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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

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October 3, 2019

Parents



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In re: Edmonds School District
Cause No. 2018-SE-0025
Docket No. 3-2018-OSPI-00483

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.

A handwritten signature in black ink that reads "Matthew D. Wacker".

MATTHEW D. WACKER
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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

IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0025

OAH DOCKET NO. 03-2018-OSPI-00483

EDMONDS SCHOOL DISTRICT

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Lynnwood, Washington, over six days on October 1-2, 2018, and May 28-31, 2019. The Parents of the Student whose education is at issue¹ appeared and were represented by Charlotte Cassady and Nicholle Mineiro, attorneys at law. The Edmonds School District (District) was represented by Susan Winkelman, attorney at law. Also appearing for the District was Dana Geaslen, executive director of student services.

STATEMENT OF THE CASE

Procedural History

The Parents filed a Request for Due Process Hearing (Complaint) on March 1, 2018. ALJ Camille Schaefer was assigned as the presiding ALJ. On March 5, 2019, a Scheduling Notice was entered, setting a prehearing conference for March 29, 2018, and a due process hearing for April 11, 2018. On March 12, 2018, the District filed its Response to Hearing Request. The prehearing conference was held as scheduled on March 29, 2018. On April 6, 2018, the First Prehearing Order was entered. The First Prehearing Order struck the due process hearing set for April 11, 2018, set a new due process hearing for July 16–20 and July 23, 2018, and set out a statement of the issues and remedies for the due process hearing. The First Prehearing Order also granted the Parents' motion to extend the due date for a written decision to the close of record plus thirty (30) calendar days.

On June 21, 2018, a Notice of Reassignment of Administrative Law Judge was entered, reassigning this matter to ALJ Anne Senter. On June 28, 2018, the Parents filed a Motion of Prejudice and Request for Reassignment, seeking reassignment of this matter to a new ALJ. On June 29, 2018, an Order of Reassignment of Administrative Law Judge and Order Changing Time of Prehearing Conference and Striking Hearing Dates was entered. That Order granted the Parents' timely motion of prejudice and reassigned this matter to the undersigned ALJ.

On July 18, 2018, an Order Setting Prehearing Conference was entered, which set a prehearing conference for July 19, 2018, by agreement of the parties. On July 24, 2018, the Second Prehearing Order was entered. The Second Prehearing Order set the due process

¹ In the interest of preserving the family's privacy, this decision does not use the actual names of the parents or the student. Instead, they are identified as the "Mother," "Father," or "Parents," and the "Student."

hearing for September 5–7, and October 1–2, 2018. On September 4, 2018, the Parents requested an emergency prehearing conference be held the same day to address scheduling of the hearing and submission of proposed exhibits by the Parents. A prehearing conference was held on September 4, 2018, by agreement of the District. On September 17, 2018, the Third Prehearing Order was entered. The order reset the due process hearing to October 1–2 and November 5–7, 2018, by agreement of the parties. The first two days of the hearing were held as scheduled on October 1–2, 2018. On November 15, 2018, an Order of Continuance was entered, striking the hearing set for November 5–7, 2018, based upon the Parents’ request due to an illness. The District did not object to the continuance. That order set another prehearing conference for November 16, 2018, by agreement of the parties.

The prehearing conference was held on November 16, 2018, and on November 19, 2018, the Fourth Prehearing Order was entered. That order reset the remaining days of the due process hearing to February 12–15, 2019. Due to inclement weather, the hearing was not held on February 12–15, 2019. Another prehearing conference was held on February 21, 2019, to consider rescheduling the remaining days for hearing. By agreement of the parties, the hearing was reset to May 28–31, 2019. The hearing was held over those four days, but not completed. An additional day was set for June 25, 2019, to take the Parents’ rebuttal testimony. The Parents later withdrew their request to present rebuttal testimony, and the hearing set for June 25, 2019 was stricken. During a conference call with parties’ counsel on June 25, 2019, the ALJ admitted Parents’ Exhibit P9 without objection, and the parties agreed to file written closing briefs by close of business, July 15, 2019. The parties subsequently agreed via email to extend the filing date for closing briefs to August 16, 2019, on which date the record would close.

Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See April 6, 2018 First Prehearing Order. The record of the hearing was set to close on August 16, 2019 with the filing of post-hearing briefs. By email on August 5, 2019, the Parents requested an extension of time to file post-hearing briefs to August 30, 2019. The District did not object, and the due date was extended to August 30, 2019. See August 7, 2019 Order Setting Due Date for Post-Hearing Briefs. Via email on August 28, 2019, the Parents requested to file their brief by email. Their request was denied, but the Parents were granted permission to file by fax/mail provided they filed by close of business on September 3, 2019.² Via email On August 30, 2019, the District requested that post-hearing briefs for both parties be extended to September 3. The Parents did not object. Via email on August 30, 2019, the due date for both parties’ closing briefs was extended to September 3, 2019.

Thirty calendar days from September 3, 2019 is October 3, 2019. Therefore, the due date for a written decision in the above matter is **October 3, 2019**.

² The intent in allowing the Parents to fax/mail their brief by close of business on September 3 to the undersigned ALJ was not to extend the due date for exchange of closing briefs *between the parties*. The intent was simply to permit the Parents additional time to file their brief with the ALJ. The emails cited above remain in the physical file.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parents Exhibits: P1 - P92,³ P94, P96 - P129, P131 - P133, P135;

District Exhibits: D1 - D44.

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

The Father of the Student;
Ronnie Cunningham, PhD, Licensed Psychologist;
Jan Johnson, MSW, LCSW, Co-Founder/Senior Clinical Specialist, Summit Preparatory School;
Rick Johnson, MSW, Co-Founder/Director of Program Development, Summit Preparatory School;
Jonathan Mitchell, MA, LPC, Counselor, Open Sky Wilderness Therapy;
Jessica Bruinsma, ME, Teacher, Summit Preparatory School;
Linda O'Toole, MA, LMHC, Alderwood Counseling Associates;
Molly Challman, ME, District School Counselor;
Allison Larsen, ME, MPA, District Assistant Principal;
Kevin Gonzalez Boas, PhD, Licensed Psychologist;
Pamela Hamilton, ME, District School Psychologist.

ISSUES AND REMEDIES

The statement of the issues and requested remedies for the due process hearing is:

1. Whether the District violated the IDEA and denied the Student a free appropriate public education (FAPE) by:
 - a. Failing to initiate an evaluation of the Student to determine eligibility for special education and related services under the IDEA during the two (2) years preceding filing of the due process hearing request; and
 - b. Failing to develop and offer an individualized education program (IEP) to the Student.
2. Whether the Student needs residential placement beginning sometime between the second semester of his ninth grