, to clarify information from 0% to 80% as measured by the following evaluation methods: Work Samples every grading period by 11/9/2015.

Exhibit D6, p. 4.

102. *Scientifically valid.* Each IEP contained a statement the District used scientifically valid methods of direct instruction targeted to meet the Student's specific academic deficits. Exhibits J3, p.4, J12, p.3, J20, p.4, D6, p. 5.

103. The reading curriculum uses of Bust Out. Bust Out has been used for nine years, and uses model reads. Stories are recorded and a student can listen, teachers model reading, and students can listen to a paragraph repeatedly until able to read it. Students write a few sentences daily in journals, which are not for the purpose of measuring progress. Reading Naturally is a well-known program used nationally. Bust Out is a program developed for this District by one of its junior high teachers. Testimony of Grady, RP 610. The District offered no evidence to show the program has been subject to peer review, or other evidence to support the

scientific validity of Bust Out's methods. The Parents' experts could not find any reference to Bust Out in the professional literature or research articles subject to peer review. Testimony of Roberts Franks, RP 273; Testimony of Dupuy, RP 118-119.

104. *Special factors:* The November 2013 and November 2014 IEPs repeated word-for-word the special factors assistive technology and supports from the November 2012 IEP. Exhibit J3, p. 5. The Student required assistive technology services or devices. For supports, he should increase his skills using a computer/word processor, and use a computer/word processor to do his written work edit and revise easily. The use of a computer/word processor was to allow him the opportunity to more completely express his ideas and thoughts.

105. *Curricular adaptations.* The 2013 and 2014 IEPs list the same curricular adaptations, as follows:

Environment: Preferential seating for ability to focus attention on instruction.

Instructional strategies.

Teacher will make a copy of instructional materials in each class available for "at home" use by student unless copying is prohibited by copyright or other formal prohibitions (parent to purchase as necessary).

Teachers will communicate with parent (via e-mail or other agreed method) of the preceding week (and throughout subsequent weeks as appropriate) to inform parent of individual classroom targets and assignments, student progress, and to enable parent to tutor to review material with student prior to addressing material in class.

One week prior to lessons, teacher to provide instructional content and assignment details (such as text page numbers, content overview) to enable student to be exposed to the material prior to first addressing material in-class.

Allow alternate notetaking methods (including but not limited to: use of laptop or other technology, use of recorder, obtaining copy of teacher's notes for cross-checking purposes, shared/copied notes) to increase student's ability to take accurate and legible notes.

Provide clear verbal and written directions.

Provide frequent assistance and encouragement and check with him to ensure he understands all directions.

Read tests/assignments directions orally (a scribe can records (sic) answers)

Provide small group instruction. Small groupe (sic) is a special education setting or other in-building space provided for smaller groupings.

Use a reader to read assessment or other verbatim in English.

Student method of response:

Teacher to coordinate in advance of date of assessment to ensure that assessments are taken in a quiet, small group setting with special education staff. Small group is in a special education setting or other in-building space provided for smaller group settings.

Allow longer time for verbal response.

Additional time to complete tests/projects, or answer orally (a scribe records student's response).

May use a computer/technology to record answers on assessments and/or assignments.

Allow to take assessments in small group setting with special education staff. Small group could be in a special education setting or other in-building space provided for smaller groupings.

Curriculum: Scope of curriculum is changed in these areas: repeat/review/drill.

Assignments:

[Student] is asked to complete assignments with clear verbal and written instructions given to support completion of assignments.

He should use his monthly calendar to write daily assignments.

[Student] should use a graphic organizer or notes to assure understanding of assignment or task.

Behavioral cues: None needed at this time.

Standard grading: Student will be graded using standard general education criteria

Pass or Fail?: Student will not be graded pass/fail.

Exhibits J12, pp. 6 – 7, J20, pp. 6 – 7.

106. The 2014 IEP added a student output adaptation (expect quality work), and an assignment adaptation (use the after school program to assist in getting work organized and completed). The 2014 IEP also added two instructional strategies:

Allow some work to stay in the classroom so work does not get lost. Folders and spirals to keep his work in are helpful tools.

[Student] is helped by constant "Nudging" to get his work done and turned in. He will do the work and forget to turn it in. Reminders are helpful to get him to turn in work.

These changes were carried over to the February 26, 2015 IEP. Exhibit J20, p. 6.

107. The Parents believed the Student was earning the grades reported on his report cards just as his same-grade peers. They believed teachers grades in accord with the IEPs using standard general education criteria. They did not understand how District general education teachers were accustomed to exercising individual, professional discretion and judgment to determine the grade of a Student on an IEP. Testimony was not received from every teacher about the individual applied in each class. The Student's 8th grade history teacher explained that per his IEP, with his completion of modified assignments, he felt the Student earned the B and B- semester grades through his ability. The Student would not have been passing history by standard criteria. Parents wanted teachers to challenge the Student to his potential, and to that end it was at their request that "expect quality work" was added to area of Student output in the November 2014 IEP. Teachers, general and special education alike, did not identify specific accommodations that they did not also provide to most other students. Testimony of Ms. Grady, Ms. James; Testimony of Mr. Conklin, RP 567, 585.

108. *Extended school year (ESY) eligibility.* ESY was not at issue in Complaint #1 and facts are not made about that portion of the IEPs.

109. *Transition.* The November 2014 IEP was developed a few months prior to the Student's 16th birthday. It referenced a career cluster interest survey but did not describe date of assessment. It referred to Student interest in math, science, music and history, being a problem solver, using patience and persistence. It listed classes he may take to support the interests. Exhibit J20, p.1. The Mother was surprised to read the transition plan's employment goal of computer design using CAD software. When she met the Student with her husband later that day, she asked about what CAD meant. The Student did not know. She acknowledged in his stage of development that he may have said something at some time about computer design, but she would have appreciated more discussion at the meeting. Testimony of Mother, RP 452.

110. *IEP Development: SDI service minutes.* The service minutes confirm none were allotted to the area of math. The issues in Complaint #1 regarding IEP development and implementation do not challenge the number of service minutes for reading and written language, but rather the content and effectiveness of the instruction and lack of educational benefit. No further findings are made about IEP calculation of service minutes in these areas.

111. The February 2015 IEP added 20 minutes five times per week for social emotional/behavioral services. The change increased total SDI minutes to 650 per week, with the student in general education classes 64% of the school week. Exhibit D6, p. 11.

IEP Implementation

112. The implementation of the November 2012, November 2013 and November 2014 IEPs are at issue. Exhibits J3, J12, and J20, P77, and P80. Findings are not made regard every element of each IEP. Findings are limited to the contents of the IEPs which are relevant to the issues presented.

7th grade, balance of 2012-2013 school year

113. The Mother's recollections about 7th grade are in findings above. The middle school graded progress on a point system from 1 to 4, with 4 the highest grade. The Student's second

semester overall grades in 7th grade general education classes were literacy 2.4, math, 2.0, and P.E. was 3.0. In special education classes he received a 2.5 grade in both basic writing and reading. The record does not show if any 7th grade teacher adapted the scale from the standard general education grading scale. Exhibits J5, P86. The Student passed the 2013 MSP reading as a student receiving special education in that area, with a level 2 score of 381. He did not pass the writing test with a level 1 score (showing no mastery of skills and knowledge). He did not pass the math test, with a level 2 score of 380, since he did not receive special education in the area of math. Exhibit J6.

8th grade, 2013-2014 school year

114. The Student report card shows 8th grade teachers generally remarked that the Student was a pleasure to have in class. The history teacher remarked he was showing considerable improvement. He earned grades of A's and B's. Only the special education teachers noted that in two classes, grades were based upon an IEP. Exhibit J17.

115. The Mother liked the 8th grade special education writing teacher (English) and they exchanged many positive communications. She found the teacher to be a nice person with whom the Student had a good relationship, and some instructional strategies were used sporadically. However, based on review of Student's illegible classroom work the Mother now believes the "A" grades reflected Student effort and did not indicate acquisition of English writing skills. Mother RP 497-499. Fall 2014 was the first year at the junior high for the 9th grade writing teacher, who had prior District employment and at another District. She had earned her master's in education before her return to the District. Testimony of Ms. Keith, RP 916.

116. Mr. Conklin taught the Student 8th grade U.S. history. He found the Student to be really challenging to find what worked, but found that preferential seating and regularly checking in during class did help. He modified assessments and adapted assignments, for example, have the Student indicate when he had finished a few questions and Mr. Conklin would check for accuracy. RP 561-563. The class is a challenging mix of gifted children and children with IEPs which focused on historical documents and learning to think as an historian. The class required a lot of writing, but Student was allowed shorter responses, more time, and could take work home to complete. He provided Mother with course materials, and admitted the Student failed some early projects due to lack of completion. The Mother developed with him a process to get assignments completed and turned in. RP 576. He report no access to a computer in history class, but that is would not have been necessary in his class. RP 585. He agreed that written language was a challenge for the Student, and he had a great deal of difficulty getting information down on paper. He agreed the Student's spelling and sentence structure were atrocious. The Student could articulate, and he gave weight on the subject knowledge as the skill learned. RP 577-578. Only two or three times did he ask for help from the special education writing teacher regarding the Student's writing and grammar. No one else helped, other than the Mother, in regard to completing written work. RP 579-580; Exhibits P75, 76.

117. After the District determined the Student still would not qualify for SDI in math in November 2013, the Parents enrolled the Student in an online tutoring academy to receive one-on-one math tutoring about twice weekly. Mr. Peterson, the Student's IEP coordinator, and the Student's 8th and 9th general education math teachers knew the Parents engaged a private tutor. Exhibit P94; Testimony of Mr. Peterson, RP 756.

118. *Expulsion.* After talking to Mr. Peterson about the expulsion, the Student did not approach Mr. Peterson to talk about stress or girls or other problems. Mr. Peterson was sad about that. RP 722. When Mr. Peterson happened to see the Student, he would ask informally how things were doing. He understood the Student was okay or better. Mr. Peterson did not recall that he spoke to the student in any formal or intentional way and there is no evidence he took action in response to the Mother's November 30, 2013, email. RP 763-764. He was unaware of a teacher's report in October 2012 that the Student said he wanted to kill himself. Despite the Mother's concerns about lack of friends, Mr. Peterson had given weight to the Student's statement in which he named some friends. Exhibit P56; RP 762-763.

119. Mr. Peterson did not consider qualifying the Student for SDI around organization or work completion. He believed the Student's LRE was the general education classroom provided he was successful, even if to be successful he required a lot of work and support from home. In hindsight, given the Parents eventually filed a due process hearing complaint, he wishes that there would have been something the District court have done differently that was still in keeping within LRE considerations. RP 723-24.

120. The school counselor intentionally and regularly initiated contact with the Student through the remainder of the 8th grade year, and recalled he initiated contact with her a couple of times. She knew and approved of Parents decision to obtain mental health counseling for the Student. She is not a mental health counselor and did not feel Parents were asking for that type of help from the school. She thought the text message was very out of character for him, as she found him to be kind and compassionate to other students and respectful to staff. Testimony of Ms. Adams, RP 802-805. The evidence does not show her specific response to this email.

121. The Student did not appear to have trouble with social interaction with his peers in class. He seemed "pretty normal" although slower to process when having conversations, according to his 8th grade history teacher. Testimony of Conklin, RP 568.

9th grade, 2014-2015 school year

122. As noted in the findings above, the Parents regularly monitored grades on Skyward, and saw A and B grades, provided the Parent followed through to see that assignments were in fact turned in to receive a grade. Ms. Keith, Student's 9th grade special education teacher, had given him a grade of A. Effort is a big part, along with work production in class, such as paragraph monthly measures, a daily six-trait writing warmup. Testimony of Keith, RP 947-948.

123. The District placed the Student in 1st quarter 2014 in its essentials class for math, an elective non-credit class for students who scored low on the MSP. Ms. James, his 9th grade math teacher, confirmed he started out the year in corrective math, outpaced the other students to the extent she gave him and a couple of other students "incentives" and allowed them to swim or work on Kahn Academy. She recalled by October conferences suggesting the Student move, as it was not too early in the quarter. She did not oppose the transfer when it did occur and from December 2014 the Student was progressing in her 9th grade general education algebra class. He earned an A by standard criteria. RP 844, 850-854. In spring 2014, the Student's MSP reading test score was invalidated. Exhibit J18, p. 1. However, MSPs are not stated as a measure to determine progress in the IEPs at issue.

124. Ms. Keith's experience was that she could not speak to writing difficulty impact in general education, as she was not a general education teacher. But with A's across the board she

expected that accommodations were in place to help him. He regularly typed materials in her class, but she could not comment on general education. RP 950. In her class, she only used accommodations like allowing access to word processing, shortening writing assignments, having access to notes in advance when she absolutely needed them for him. If she observed a level of frustration, for example, she would use an accommodation. However, most of the time the Student was able to do the work in her class without accommodations. She observed him to be motivated and on task. RP 966-967. Regarding dyslexia, she had a three-day training at the District years ago, but could not identify an accommodation in materials related to it other than the "major thing" is the email with his Mother. RP 968.

125. The spring 2014 MSP did not test in the area of writing. The Student's reading score was invalidated. The Student's math score of 347 in level 1 or "below basic" was not passing. The MSP describes level 1 as representing little or no mastery over the subject's skills and knowledge. Exhibit J18. The annual goals did not mention MSPs to measure progress.

126. The 9th grade math teacher read the November 2014 meeting minutes and saw they needed correcting. The minutes recorded that the Student said math class was too hard. The math teacher recalled his complaint was the exact opposite: he was frustrated because math class was too easy. She wrote the IEP coordinator to correct the minutes, but at hearing the IEP coordinator persisted in the mistaken belief that her notes were correct and that math class was too hard. The Mother's testimony agreed with the testimony of the math teacher, and was supported by other facts including opportunities to miss at least one math class and to move to a more advanced class. It is found the Student found the math class was too easy.

127. The District placed the Student in the essentials math class, the next step for a 9th grader who was in an 8th grade corrective math placement. It is a low-level general education class, with no homework. The Student did very well, enough so that the 9th grade math teacher raised the issue during parent-teacher conferences about the possibility of transferring into a more challenging class. She allowed the Student and a couple of others the incentive of missing class if far ahead of the other students. Twice, in fall 2014 she allowed the Student to attend swim class instead of math. She subsequently used Kahn Academy work as the incentive in the class room setting. Testimony of James, RP 849-851. The Parent understood the math teacher was supportive of moving the Student to algebra, which had been recommended by his 8th grade math teacher.

128. A story book project in science class provides an example of a common pattern, shown in an email exchange December 8 and 9, 2014. The science teacher assigned a project with a schedule of interim due dates starting October 28, with December 12, 2014, set as the final due date for project completion. P88, p. 1. By November 10, 2014, Parent was concerned about the lack of Student progress on the project as well as lacking time to help the Student complete a painted mache' map and review study notes for an upcoming test. She contacted the ESD educational advocate who agreed to provide help on one day. The Mother informed the science teacher as well as the special education reading teacher/IEP coordinator, the school counselor, and the school aid, that the advocate would be accessing the online class documents to help the Student. Exhibit P88, p. 8.

129. The Student remained behind on the story book project and on December 7, his Mother helped him make handwritten edits to the first two pages of the hard copy printout he brought home. The electronic version was saved electronically at the junior high. The next morning, she emailed Ms. Grady, the IEP coordinator, and asked if she could help coordinate as the Student was told to ask an adult at school that day for help making quality edits. The Mother

suggested he ask the special education teacher writing teacher, Ms. Keith, or someone at Jump Start, to get the rest of the draft edited. Ms. Grady forwarded the Parent's email to Ms. Keith and a special education aide, Ms. Tinsman. Unfortunately, Ms. Keith didn't check email that day because she was doing easyCBM reads with students all day. Ms. Grady had a meeting in her room after school and was also unable to help the Student. Ms. Keith suggested emailing the science teacher to inquire about more time to work on the project. Ms. Grady hoped the Student would get some help from the science teacher, and the next morning emailed Mr. Conover. Mr. Conover replied the Student was slow getting the project done and needed to finish typing and do his captions. He confirmed the Student had stopped by on December 8th but was too late to get help because Mr. Conover was leaving the building. About 3:15 p.m. on December 9th, Mr. Conover reported that the Student had shown up 40 minutes late after school and immediately had to leave. He was not sure how much help he could be if the Student will not come or stay when he does come. Ms. Grady emailed the Parent to say the Student showed up late to work with the science teacher, and that she would talk to the Student the next day. Exhibit P89. The Mother contacted the ESD educational advocate again, desperate to find some help for the Student to complete the science project (see findings above).

130. Since the February 3, 2015 reevaluation meeting, the math teacher, Ms. Keith, has begun to check in daily and to email home daily to Parent. She thought it was successful, but admitted some gaps early on, and that homework was missing when the Mother was focused on hearing. RP 954.

Applicable to more than one school year

131. The record for the entire period at issue includes some handwritten and typed work, but there is no evidence of recordings by the Student or other alternate methods of taking note taking. Exhibit P52, P88. Few laptops were generally available or encourages outside the special education classroom (with exception of 9th grade math), and the District did not provide a recorder or other technology for that purpose. Records of communication and course materials under the IEP are many. RP 415; P50; P58 through P68; P73 to 76; P78.

132. It was unusual amongst District middle and junior high school teachers to regularly communicate with parents by electronic mail. However, the Mother's recollection in the findings above, and the record overall contained multiple examples over the two-year period at issue of communication by email as a strategy to keep the Parents informed, and to provide information about assignments and class projects. Testimony of Ms. Keith, RP 947, 968; Exhibits P56, P72, P76.

133. Ms. Grady used the Reading Naturally program over 8th and 9th grade years, to measure comprehension, and the reading teacher periodically administered one-minute timed tests to assess performance progress. Testimony of Ms. Grady, RP 603, 605-607.

134. Ms. Grady agreed the Student struggled with fluency and vocabulary. She disagreed with Dr. Dupuy on several points. The Reading Naturally did grade comprehension, as well as accuracy, using the one-minute tests. It allowed Students to choose from a wide variety of reading levels, and cognitive level is not an issue because the Students demonstrate the level at which they can work which she accepts. Reading progress is not just a grade level or wcpm count, but ultimately that the reader understands what is read. A reader can be a great decoder but not understand. Word recognition skills are a component, and accuracy and fluency are both measured. Stories have been read into MP3 plays so students can listen over and over

until they get it correct. RP 598-603. She agreed the comprehension goal did not spell out how she distinguished between literal and inferential interpretation of the text. However, the Reading Naturally questions get harder as levels increased, with different types of questions, some concrete (what happened) and some which required information from the story to write an answer. The Student wrote a couple of sentences in the Bust Out journal daily regarding knowledge of story content, which she used to gauge comprehension. She did not gauge writing skill for that component. She believed the curriculum addressed each goal addressed by Dr. Dupuy. RP 603-608. The curriculum has successfully moved some students out of the program. RP 611.

135. Ms. Grady did not see his deficits as unique and different from all her students. They all require work with organization. They all show the same level of needing help. He had better work and study skills than some of his peers. In her classroom, for the most part, all the students have organizational and study skill needs more or less. Testimony of Ms. Grady, RP 891-892.

District progress reports

136. Each IEP stated that a report card or progress report would be issued at least as often as report cards are issued to parents of students not receiving special education services, using four methods: report card, copies of goal pages, written progress report, and parent conference. Exhibits J3, p. 5, J12, p. 3, J20, p. 4. The Parents and Student also had online access to the District's online Skyward reporting system, which tracked completion of class assignments/projects, class room and homework grades, test grades and final semester grades.

137. The evidence contains no IEP Progress Reports, titled as such, prior to February 2014. The Mother acknowledges receipt of an IEP Progress Report in January 2015, shortly before filing the complaint. Exhibit P81. She denies that she received earlier IEP Progress Reports produced in the records exchange covering winter 2014. The Student's educational records contained three IEP Progress Reports, which purported to assess progress on February 4, 2014, April 21, 2014, and June 11, 2014, in reading and written language goals. Exhibits J14, J15 and J16. The testimony of the Mother is credible and it is found that she did not receive the IEP Progress Report form prior to January 2015.

138. Even if the Parents had received the February 2014 progress reports, they would have received no meaningful information about the Student's progress. The first report comments about a three paragraph essay assignment but does not score the assignment, or refer to a writing rubric score. It refers to an easyCBM comprehension assessment and one-minute timed tests in addition to assessing by informal evaluation and work samples. The next two reports describe the method of assessments as "informal evaluation, work samples." The reports uniformly described progress as "satisfactory" without any reference to a rubric or score. Each assessment refers to a percentage, like 75% or 80%, without any reference to what was measured.

139. The January 2015 progress report is of assessments completed January 26, 2015. His progress in each of the three writing goals is described as 35% to 45% "skill emerging", with references to current "average" scores of 1 or 1.5 on the CON and COS rubrics. It is unclear if the averages were from multiple scores on tests given January 26th, or if the report is referring to test averages calculated over a period of time prior to January 26th. The January 2015 progress report on the two reading goals described progress as satisfactory. It does not refer to

his progress in terms of the stated goal ranges, refers generically to “state assessments, observations, information evaluation, work samples”, without specific reference to a current reading assignment or test, and reports a percentage (such as 80%) without any reference to what is measured. The reference to state assessment was particularly galling to the Parents, since they had been informed by OSPI that the Student’s spring 2014 MSP scores had been invalidated. Exhibit P81.

140. The District was able to produce records for only nine one-minute timed reading tests in the Reading Naturally program. The earliest is September 16, 2013, when the Student was reading at 5.6 grade level. The next test four months later was on January 15, 2015, and he was at grade 5.8. He was tested at grade 5.8/6 twice in February 2014 and once in March 2014. He passed the March 13th read and on March 21, 2014, was tested at grade 7.0. He failed. He was tested twice more in April 2014 at grade 7.0 but did not pass. He was in second semester of 8th grade. Exhibit J19.

141. The 8th and 9th grade special education reading teacher/IEP coordinator explained that a student must be two years behind peers to get an IEP. She always strives for student progress, but her expectation of being two-years-behind is the context in which she judged the Student’s progress. Testimony of Ms. Grady, RP 902.

Parents’ expert witness Cindy Dupuy, Ph.D.

142. Cindy Dupuy testified for Parents. She has a Ph.D. in learning disabilities, a master of secondary education, and a bachelor of science in chemistry. Her Ph.D. program at Northwestern University focused around language development from oral through written language and nonverbal pragmatic language, how to do dynamic assessment, viewing children in a not-one-size-fits-all model. She is a diagnostician. Since 1998, she has owned Explanations, LLC, a private practice focused on assessment and remediation since 1998. She taught science for six months in a Washington high school, after which she changed careers to work directly with clients performing diagnostic evaluations to assess learning disabilities and individual learning styles. She has a Washington secondary education certificate with endorsements in chemistry, science and special education. She received certification in the Orton-Gillingham Phonology and Language Structure Course. She is a member of the International Dyslexia Association and the Learning Disabilities Association. She served on a state task force which reviewed regulations for identification of learning disabilities, pursuant to the 2004 re-authorization of IDEA. Dr. Dupuy described her expertise as a very narrow box related to learning disabilities and attention deficit, unlike that of a clinical psychologist with a breadth of experience ranging from diagnosing minor depression through schizophrenia, pica through autism. Exhibit P2; RP 26-32.

143. Dr. Dupuy assessed the Student on April 4, 2015, and produced a Psychoeducational Evaluation. He was 16 years, 1 month, 26 days and in the 9th grade. Exhibit P11, p. 15.

144. Dr. Dupuy administered the Kaufman Test of Educational Achievement – 3rd Edition (KTEA-3), Beery-Buktenica Developmental Test of visual Motor Integration – 6th Edition (VMI-6), Jordan Left-Right Reversal Test – 3rd Edition (Jordan L/R – 3), and Gray Oral Reading Tests – 5th Edition (GORT-5) She believed the results of the evaluation to be an accurate estimate of the Student’s current functioning. Exhibit P11, p.15 and p. 18. She diagnosed the Student with a learning disability in areas of reading (315.02 – Reading disorder) (dyslexia) and written language (315.2 – disorder of Written Expression) (dysgraphia). Exhibit P11, p. 25.

145. Dr. Dupuy also reviewed previously collected data including the UW reports, the District's evaluations, and District and statewide tests and assessment. Based on that data, she observed indications that he may also have ADHD and that he be fully assessed in that area.

146. Dr. Dupuy used the KTEA-3 to assess rapid automatic naming, word retrieval, and phonological processing. The Student's score on object naming fell in the low average range (13th percentile), letter naming in the extremely low range (1st percentile), associated fluency in the average range (25th percentile), phonological awareness in the borderline range (3rd percentile). Exhibit P11, pp. 18-19. In reading, the Student's letter & word recognition score fell in the borderline range (4th percentile), and nonsense word decoding fell in the extremely low range (1st percentile). Exhibit P11, p. 21. His reading comprehension fell in low average range (9th percentile), and reading composite in borderline range (8th percentile), which Dr. Dupuy interpreted in context of similar outcomes on the GORT. Exhibit P11, p.22. Results on spelling, written expression, and written language each fell in the extremely low range (1st percentile). Exhibit P11, p. 23.

147. The Student's KTEA-3 scores in math computation, math concepts and applications, and math composite were in the average range, between 42nd to 55th percentiles. Exhibit P11, p. 24.

148. The VMI assessed the Student's visual motor integration to be in the extremely low range (1st percentile), motor coordination in low average range (12th percentile), and visual perception in the borderline range (5th percentile). Exhibit P11, pp. 19-20.

149. The Jordan L/R-3 tested orthographic processing, the ability to create, store and retrieve labels for visual images. On tests of accuracy, the Student's score tended to occur in 4 percent of the population, respectively. On tests of errors, his score tended to occur in 1 percent of the population, which she considered clinically significant. Dr. Dupuy considered him to have a processing deficit in the orthographic processing area. Exhibit P11, pp. 20-21.

150. The GORT measured overall reading fluency, and the Student's scores for rate fell in the low average range (16th percentile), accuracy fell in the extremely low range (.4 percentile), and fluency in the borderline range (4th percentile). The Student's reading comprehension measured in the low average range (9th percentile), which Dr. Dupuy compared to the KTEA-3 reading comprehension, also in the low average range. The GORT also measured an oral reading quotient in the borderline range (5th percentile). Exhibit P11, pp.21-22

151. Dr. Dupuy did not have an FSIQ for reference in a standard discrepancy model calculation. She nevertheless attempted to inform the Parents about the discrepancy between the Student's cognitive potential and his current performance level as compared to his same-age peers. She used her professional judgment to measure against an area of strength, math, to set a zero point for determining weaknesses in processing and academic performance. Exhibit P11, p. 26; RP 179-180. No findings are made here of her discrepancy calculations as they are not relevant to the ultimate determination of the issues.

152. Dr. Dupuy provided a 17-page report of recommendations, including accommodations for standardized testing, the classroom, academic/curriculum, and homework. She made recommendations for instruction, including general, sequencing, reading, reading fluency, reading comprehension, written language, and studying techniques. She also provided a writing process model instruction, classroom strategies, and home strategies. Exhibit P11, pp. 26-42.

153. She acknowledged her recommendations could be delivered within a public school system, provided the teacher have the qualifications and experience needed for his level of severity of the Student's difficulties. She recommended the teacher have five to seven years of experience in the field teaching multisensory research programs, and ideally be trained in two or more multisensory reading instruction programs (to pull from a variety of curriculums to tailor to the Student's needs). The teacher should have a background in written language instruction, and how to teach handwriting and keyboarding. The person should also have experience teaching organizational skills and prioritization to address the executive functioning deficits, RP, and writing. She knew four persons with these qualifications but none lived in Shelton, and of the 60 to 70 persons with multisensory reading instruction experience, only about 10 percent had the skill set she described. She thought the Student needed a program of intensive multisensory instruction three hours per day, five days per week, for eighteen months, to catch up. RP 166-168.

154. She was familiar with Reading Naturally, and agreed some of the curriculum would be appropriate to address dyslexia, such as model reads and re-reading, but not for a Student as severely dyslexic at this Student. She noted the goals failed to address fluency and vocabulary, comprehension of literal or inferential understanding, for example.

155. As for remediation, it was Dr. Dupuy's opinion that a "couple hours a week" was not going to be sufficient to remedy the Student's current reading and written language deficits. The best chance of the Student becoming the best reader that he can be and get his literacy up as high as possible would be in a school that specialized in instruction for kids with learning disabilities that has an Orton-Gillingham-based model using diagnostic teaching methodology and understanding how to pull curriculum together that is designed for the Student to take on the reading component. He will need to un-learn the bad habits as part of learning new decoding and phonological awareness skills. The program would include instruction in executive function, how to stay organized, how to manage his time, how to plan ahead. All of those have to be taught skills. A boarding school that specialized in children with learning disabilities, specifically dyslexia and dysgraphia, could address the entire combination of Student needs. RP 154-155.

156. She opined that Brightmont Academy was an appropriate placement for the student to get caught up, offering a mix of students from all over the Seattle area in a commuting situation. It had certified teachers, accreditation, one-on-one instruction in high school core curriculum. She weighed with approval the fact that one of Brightmont's directors served on the state board of the International Dyslexia Association with Dr. Dupuy and was familiar with working with students with dyslexia and dysgraphia. Brightmont's teachers were very experienced with a robust program, meaning the teachers were not afraid to give a student a "C" and would give an accurate grade showing the level of mastery over the material. RP 159-160.

157. She also opined about other schools considered by the Parents, with particular favor for those with staff well-trained in multisensory reading instruction in a collaborative environment. Of those, she noted New Horizons in Renton, and all other schools were out-of-state. She approved Dartmoor in Seattle, a school she compared with Brightmont. RP 157-158, Exhibits P14, P16.

Parents' expert witness Alicia Roberts Frank, Ed.D.

158. Alicia Roberts Frank has a doctorate in education in learning and instruction, and a master of arts teaching English to speakers of other languages. She earned a bachelor of science in secondary education/English. She is an assistant professor at Lewis and Clark College, Graduate School of Education & Counseling, in Oregon. The program is an endorsement program for teachers who have their license in elementary or secondary education and want to add on a special education endorsement. She teaches an introductory course on legal and learning issues, a practicum course, and a final or capstone course covering current issues in special education. RP 206-207; Exhibit P1. She has not taught in Washington and her instructions to graduate students were sometimes unique to the laws of New York, California, or Oregon. RP 207-209. She was a K-12 teacher herself and last taught in 2009. RP 213. She reviewed the Student's IEPs and the evaluations at issue here, and Dr. Dupuy's report. RP 215. Her opinions were not based on first-hand assessment or evaluation of the Student.

159. Dr. Roberts Frank taught school using an approach called Slingerland, which is a classroom adaptation of the Orton-Gillingham approach for teaching students with dyslexia. She is on the board of directors for the Oregon branch of the International Dyslexia Association, on the leadership team of Decoding Dyslexia Oregon, and the Oregon State Council for Exceptional Children. RP 257-258. At its most basic, she described dyslexia as a weakness in phonological processing that causes problems in reading and spelling. She described generally the impact of dysgraphia on a student with dyslexia, and issues related to phonemic awareness. RP 258-261. These manifest in the area of mathematics in calculation issues related to reversal problems happening in visual processing, and word problems and understanding the language of math. Dyslexia influences executive function and how the brain organizes and takes things in. RP 261-262. She was very concerned about the Student's KTEA scores in the testing administered by Dr. Dupuy, in visual perception and phonological awareness particularly. They were very indicative of a student with having issues attending to all the letters in the words, connecting symbols and sounds, and dividing syllables appropriately. It is not often she sees in children of his age a problem with mirror imaging of letters. She had not ever seen a case this severe. In her opinion, the Student needs instruction in sound/symbol correspondence, and until then he's doing to very severely struggle in learning to read new words. His decoding errors (for example, hypocrite and hyper crick) show he has either not received instruction in dividing words into syllables, or he has not internalized in order to be able to make the mental orthographic images or to attack a word he's never seen and use strategies. RP 263-264.

160. Regarding reevaluations, in the area of math Dr. Roberts Frank was concerned about the repeated statement that he did not qualify without further comment and explanation. She believed that his low calculation scores in his evaluation reports (under 85) would have qualified him in the area of math to receive SDI. The spring MSP score of 393, which was under the proficient level of 400, was another indicator. And, his attendance at the District's math academy sounded to Dr. Roberts Frank like District acknowledgement that he needed math help. RP 246-247. Dr. Roberts Frank opined that the Student needed general education language arts as well as SDI in reading. RP 296. Dr. Roberts Frank found it difficult to assess the impact the online one-on-one tutor had on the Student's grades and scores in math at school and on state assessments, but said the more recent higher scores could have been influenced by the tutoring, especially if tutoring began after the lower-reported scores. RP 303-304.

161. Regarding reevaluations, in the area of social-emotional functioning and organization Dr. Roberts Frank faulted the failure to recommend the Student receive SDI for organization as it had been noticed as a weakness. RP 224. Exhibit J11, p. 5. When an area of weakness is

identified, it needed to be addressed in present levels of performance, remedial procedures, goals, and SDI, and pulled into the IEP. In her opinion, the District included social-emotional function in the report and the present levels but not in a "we-are-going-to-do-anything-about-it" way. RP 225; Exhibit J12. Another area of concern was that no supplemental aids and services were indicated, when in her opinion the data showed the Student could use a calculator for math and organizational tools, such as checklists, pencil grips, and other kinds of assistive technology that could have benefited the Student. My Mapping software could be very beneficial to organize his thoughts. RP 225-227. She opined the statement that no assistive technology needs were indicated at the time was inaccurate. Exhibit J11, p. 5; RP 226.

162. Regarding IEPs, Dr. Roberts Frank did not believe the recommendation for related services in the area of social-emotional functioning was carried over into the IEP. She faulted the lack of updated PLPs and annual goals troubling, and that none were included for social-emotional needs. RP 224-227. She opined that the pattern of stating annual goals using a range rather than a specific end goal to be confusing. Any special education teacher should be able to read and understand IEP goals, and would be confused whether the goal was lowest, the highest, or anywhere in between. She expected an IEP would aim toward a specific end goal, as that is what teachers do. She disapproved of a goal which depended on the Student's selection of a manageable topic, which she described as an activity that will work toward getting to a goal but not the goal itself. RP 220-221. She understood the concept of selecting a topic of interest to the Student, but she disagreed with a goal that allowed a student with a disability, particularly one with executive functioning issues, to determine what was manageable. She also disagreed with the use of a very vague descriptor like manageable in an annual goal. RP 229. The references to capitalization and punctuation did not specify the kind of text and how much text, such as out of an essay or out of a paragraph. The same concern related to vague spelling goals. RP 247.

163. Dr. Roberts Frank disagreed with IEP references to a rubric score even if the nonspecific reference was understood within the District. The IEP annual goals should be understandable to a substitute teacher as well as a teacher in another district if a student transferred. She disagreed with rubrics described as 1.0 to 2.5 because they did not state out of what, as in 2.5 out of 5 or 2.5 out of 10. If based on a locally-known scale, the language might be clear to some in the District, but as stated the goals which referenced rubrics were unclear as written. She would not have accepted these IEP goals if written by one of her students. RP 229. She also faulted the lack of IEP reference to the Student's October 2013 expulsion, and failure to conduct a manifestation determination. RP 243. She faulted the lack of statement about how often progress would be reported to the Parents. Overall, she found the November 2013 IEP insufficient. RP 243. It failed to give a teacher a good, clear picture of what the Student can do and what he needs in order to be successful. Since IEPs are based on the reevaluations, she found them to be deficient regarding the lack of SDI in math, social emotional functioning and organization and language arts. RP 246-247. Transition planning was addressed in the November 2014 IEP as it was nearest to the Student's 16th birthday. She opined it contained an age appropriate transition assessment. But, Dr. Roberts Frank was critical of the failure to indicate which assessments were used. RP 256.

164. Dr. Roberts Frank reviewed at Parents' request website information regarding proposed private placements. She described Brightmont as "borderline" for an appropriate private placement for the Student because while it reported one-to-one instruction that fully accommodated individual learning styles and needs, she was unclear about the kinds of instruction provided. She saw no evidence of multisensory instruction at Brightmont. RP 277.

She would not recommend the "one teacher, one student, all of the time" model of Brightmont for the Student. RP 297.

165. She also opined about other schools considered by the Parents, with particular favor for those with staff well-trained in multisensory reading instruction and IDEA accreditation, and accreditation by the International Multisensory Structured Language Education Counsel. Of those, she described as "gold stars" The Gow School and The Greenwood School as appropriate private placements for the Student. She also recommended as appropriate for the Student placement at Kildonan, Landmark and Forman. RP 277. Her opinion was based on their academic programs. RP 298.

166. Dr. Roberts Frank opined the District was not an appropriate placement unless it hired someone who teaches Slingerland. Using multisensory methodology like Slingerland, Dr. Roberts Frank opined the length of study would depend on how well the Student progresses over one to three years. When the student is of high school age, she would also recommend consideration of social and emotional needs in determining program length for a full three years in one program without disruptive change. RP 278. Absent evidence of multisensory instruction at Brightmont, Dr. Roberts Frank did not recommend a model which combined placement at Brightmont part time and in District general education part time. RP 302-303.

167. Regarding remediation to catch up, Dr. Roberts Frank believed his phonemic awareness and phonic skills are pretty low and he definitely needed more than a regular school year. She suggested two to three hours a day of daily practice. RP 279.

Brightmont Academy

168. Located in the Northgate neighborhood, the Seattle Campus of Brightmont Academy offers one-to-one instruction for full time, individual courses, or tutoring, with summer school options available. They currently enroll about 40 students, most of whom are part time. The Brightmont instruction model is one teacher, one student, all of the time, using customized learning plans to accommodate for individual academic needs, learning difficulties, and styles. Its curriculum includes all required 6th- to 12-grade courses in math, language arts, science, and social studies, as well as Spanish and elective courses. Students learn concepts at their own pace. The pace slows when the student struggles and accelerates when the student "gets it".

169. Brightmont is accredited by Washington State Board of Education and an approved nonpublic agency by OSPI. It is not on OSPI's list of approved nonpublic agencies to provide special education and related services specified in a student's IEP.

170. Marcia Rodes, M.Ed., Ed.D., is the Seattle Campus Director, and a Washington K-12 certified teacher, counselor and principal. Currently, one of Brightmont's 11 teachers has special education credentials. She described familiarity with student IEPs, which are reviewed and included in the instruction. Dr. Rodes anticipates Brightmont may soon be contracting with Seattle Public School to provide SDI to implement IEPs for some Seattle students.

171. Dr. Rodes reviewed the UW and Dupuy reports of the Student. She opined that the Brightmont model of one-to-one instruction individually paced would benefit the Student. She held a strong opinion about their supportive approach to building student self-confidence and encouraging persistence through an individualized, self-paced program focused on a student's strengths. Brightmont does not have a teacher specifically trained and experienced in

implementing an Orton-Gillingham reading methodology. Brightmont teachers do have experience instructing students with dyslexia and dysgraphia. Brightmont staff expects to work collaboratively with each other and with other educational specialists. Dr. Rodes believed Brightmont staff could support and collaborate with a reading specialist or other service provider who served the Student.

Dyslexia Resource Guide

172. The Washington Branch of the International Dyslexia Association (IDA), in collaboration with the OSPI Reading Office, published a Dyslexia Resource Guide in November 2011. Exhibit C1. OSPI uses the definition adopted by the National Institutes of Health and IDA:

Dyslexia is a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.

Dyslexia is not due to either lack of intelligence or desire to learn; with appropriate teaching methods people with dyslexia can learn successfully. Exhibit C1, pp. 8-11. It is a diagnosis typically made by a learning disability specialist like Dr. Dupuy, or a clinical psychologist or neuropsychologist or educational psychologist. Exhibit C1, p.24.

173. The Mother recognized the Student in every description of the common indicators of persons with dyslexia: oral language; phonemic awareness; decoding; spelling; writing; mathematics; organization of time, materials and space; and, social and emotional development.

174. OSPI did not endorse specific diagnostic tools or instructional programs. The Dyslexia Training Model, however, provides additional detailed information about instructional methods in alignment with the IDA and latest scientific based reading research. Exhibit C1, p. 7. The Guide addressed instruction and intervention in the classroom, with principles of instruction. It stated students with dyslexia learn best with instruction that is: simultaneous and multisensory; systemic and cumulative; direct; and, synthetic and analytic. Exhibit C1, p. 27. The Guide contains multiple lists of appropriate research based hands-on strategies and activities for the classroom teacher. Exhibit C1, pp. 27-44. An entire section is dedicated to the Dyslexia Friendly Classroom. Exhibit C1, pp. 45-50.

The District

175. The special services director supported the appropriateness of the District reevaluations, but agreed that Dr. Dupuy's assessment provided new information and the District was open to conducting a neuropsychological evaluation with a provider not employed by the District at public expense, including cognitive, academic, OT, assistive technology. RP 1021-1022. They would envision reviewing the information, along with honoring the information from Dr. Dupuy, in order to plan for the Student's high school education. She holds a master's in education with endorsements in Grades 4 to 9 in math and science. RP 997. She was not convinced Orton-

Gillingham was the best approach, but she is not a reading specialist and would defer to the recommendations from an outside provider. RP 1022-1023. The District is willing to provide additional staff training, if necessary, in the event some curriculum other than Read Naturally or Bust out would be better for the Student. If a reevaluation indicates that the Student has lost some educational opportunity the last few years, the District would be open to providing compensatory services to the Student. The team would also consider providing counseling support from the school counselor. RP 1023. She had strong concerns about placing any student, including this Student, in one-on-one placement especially if struggling with social-emotional skills. RP 1024.

Remedies

176. At public expense, the Parents seek an IEE, private placement, one-on-one tutoring, reimbursement for the online tutor, reimbursement for other costs, educational counselling, medical/mental health counseling, and other equitable remedies.

Prospective Private Placement

177. Parents identified Brightmont Academy as the prospective private placement remedy they sought for the Student. See Second Prehearing Order dated March 16, 2015. A factor in selecting Brightmont was that the Parents and Student have family living within 10 minutes of its campus. The Student would have a place to stay during the week and not commute daily. RP 470. There were schools closer to home in nearby counties, but attendance at any would require a daily commute of at least 1.5 hours or more. The Mother had personal experience commuting from Shelton to the UW for education, and knew a daily commute would not be appropriate or realistic for the Student. RP 467. To prepare for hearing, the Parents consulted with Dr. Dupuy and others, and searched the internet and the OSPI website. They discovered Dartmoor, a school near Brightmont and close to family. It did provide special education in a one-to-one basis, and Dartmoor evaluated the Student and informed Parents they could provide services for him. The Student had done well with the one-on-one tutoring with the ESD educational advocate and the online math tutor, and Parents expected he could adjust well to a one-on-one environment at Brightmont or Dartmoor. RP 470.

178. In the weeks prior to hearing, Parents continued investigate other private placement options. Even as the hearing was in progress, the Student was being interviewed by potential private schools. The schools which stood out to Parents as the most appropriate were out of state and most were boarding schools, most for boys only: Greenwood, Gow, Phelps, Landmark, Kildonan, Forman, and Gould. Testimony of Mother, RP 486. Ultimately, she felt Kildonan really hit the mark with appropriate structure, and able to meet the Student's unique needs related to social-emotional and executive functioning and dyslexia. RP 487. The Parents evidence included testimony from administrators at Brightmont, Kildonan and Landmark. They are comfortable as parents with the notion of sending the student to a distant school for a good educational experience. RP 1067.

179. The Parents requested that all costs related to application fees, tuition and other academic fees associated with the private placement be at public expense. They also request costs reasonably related to transportation of the Student to any approved private placement, including returning home for regularly scheduled school holidays and breaks. They requested costs reasonably related to transportation and lodging to provide Parents an opportunity to visit the

Student at during each academic session in order to remain connected with the Student and his academic setting, environment, and teachers.

180. Brightmont does not currently have a teacher on staff with the experience in multi-sensory instruction recommended by Drs. Dupuy and Roberts Frank. Brightmont has many part-time students, and Dr. Dupuy considered its' core academic program could be coupled with an appropriate intensive program of reading and written language instruction in the Seattle area by a person who had the qualifications to meet the Student's unique needs. Dr. Dupuy recommended for one-on-one systematic multisensory reading and written language and executive function skills, the Student probably needed three hours a day, five days a week, for 18 months. RP 168.

One-on-One Tutor

181. The Parents request one-on-one tutoring for a minimum of five hours per week throughout the calendar year until the Student's 21st birthday, in the areas and by the providers identified in the evidence. Drs. Dupuy and Roberts Frank testified about the one-on-one tutor needs of the Student related to daily instruction on a year round basis in systematic multisensory reading and written language and executive function skills. They did not recommend additional hours one-on-one in any other areas.

Compensatory Education

182. Parents seek compensatory education in the areas of written expression, math, cognitive areas of memory, executive functioning and problem solving, adaptive skill development, organizational and time management skills, social emotional and anxiety skills development, communications for language, articulation, pragmatics and social skills for high school. They ask for educational counseling as well as medical/mental health counseling services to address impulse control, mental well-being and social integration.

183. The Mother testified about her observations of the Student's pragmatics and social skills, but no current expert testimony was offered. The Parents did not present the testimony of the Student's private therapist and withdrew the document he prepared. The Parents request at public expense all costs associated with counseling services to address Student's social-emotional well-being and social integration, up to four hours per month per calendar year until he graduates high school or reaches age 21. The evidence did not address the subject of educational counseling directly. Indirectly, perhaps this is a reference to Parents' dissatisfaction with the November 2014 Transition Plan. However, they offered no evidence that the career cluster interest survey was inappropriate. The Student just turned 16 years old, and Parents offer no evidence that the Student needs to catch up in the area of educational career counseling.

184. There is no current evidence from a speech language pathologist or communication disorder specialist or other qualified expert regarding the Student's needs for communications for language, articulation, pragmatics and social skills. The evidence does not measure a loss or regression in this area while he was a Student at the District in the two year period at issue, not is there any evidence of what would be needed to catch up (if he had regressed).

185. Dr. Dupuy did not recommend the Student qualified for SDI in the area of math. The record supports a finding that with two hours of one-on-one tutoring in math, the Student

progressed and is currently earning "A" grades in 9th grade general education algebra. Notably, the 9th grade general education math teacher organized her classroom and provided a folder in which each student keeps classwork, and she had been meeting nearly daily with Student for after-school help in Jump Start. Also, the Student had the continued support of the online tutor and his Parents. Notably, the Student had fallen behind in math and had three zeroes because of missing assignments in the weeks prior to hearing when his Mother did not have the time to devote to tracking Skyward and coordinating with the teacher.

186. Witnesses related facts, observations and events descriptively and not in diagnostic terms such as those used in the UW reports. For example, evidence would be about skills needed for independent, responsibility, and self-control, including starting and completing tasks, keeping a schedule, following time limits, following directions, and making choices (adaptive functioning), or skills needed for the ability to adjust to routine or task demands, initiate problem solving or activity, sustain working memory, and plan and organize his environment and materials (executive function), or skills related to attention problems when he failed to finish work, day dreamed, was inattentive, or displayed at-risk behaviors of anxiousness, withdrawal, somatic complaints, social difficulties, and thought processing (behavioral and social-emotional and behavior). Therefore, most all of the evidence about the Student's need to catch up on what he missed while at Student at the District did not clearly label and distinguish needs by the categories matching the Parents' request. With the exception of math, it is found that the recommendations of Drs. Dupuy and Roberts Frank regarding one-on-one tutoring in the findings above already addressed many if not most of the Student's needs which might be labeled as executive functioning and problem solving, adaptive skill development, organizational and time management skills, social emotional and anxiety skills development, and some communications and language difficulties.

187. Parents seek reimbursement for the private online math tutoring service costs through the date of filing the due process hearing. The invoice is described in findings above.

188. Parents seek reimbursement for the initial testing performed in preparation for hearing by Dr. Dupuy of \$2,000. Parents seek reimbursement for attorneys' fees.

CONCLUSIONS OF LAW

The IDEA

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. §1401 *et seq.* (Individuals with Disabilities Education Improvement Act IDEA, sometimes referred to as IDEIA, formerly Education for All Handicapped Children Act EHA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) §300 *et seq.*, and Chapter 392-172A Washington Administrative Code (WAC).

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

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

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

3. A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA (formerly the EHA). The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

According to the definitions contained in the (Education for All Handicapped Children Act) a 'free appropriate public education' consists of education instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the state's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items of the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act.

Rowley, supra, 458 U.S. at 188-189.

4. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but instead a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Rowley*, 458 U.S. at 200-201. "District must provide Student a FAPE that is 'appropriately designed and implemented so as to convey' Student with a 'meaningful' benefit". *J.W. v. Fresno Unified School Dist.*, 626 F.3d 431, 432 – 433 (9th Cir. 2010); see also *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1038, n. 10 (9th Cir. 2009).

5. There is both a procedural and a substantive test to evaluate compliance with the IDEA. Reviewing courts must inquire:

First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

Hendrick Hudson Dist. Bd. of Ed. v. Rowley, 458 U.S. 176 (1982). "If a violation of the IDEA is found in either regard, the court shall 'grant such relief as [it] deems appropriate.'" *Hacienda La Puente Sch. Dist. of L.A. v. Honig*, 976 F.2d 487, 492 (9th Cir. 1992).

6. The burden of proof in an administrative hearing under IDEA is on the party seeking relief. The Parents have the burden in Docket No. 02-2015-OSPI-00012. The District has the burden in Docket No. 02-2015-OSPI-00017. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

Parents' Motion to Amend

7. Following Mother's testimony, counsel for Parents moved to amend the prayer for relief to conform to the evidence adduced at hearing and consistent with Parents' final requests. After identifying during the prehearing process that Brightmont Academy was their choice for prospective private placement, the Parents continued to investigate private placement options. Even as the hearing was in progress, the Student was being interviewed by potential private schools. The District objected to the motion.

8. Parents may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees. WAC 392-172A-05100(3). A party may amend the due process complaint with the consent of the other party, or the ALJ may grant permission to amend, but not later than 5 days before a due process hearing occurs. 20 USC §1415(c)(2)(E).

9. The Parents' complaint exceeded 40 pages, addressed periods four years or more prior to the date of filing, and did not identify a specific school for prospective private placement. The complaint described a placement to be determined by Parents based on credible research and production of documentation at hearing which met a list of parent-approved criteria. After two prehearing conferences, the Parents' limited the issues to a two-year period prior to the date of filing, and identified Brightmont Academy as the private placement remedy they sought for the Student. See Second Prehearing Order dated March 16, 2015. The Parents were given an opportunity to make further clarifications. The Parents' clarification added extended school year issues not included in the original complaint. Parents were instructed to comply with the provisions for amendment of complaints in 34 CFR §300.508, if they wished to add to the issue statement. See Amended Second Prehearing Order dated March 27, 2015. The Parents did not seek permission to amend, and did not object to the prehearing order which controlled the subsequent course of the proceedings.

10. Subsequently, Parents arranged for the Student to be tested in April 2015 by Dr. Cindy Dupuy, Ph.D., who issued a Psychoeducational Evaluation which provided Parents with much information about dyslexia and dysgraphia and the Student's educational challenges impacted by Dr. Dupuy's diagnosis. They also consulted with Dr. Alicia Roberts Frank, Ed.D., for expertise in writing IEPs. Dr. Roberts Frank also provided new information to Parents about deficits she perceived in the District's IEPs, none of which were understood by Parents at the time they filed their complaint and were not stated as violations in the complaint. Finally, in considering Dr. Dupuy's report the Parents expanded their search for proposed private placements. These events, which occurred prior to the filing of the complaint, are not included in the complaint. A natural result was a shift in focus of the Parents..

11. In a 72-page prehearing brief filed five days before hearing, Parents' asked for "all relief requested, including alternative private placement established as appropriate based on evidence at hearing, in addition to all equitable remedies." They asked for prospective private placement at Brightmont at public expense, but added a parenthetical "(or other appropriate private placement as proven by evidence at hearing)". In their closing brief, the Parents summarized their request for private placement as follows: an opportunity at public expense to

submit applications to five private schools (Gow, Kildonan, Landmark, Greenwood and Forman); and, if admitted to one or more of these schools, an opportunity at public expense to attend the school the Student finds to be the best personal fit based on an in-person interview and campus visit; and, if not admitted to any of the five named schools, an opportunity at public expense to enroll at Grand River Academy; and, if not admitted at Grand River, placement at public expense at Brightmont, or at Dartmoor School, also in Seattle.

12. The Parents cite 34 CFR § 300.153(b)(4)(v), noting the complaint need only propose a solution to the problem to the extent known and available to the party at the time the complaint was filed. The District correctly asserts that due process and IDEA require that when Parents find a different solution to a problem at a later date, they are required to amend the complaint. The timelines begin anew with the date the amendment is approved. The act of filing a due process hearing complaint initiates a series of timed actions measured in days to encourage speedy resolution of the dispute at the earliest possible stage. For any issue not resolved prior to hearing, the party has a right to prohibit the introduction of evidence at hearing that has not been disclosed to that party at least five business in advance. WAC 392-172A-05100(1)(c). The District would have been barred from adding to its exhibits or its list of witnesses to counter private placement options proposed for the first time at hearing. Even if the Parents did not object to a continuance and time for additional discovery by the District, such a course of action is beyond the timelines required in the IDEA dispute resolution process.

13. At its core, due process requires advance notice which is adequate in its content, with opportunity to confront and reply. The District received advance and adequate notice and the opportunity to confront the proposed private placement at public expense at Brightmont. The Parents do not cite to any legal authority to support their position. The ALJ is unable to find any federal or state authority or appellate decision to support a motion to amend the prayer for relief to conform to the evidence adduced at an IDEA hearing. The Parents' motion to amend the complaint is denied.

Procedural Compliance with the IDEA

14. The procedural safeguards are essential under the IDEA:

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

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

Procedural violations of the IDEA amount to a denial of FAPE only if they:

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

20 USC §1415(f)(3)(E)(ii). See, *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484, 18 IDELR 1019 (9th Cir. 1992); accord *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 938, 48 IDELR 60 (9th Cir. 2007).

Did the District violate the Parents procedural rights by not ensuring attendance and participation in IEP meetings of the Student's general education teachers?

15. IEP team members include mandatory and permissive participants. Regarding general education teachers, the IEP team must include not less than one general education teacher of the student. WAC 392-172A-03095(1)(b). The Parents have not proven the District violated their procedural rights in this regard. The record does not include minutes of the November 2013 IEP meeting or other evidence sufficient to prove that the three general education teachers who signed the IEP did not attend and participate. The Parents have not proven the District violated their procedural rights regarding general education teacher attendance at the November 2013 IEP meeting.

16. The record of the November 2014 IEP meeting shows that the Student's general education math teacher attended and participated, but left early. She heard the presentations by the Student and the general education science teacher, but after she made her own presentation she left to go back to class. The minutes reported the meeting continued for another 25 minutes with no general education teacher in attendance and participating. A school district member of the team is not required to attend a meeting, in whole or in part, if the parent and the district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum is not being modified or discussed in the meeting. WAC 392-172A-03095(5)(a). When the member's area of curriculum is being discussed, the member may still be excused provided the parent, in writing, consents to the excusal, and the member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other team members. WAC 392-172A-03095(5)(b). The general education teacher's curriculums were under discussion, and thus WAC 392-172A-03095(5)(a) is inapplicable. The District did not comply with the provisions of WAC 392-172A-03095(5)(b). The Parents have proven the District violated their procedural rights regarding general education teacher attendance at the November 2014 IEP meeting.

17. The analysis proceeds to whether the violation of rights had merely a de minimis impact or resulted in a substantive denial of FAPE to the Student. There was no general education teacher present to hear the Mother report the frustration the Parents and Student experienced related to lack of learning organization skills, and lack of teaching focused on executive function, or the discussion about the after school program known as Jump Start. The participation of the general education math teacher would have been significant as she was the Jump Start tutor in math. The evidence is overwhelming that instructional strategies and accommodations, particularly regarding organization, completing and turning in assignments, and understanding the Parents' view about the Student's executive function deficits, were fundamental and significant to providing FAPE. For these reasons, the Parents have proven the absence of at least one general education teacher for nearly half the meeting was not a de minimis violation of the IDEA. The violation of rights impeded Student's rights to FAPE, and significantly interfered with the Mother's opportunity to participate in team decision making.

Did the District violate the Parents procedural rights regarding the IEP development of IEPs dated January 5, 2015 and February 3, 2015?

18. Changes to the IEP may be made either by the entire team at an IEP team meeting, as provided in WAC 392-172A-03110(c), by amending the IEP rather than by redrafting the entire IEP. After the annual IEP team meeting for a school year, the parent and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP, the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. WAC 392-172A-03110(d).

19. The Parents did not allege a violation specific to process by which the District special education staff added performance data to the IEP signed in November 2014. Their complaint alleged a failure in IEP development and specifically faulted the transition plan and the instructional strategies proposed by the District. Those terms were included in the document the Parents signed and received in November 2014. Exhibit P77, p. 7. There is no evidence of an IEP dated February 3, 2015. The IEP dated February 26, 2015 is after the due process complaint was filed and is not at issue. Even if the complaint were broadly read to allege a procedural violation related to the IEP mailed January 5, 2015, the Parents have not proven any such procedural rights violation impeded the Student's right to FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents, or caused a deprivation of educational benefits.

Substantive Compliance with the IDEA

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

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

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

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

21. An analysis of whether a student has been denied FAPE is not appropriate when a district fails to provide a placement in the student's least restrictive environment (LRE). A student's right to placement in his/her LRE is both a procedural and substantive right. Substantively, it is independent of the obligation to provide FAPE, and is not amenable to the FAPE analysis set out in *Rowley, id*, and its progeny such as *Target Range, id*. See *Greer by Greer v. Rome City Sch. Dist.* 967 F.2d 470 (11th Cir.1992). School district failures to provide a student FAPE in the least restrictive environment have routinely resulted in determinations that a placement was not appropriate. See *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994).

22. Looking broadly at the needs of a disabled child in order to determine whether he or she has progressed appropriately is supported by the general purpose of special education regulations, which is to ensure that all children with disabilities receive FAPE through special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 34 C.F.R. § 300.1(a); WAC 392-172A-01005(2). Academic progress may satisfy this purpose as it relates to some disabled children, but certainly not all.

23. Under the federal Individuals with Disabilities Education Act (IDEA) and state law, students with disabilities have the right to a free appropriate public education. 20 U.S.C. §§ 1400, et seq. The term "free appropriate public education" (FAPE) means special education and related services that have been provided to the student at public expense and without charge, that meet State educational standards, and that are provided in conformity with the student's individualized education program (IEP). 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; WAC 392-172A-01080.

24. The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of the student. 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; WAC 392-172A-01175. The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; WAC 392-172A-01155.

Did the District fail to appropriately evaluate the Student in all areas of suspected disability?

25. The District's child find activities must be calculated to reach students with a suspected disability and evaluate the students' needs for special education and related services. One activity or method involves using internal methods such as reviewing district-wide test results. WAC 392-172A-02040. This is not a case of a student overlooked by the District. He was identified in elementary school. His Mother proactively maintained communication with the District about his needs.

26. The purpose of an evaluation is to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.15, 300.301(c)(2); WAC 392-172A-01070. Federal and State regulations require a school district to evaluate a student, "in all areas of suspected disability." The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F.R. § 300.304(c)(4), (6); WAC 392-172A-03020(3)(e), (g). The evaluators must also use a variety of assessment tools and strategies to gather functional and developmental information about the child. 34 C.F.R. § 300.304(b)(1); WAC 392-172A-03020(2)(a).

27. A student must be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. WAC 392-172A-03020(3)(3); 34 CFR § 300.304(c)(4). The Parents assert the District's November 2013 reevaluation of the Student should have included assessments of the Student's executive functioning, and social and emotional status, and an assistive technology evaluation to address note taking and organizational needs.

28. A school district must ensure that a reevaluation of a student eligible for special education is conducted when it determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation, or when requested by the parents or teacher. A reevaluation must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary. WAC 392-172A-03015.

29. A group of qualified professionals selected by the school district must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent" to determine whether the student is eligible for special education, and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. The group must not use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors. Assessments must be administered by "trained and knowledgeable personnel" and in accordance with the test producer's instructions. Students must be assessed "in all areas related to the suspected disability" and the evaluation must be "sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified." WAC 392-172A-03020; *see also* 34 CFR §300.304.

30. The group must review existing evaluation data on the student and identify what additional data is needed to determine whether the student meets eligibility criteria. WAC 392-172A-03025; *see also* 34 CFR §300.305. Upon completing the assessments, the group of qualified professionals and the parents must determine whether the student is eligible for special education. WAC 392-172A-03040. The district must draw upon information from a variety of sources, including parents and teacher input, to interpret evaluation data to determine eligibility.

31. The content of evaluation reports is governed by WAC 392-172A-03035. They must include: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the disability affects the student's progress in the general education curriculum; and the recommended special education and related services the student needs. *See also* 34 CFR §300.304-.306.

32. The Parents and District were well informed by the UW reports. With no disrespect intended to the UW interdisciplinary team, however, by November 2013 and February 2015, the reports were over four and five years old, respectively, and no longer current. For IDEA, a reevaluation requires current information at least every three years.

Math

33. The body of the complaint specifically referenced math as an area in which the Parent disputed the lack of qualification for SDI. The District's group of qualified professionals made some fundamental misjudgments regarding math. An expectation that all special education students are about two years behind their peers ignores that each student is unique, and in this case likely resulted in performance expectations based on an SLD model which were not be relevant to this Student's health impairment. The District's determination that the Student should not be found eligible for SDI in the area of math based on an LRE preference for general

education was an error. The continuum of LRE refers to the process of selecting the environment in which to provide special education to an eligible student. WAC 392-172A-02050, -02055. The more appropriate discussion would have focused on the Student's MSP scores in spring 2013, the math fluency and math calculation data from the WJ-III, in the context of having been in math academy, and being assigned a corrective-level class. The District's placement of the Student in its lowest level math class in the general curriculum can hardly be labeled a success in general education. No expert could identify or distinguish the progress from school apart from progress received due to support by the Parents and the online tutor. However, the Student's assessments did not show a trend toward progress from 2008 through 2013, or 2014. For these reasons, Parents have proven the District failed to appropriately evaluate the Student in the area of math in November 2013 and the February 3, 2015 "file review".

Reading and written language

34. This is a more difficult issue, because the assessment tools were appropriate, and while mis-scored in writing in November 2013, the evidence does not prove the errors were significant. Also, while there is evidence of decoding and fluency issues, there evidence from the experts and the OSPI Guide is also that dyslexia is very difficult to diagnose. The Student was good at faking and not asking questions to show he needed help. The abysmal lack of progress reports in 8th and 9th grade does not necessarily support a conclusion relevant to the reevaluation in November 2013. The Student was receiving some educational benefit according to his teachers, in 2013. However, it is found that lack of progress by November 2014 in reading and written language supports a conclusion that the District failed to reevaluate in the area of reading related to the February 3, 2015, file review. This conclusion is reached based on the information known to the team about the Student's reading and writing as of that date, and not on the information provided by Dr. Dupuy subsequent to the filing of the complaint. For these reasons, the Parents have proven that as of February 3, 2015, reevaluation, the District failed to appropriately evaluate the Student in the areas of reading and written language.

Executive-functioning and social and emotional needs.

35. By November 2013, the District had ample first-person experience with the Student and had been well-informed by the Mother regarding the Student's unique challenges related to his health impairment. The evidence is abundantly clear the Student had deficits related to skills needed for independence, responsibility, and self-control, including starting and completing tasks, keeping a schedule, following time limits, following directions, and making choices, adjusting to routine or task demands, initiating problem solving or activity, sustaining working memory, and planning and organizing his environment and materials, and failing to finish work related which required manual handwriting. The social and emotional component is based on confidence or lack thereof, and frustration experienced by the Student. Parents' have proven the District failed in its responsibilities to evaluate in these areas as they related to classroom performance and ability to complete homework (not regarding mental health or disciplinary behavior issues).

36. The District failed in its judgment that the Student's needs were similar to those of his teenaged peers, most of who were observed to display a lack of executive function and organizational skills. The District erred in judging that the Student's lack of organization, repeated failure to turn in assignments, inability to manage paperwork, and poor time management skills (to name only a few examples of his school day challenges) were due to a lack of maturity that would improve with the passage of time. There is no evidence to support

that his executive functioning deficits will diminish with the passage of time. Unlike his peers who may outgrow adolescent delays, awkwardness and disorganization, a lack of maturity have not been shown to be the cause of the Student's deficits. The group failed to reevaluate the Student's unique needs related to executive functioning and organization caused by static permanent health impairments.

37. The evidence is far less clear about lack of attention in class, day dreaming in class, and instances of at-risk behavior were far and far apart in time identified by UW. The District knew the Parents obtained appropriate mental health counseling to address those concerns, and any other mental health or behavioral issues. The Parents have not proven the District failed in its responsibilities to appropriately evaluate in these areas.

38. The Parents have not proven the District failed to evaluate the Student's social and emotional behavior as it related to the October 2013 text message, or the prior year's single reference to killing himself. The evidence does not prove that in November 2013, the District knew or should have known the Student had a need for further assessment. The later note referring to his groin has been shown to have been appropriately addressed in private mental health counseling and was not shown to be a significant enough issue at school to warrant evaluation.

39. The District failed its reevaluation duties in November 2013 and February 2015 by narrowly considering "behavior" as limited to conduct addressed in discipline policies, manifestation determinations, behavioral intervention plans, or aversive interventions. They failed to evaluate the Student's behavior in the school environment related to lack of executive function and organizational skills, such as his repeated failure to report on time, to turn in assignments, to keep a calendar, to maintain a graphic organizer, to maintain a locker, to start projects on time, and to understand how to complete steps to a project in a specific sequence. The District failed to evaluate the Student's need for assistive technology related to the Student's poor handwriting skills and lack of success using the standard organizational tools such as graphic organizers, school and class calendars, and tracking assignments on Skyward (as labels overlap, this is also addressed below). For the above reasons, it is concluded Parents have proven the District's November 2013 and February 2015 evaluations were not appropriate and did not comply with the cited regulations.

40. *Assistive Technology, note-taking, organizational needs.* The evidence about computer usage and keyboarding is insufficient regarding the February 2015 reevaluation, given the testimony of Ms. Ozga and teachers. As for November 2013, the reference to access to a keyboarding application at the Student's grandparents' home did not inform about level of progress. The UW report was still dated but its OT content, the District's own OT last evaluation, combined with the experience of teachers with the Student's scribbling were sufficient to put the District on notice that this area needed to be evaluated in 2013. The Parents have proven the District failed in its responsibilities to appropriately evaluate in these areas.

41. In reaching the above conclusions, it is important to note the Parents' focus has been on teaching the skills the Student needed, and lack of current evaluation impacted the ability of the teachers in this regard. The above conclusions are not based on the lack of knowledge of the Student's full cognitive potential. Lack of knowledge in that area has not been shown to have significance in failure to appropriately evaluate the areas at issue here. Nor were the conclusions based on the data provided by Dr. Dupuy's discrepancy model. It was not

necessary to evaluate her SDI discrepancy model to make these conclusions. They are based on the information reasonably known and available to the District at the time of the reevaluations

42. This analysis is intended to also address the child find allegations raised in the complaint, regarding failing to identify and evaluate under the child find duties. Since it is amply addressed above, no further conclusions will be made on that portion of the complaint.

Are the Parents entitled to an IEE at public expense?

43. A parent has the right to an independent educational evaluation (IEE) at public expense when the parent disagrees with a District evaluation, provides written notice to the District requesting an IEE at public expense, and the District is unable to show the appropriateness of its evaluation at a due process hearing. 34 C.F.R. § 300.502; WAC 392-172A-05005.

44. The District is unable to show the appropriateness of its November 2013 and February 2015 reevaluations. The Parents are entitled to an IEE at public expense, subject to the requirements of WAC 392-172A-05005.

45. The district shall provide information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations. The criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the District uses when it initiates an evaluation, to the extent consistent with the Parents' right to an IEE. If the District criteria include a range of costs, the Parents' are entitled to reimbursement for an IEE at a cost not to exceed 20% of the District's cost criteria. WAC 392-172A-05005(7).

Did the District fail to appropriately develop the November 2013 and November 2014 IEPs?

46. An IEP is appropriate if it complies with the procedural requirements of the IDEA and provides the special education and related services necessary for an individual student to obtain an educational benefit. When reviewing an IEP to determine if it was or is appropriate for a student, the review is based upon what was known to the IEP team at the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

47. The UW reports were dated, as noted above, and it was not a violation of IDEA to fail to specifically review the UW reports by each IEP team. Moreover, the Parent herself informed the team about the Student's diagnosis and needs. The Parents have not proven a violation of IDEA in this regard.

48. The Parents allege the District placed the Student in special education classrooms far below his academic potential without adequate supports to enable him to succeed in general education classes. Other than Mother's use of the term "self-contained", the classroom were not otherwise described in any detail. A student's right to placement in his/her LRE is both a procedural and substantive right. Substantively, it is independent of the obligation to provide FAPE and is not amenable to the FAPE analysis put forth in *Rowley, id.*, and its progeny such as *Target Range, id.* See *Greer by Greer v. Rome City Sch. Dist.* 967 F.2d 470 (11th Cir.1992). School district failures to provide a student FAPE in the least restrictive environment have routinely resulted in determinations that a placement was not appropriate. See *Sacramento City*

Unified Sch. Dist. v. Rachel H., 14 F.3d 1398 (9th Cir. 1994). Therefore, prior to further FAPE determinations, the LRE issue will be addressed.

49. The District placed the Student in two special education classrooms: reading, and written language. The Parents' experts and the District reevaluations confirm the Student has severe impairments in these areas. The Mother asked for specially designed instruction and less homework, but it is unclear how that request relates to the placement. No other special education resource room was described. The Parents have not proven the Student's reading and written language placements violated LRE. This analysis concerns placement determinations, and not classroom content. The Parents have not proven the District's placement of the Student in special education classrooms for reading and written language was a violation of IDEA.

50. The Parents have not proven teachers failed to consider progress in general education history in development of the IEP or that such failure constituted a violation of IDEA. Parents have not proven the specific processes which worked in that class were not that same processes she encouraged to be used in other classrooms. Other than general assertions, the Parents' evidence on this point is scant on any specifics and assumes that the needs of the Student in history were the same in other courses. The evidence would appear the US history's document focus was not the same as the PNW or the geology mapping project, and accommodations are implemented in the judgment of the teacher on a day to day, assignment to assignment basis.

51. There is no evidence of meaningful training of District staff about how to address the Student's executive function deficits, including how to timely and appropriately tailor interventions. General education teachers focused on knowledge of core subject content, without regard to the poor writing and grammar and punctuation. It was some other teacher's job to teach reading and written language skills. Here, no one was assigned the task of teaching executive functioning skills. The Parents have so clearly met their burden in this regard that no further analysis is needed.

52. The issue of child find as it relates to developing the IEP was addressed in the analysis of the appropriateness of the reevaluations. It does not merit further comment.

53. The development issues here were very specific, and none related to the procedural flaws about which Dr. Roberts Frank testified. As those were not known to Parents at the time of the complaint, and there was no amendment, they are not addressed here.

54. For the reasons stated above, the Parents have proven the District failed to appropriately develop the November 2013 and November 2014 IEPs, and such failure resulted in a denial of FAPE to the Student.

Did the District fail to implement the November 2012 IEP?

55. The development of the November 2012 IEP is outside the statute of limitations period and not at issue. It covered the period November 2012 to November 2013, and its implementation during parts of the Student's 7th grade and 8th grade years at issue here.

56. Parents' evidence concerning the portion of 7th grade at issue here does not support their burden. The Parents have not shown the District failed to implement the November 2012 IEP here as to the specific issues raised for that time period.

Did the District fail to implement the November 2013 and November 2014 IEPs?

57. The failure to consider the UW reports was address in the evaluation section. The same analysis applies here and no further comment is made. An IDEA violation has not been proven related to the failure to implement 4-5 year old reports.

58. The Parents have not proven that after October 2012, any specific general education teacher was not aware that the Student had an IEP. They have proven general education teachers were not aware of some of their responsibilities. The IEPs provided Student "may" use a computer/technology to record answers on assessments and/or assignment, but do not specify training or specify note taking during class as a matter separate from recording answers on assignments. The lack of training and issues related to note taking were addressed in the reevaluation discussion above. The Parents' testimony regarding the 9th grade PNW history never, never, never providing course materials or implementing the IEP, or that IEP coordinators could suggest and plead but not enforce implementation by general education teachers, evidence was not rebutted by the District. It the single, clear example of one general education teacher's failure to implement the portions of the IEP identified at subsection c.iii.1-9. The Mother was no in the classroom, and the record does not prove general education teachers failed to provide frequent assistance or encouragement. If the Student confirms an instruction is understood, the IEP did not state a responsibility other than to check in to ensure understanding. There is no evidence on that point, except that Student often did not understand. His lack of understanding, and skills related to being able to state he does not understand and ask other questions, were addressed in the reevaluation conclusions above. The same analysis applies to the other items listed not expressly identified above. However, the IEP did not require general education teachers to provide a graphic organizer, as a specific item, and the evidence is that notes were received but lost or misunderstood. Again, those issues were better fully addressed in the reevaluation discussion above.

59. The Parents allege a failure to provide support, accommodations, services, or assistive technology by special education providers to meet general education requirements, such as [the Student] creating legible handwritten reports, calendaring and meeting assignment due dates, understanding the sequence in which assignments or project steps were to be completed (subsection c.iv). The IEPs do not expressly require these actions by special education providers, and was more properly addressed in the reevaluation of executive functioning above.

60. The Parents allege an IEP implementation issue related to the classroom assignments in reading and writing/English, asserting he was placed in classrooms far below his potential without adequate supports to enable him to succeed in general education classes. This is an LRE issue and was addressed above.

61. The Parents raise the issue of the duties of the IEP coordinator. They assert it was the coordinator's duty to coordinate and manage the day-to-day, week-to-week communication with general education teachers and instead relying on the Parents. Clearly, the efforts the Parents invested (Mother twice weekly at school, both Parents regarding homework) took a toll. As to IEP implementation, however, the record shows the IEP coordinator for 8th and 9th grade was actively engaged. She had other students, too, and could not be expected to devote the time

required for this one Student. This circles back to the fundamental issue addressed in the development discussion above: The District failed to assign responsibility to teach executive functioning and organizational and note taking skills, and thus no intensive skills training was done. That failure is addressed above; but, as to the IEP coordinator, in the context of a public school no violation of her duties is shown.

62. There is legal requirement under IDEA that every individual from a district respond to a parental request for ideas for tutors or summer activities. No violation of IDEA has been proven by Parents in this regard.

63. The issue of failing to provide SDI and related services and instead relying on Parents' private tutor relates to math, as the online tutor reports show. Accordingly, that issue was discussed above regarding reevaluation duties in the area of math. Regarding claims the District failed to place Student in the LRE in 9th grade math, Parents own experts did not qualify him in math yet indicated he had weaknesses, and the evidence is the Student did fail the spring 2014 MSP. Also, the District failed to respond when he was ahead of the class. The general education corrective or essentials math class was attended by peers who did not pass the MSP, the teacher's testimony was credible about her own efforts to inquire about movement in October 2014, and the evidence does not prove the Student went to swim class more than two times. While that incentive may have been a misjudgment on the teacher's part, the Kahn Academy was an appropriate incentive for doing good work. The Parents have not proven the District violated IDEA requirements for IEP implementation in this regard.

64. The claims regarding the "January 5, 2015" IEP are considered here as they are also components of the November 2014 IEP. The Parents allege violations regarding the accommodations or adaptations related to Jump Start after school, nudging and reminder the Student, and allowing his work to stay in the classroom. The Jump Start program has not been shown to be an inappropriate accommodation where the Student can receive after school tutoring and assistance with homework. The other accommodations are also appropriate at the present time, but this conclusion is not to be interpreted as license to not help the Student learn the skills needed to meet these tasks independently.

65. The Parents allege the IEP closest to the Student's 16th birthday failed to include an age appropriate transition assessment, and failed to propose transition services and goals tailored to meet the Student's needs to prepare him for post-secondary education and employment. Transition services are a coordinated set of activities for a student eligible for special education that are designed within a results-oriented process, focused on improving the academic and functional achievement of the student to facilitate his movement from school to post-school activities. It is based on the student's needs, taking into account strengths and preferences and interests, and includes instruction, related services, community services, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and provision of functional vocational evaluation. In some cases, transition services may be special education if provided with SDI or a related service. WAC 392-172A-02990; see also 34 CFR § 300.43. The transition plan was required in November 2014 because the Student was attaining age 16 in early 2015. WAC 392-172A-03090(1)(j); see also 34 CFR § 300.320(b).

66. The transition plans on the Student's November 2014 (and subsequently modified and postmarked January 5, 2015 version), meet most of the above requirements. The Parents were not present when the career survey was administered, and no evidence was offered. The

Mother acknowledged the Student may have expressed the interests when asked, and the evidence is that he is familiar with computer games. The evidence does not prove the class selections were inappropriate. The Parents' experts preferred the assessment be better identified and there be a clearer connection to the classes, but the evidence does not show the plan itself did not comply with the IDEA. The Parents have not met their burden of proof on this allegation.

67. *Conclusion regarding IEPs.* The Parents did not prove an IDEA violation regarding implementation of the November 2012 IEP during the portion of 7th grade at issue. The Parents did prove an IDEA violation regarding development and implementation of the November 2013 and November 2014 IEPs (including the attempted amendment postmarked January 5, 2015). These violations resulted in a substantive denial of FAPE. The Parents have proven that in development and implementation, the District's IEPs were not reasonably calculated to provide meaningful educational benefit.

Did the District improperly expel Student in 2013 and exclude him from June 2014 trip?

68. A school district may suspect or expel a student eligible for special education just as it may suspect or expel any other student. It is only *after* a student eligible for special education is suspended or expelled that the IDEA imposes additional legal duties on school districts. The Parents have not proven an IDEA violation by the District related to the disciplinary expulsion (converted later to short term suspension), or the exclusion from by the history booster club from the June 2014 trip.

Did the District fail to ensure that safe provisions were made for the Student during the October 2013 expulsion period?

69. IDEA does not obligate the District to ensure that safe provisions were made for the Student during the expulsion period, or regarding the Student's daily whereabouts and supervision. The Parents have not established an IDEA violation in this regard.

70. The disciplinary removal of a student eligible for special education from the student's current educational placement for more than 10 consecutive school days is a change in placement. WAC 392-172A-05155(1)(a). A series of removals which in total result in removal for more than ten school days in a school year may constitute a change a placement place. The rule examines whether the student's behavior is substantially similar to the behavior in the previous incidents in the series of removals, the length of each removal, total time removed, and proximity of the removals to one another. WAC 392-172A-05155(1)(b).

71. A school day means any day, including a partial day that students are in attendance at school for instructional purposes, including students with and without disabilities. WAC 392-172A-01050.

72. The Parents have not proven the Student was removed from school for more than ten school days, and have therefore not proven a violation of IDEA.

Did the District fail to convene the IEP team following the October 2013 expulsion to develop an FBA and BIP?

73. Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the District, Parents and relevant members of the IEP team must review all relevant information and make certain determinations. WAC 392-172A-05145. The District asserts that the conversion to a five-day suspension resulted in no change of placement, and no need to make a manifestation determination. The District convened an IEP meeting on November 13, 2013, seven calendar days after the Parents were notified the expulsion was converted to a short-term suspension as of November 6, 2014. No school calendar was provided to calculate the number of school between Thursday November 7 (the first day the suspension was lifted and the Student was free to return to school), and Wednesday November 13, 2013, but it was no more than 5 school days. The evidence does not establish the behavior which resulted in the expulsion continued to be viewed as an ongoing concern or unresolved issue. Parents have not shown the outcome of the October 2012 email report or that it was a source of further concern, or that anyone advocated for additional focus on the type of behavior at issue in the October 2013 texting incident. The Parents have not proven an IDEA violation related to the lack of development of an FBA or BIP in November 2013.

Private Placement at Brightmont Academy

74. Dr. Roberts Frank through placement at Brightmont for the Student was borderline because of the one-on-one environment. Dr. Dupuy described placement at Brightmont as borderline, but acceptable on a part time basis if in combination with multisensory instruction of three hours daily. The Parents considered the option because a commute daily to other closer schools is not a good use of the Student's time, and they had family in the area. He did thrive by all accounts from the online live tutor experience, but it had sessions were of shorter duration and twice weekly from home. The experience cannot be a basis for determining success in a program which requires one-on-one with two different providers and a daily commute between each location (the Brightmont campus and the location of the multisensory tutor). The commute in that combination in metropolitan Seattle may require more time than known since the location of the multisensory tutor is not known. He would have little time remaining for interaction with peers and the satisfaction his Mother reported from being a social person who likes friendships. Full time placement at Brightmont was not approved by Dr. Dupuy because of the lack of multisensory instructor on staff. The Parents have not carried their burden of proof that Brightmont would be an appropriate placement in his least restrictive environment. This same analysis applies to Dartmoor, also in Seattle.

Compensatory Education

75. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3rd 516, 524 (D.C. Cir. 2005). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia, supra*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid v. District of Columbia, supra*, 401 F.3d at 524.

76. There is no 9th Circuit or Washington precedent to award compensatory education in the form of a private placement. The 11th Circuit approved private placement as an award of compensatory education in *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275 (2008), cert.denied, 131 S.Ct. 342. The case resulted from an appeal which had upheld an ALJ's award in *Draper v. Atlanta Indep. Sch. Sys.*, 480 F.Supp.2nd 1331 (ND GA, 2007). The IDEA does not require that compensatory awards of prospective education be inferior to awards of reimbursement. Although it is ordinarily has a structured preference for special education in public school, the IDEA does not foreclose a compensatory award of placement in a private school. The award was based in significant part on conduct by the Georgia school district that was extraordinarily disrespectful, including willful failure to comply with prior orders (after misdiagnosing the Adult Student as mildly intellectually impaired). The ALJ's footnote about the attitude during hearing and conduct of school officials rolling their eyes and turning away as witnesses testified in support of the Adult Student, was significant to the lower court. In Footnote 8 of the lower court's decision they detail the ALJs award: the Adult Student was given public school option, or the option of identifying three in-state private schools to attend at public expense, with the final choice made by the school district. The Adult Student selected option two and identified three schools. Both parties appealed the ALJs decision.

77. The record here does not show anything like the open disrespect and animosity evident in *Draper*. The record shows a system underfunded and employees overwhelmed at times, but not evidence of a mean spirited or willfully neglectful attitude. The evidence shows significant communication and cooperation between Parents and District staff, which is not to negate or minimize the frustration experienced by the Parent who only wants the best for her son. Also, *Draper* awarded a \$15,000 annual cap, later increased to \$38,000 annually, a much lower cost than the out-of-state placements sought by Parents here. The ALJ has considered the woefully inadequate PLPs, annual goals, lack of progress reports, and the many other District failings, but the appropriate remedy is not an inappropriate residential placement in an out of state boarding school in the most restrictive environment. Therefore, for the reasons stated the ALJ declines to award private placement as a compensatory award.

78. The evidence is insufficient in the area of math to show catch up to where he would have otherwise been because the Parents' engagement of a private tutor provided the missing educational services. The evidence shows the provider was sufficiently skilled to provide comprehensive progress reports, and the Parents are entitled to reimbursement for the costs of the tutor. However, the evidence is insufficient to support an award of compensatory education related to math.

79. The estimate by the Parents' experts was credible and it is found that compensatory education in the areas of executive function, social emotional behavior as it related to the response to deficit struggles, organization and note taking, combined with intensive multisensory instruction in reading and written language, was appropriate. The estimate of three hours daily, five days per week, for eighteen months, equates to 1,170 hours. The Parents' experts were convincing and thorough in their assessment of the profoundly severe level of deficits, the amount of "unlearning" needed as part of the learning new skills. For these reasons, Dr. Dupuy's estimate is accepted and Parents are awarded 1,170 hours of multisensory instruction by a provider of Parents choosing who has the qualifications described by Dr. Dupuy. The District shall be responsible for payment of the instructor/tutor/diagnostician up to a cost not exceeding 20% of the regular, reasonable professional rate charges by similar professionals in the area for such services. The Parents must notify the District of their selection of provider. The Parents and provider will determine the schedule, which may include

more hours during summer or break periods, or Saturday hours, in addition to school year weeks. At least 500 hours must be delivered within the twelve month period following issuance of this order, and any remaining hours within the next twelve month period such that the intensive remediation recommended is completed within twenty four months. Depending on the needs of the Student, the Parents and District may agree to a different service delivery schedule than the one set out above, including extending beyond 24 months, provided that all such hours must be delivered within thirty six months of the entry of this order. The District is responsible for reasonable costs of transportation of the Student, in transportation is required.

80. The Parents have not proven the Student would benefit from educational counseling from the school psychologist. The issue of who will be responsible to initiate communication (rather than wait for Student to self-initiate) is addressed below under training, and may otherwise be addressed by the IEP team. The IDEA does not require public schools to meet the medical and mental health counseling needs of students. These requests for services at public expense are denied.

Reimbursement

81. The Parents are entitled to reimbursement at public expense of the costs of the online math tutor, through date of filing the due process complaint. That amount is through January 2014 as invoiced, and the Parents will provide the District documentation of any prorated charge for February 2015.

82. The Parents are not entitled to reimbursement at public expense for costs (\$2,000) of Dr. Dupuy as they are costs related to preparation for hearing and now allowed under IDEA. Similarly, the ALJ has no authority to award attorneys' fees.

83. The District may bring to OSPI any disputes which arise, such as related to the IEE, the tutor's professional rates, transportation costs, scheduling, or other matters related to the implementation of this award.

Training

84. The District shall provide training to all high school personnel who will be involved in developing and implementing the Student's IEPs during the 2015-2016, 2016-2017, and 2017-2018 school years in the following ways:

- a. Prior to the first school day of the school year, two hours of training about how the Student's health impairment impacts his educational, which shall include information from all recent evaluations, and shall include information from junior high school general education and special education teachers and Parents about what worked in educating the Student, and shall include any information provided by the private tutor engaged for the compensatory instruction about what is working;
- b. One week prior to the annual IEP meeting, provide one hour training addressing IEP writing, including about PLPs, measureable annual goals, adaptations and accommodations to write more robust and descriptive IEP that would be able to be clearly understood by any teacher or school personnel who provides services to the Student under the IEP, as well as the Parents and the Student;

The District shall invite Parents' input about the individual(s) who provide any training but the final selection is at District choice. The District shall maintain a record of the attendance of individuals who receive training and provide the information to Parents and, as appropriate, to Student, and shall maintain a copy of the attendance training log for twelve months following the training.

85. The District shall monitor to ensure that Student progress is in fact being measured in accord with the provisions of Student's IEP in place at the time, monitoring at least monthly during the 2015-2016 school year and quarterly in years thereafter.

86. The District shall reconvene the IEP team at a time mutually agreeable to Parents but no later than the 5th school day of the 2015-2016 school year to consider reevaluation information and shall invite at District expense the multisensory tutor providing compensatory instruction. The IEP team shall identify the District personnel responsible to provide skills training to the Student directly related to his executive functioning, organization and note taking, time and resource management, and social emotional behavior, such as to self-advocate, to express when he does not understand and to ask questions, including the minutes. Parents and District may extend the start date of the meeting to a day later than the 5th school day by mutual agreement.


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

ORDER

1. The Parents claims are denied except as set forth below.
2. The Shelton School District violated the IDEA and denied the Student FAPE as follows:
 - a. Failing to appropriately reevaluate the Student in November 2013 and February 2015;
 - b. Failing to appropriately develop and implement the Student's IEPs dated November 2013 and November 2014 (and as amended irregularly January 2015);
 - c. Failing to appropriately implement the Student's IEPs dated by failing to reevaluate all areas of suspected disability in November 2013 and February 2015.
3. The Parents are entitled to an IEE at public expense as set forth in Conclusions of Law 43-45 above, subject to the requirements of WAC 392-172A-05005.
4. The Parents are entitled to compensatory education in the form of 1,170 hours for instruction areas of executive function, social emotional behavior as it related to the response to deficit struggles, organization and note taking, combined with intensive multisensory instruction in reading and written language, as set forth in Conclusion of Law 79.
5. The Parents are entitled to reimbursement at public expense for the online tutor as set forth in Conclusion of Law 80.

6. The District shall provide the training as set forth in Conclusions of Law 84 and 85.
7. The District shall reconvene the IEP team as set forth in Conclusion of Law 86.

Signed at Yakima, Washington on June 13, 2015.



Joynette Sullivan
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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

Parents

Shelton, WA 98584

Tami Stoutnar, Director of Special Education and
Early Childhood Education
Shelton School District
700 South First Street
Shelton, WA 98584

Robert W. Johnson, Attorney at Law
103 South Fourth Street, Suite 200
PO Box 1400
Shelton, WA 98584

Jeffrey Ganson, Attorney at Law
Porter Foster Rorick LLP
800 Two Union Square
601 Union St
Seattle, WA 98101

cc: Administrative Resource Services, OSPI
Michelle C. Mentzer, Acting Senior ALJ, OAH/OSPI Caseload Coordinator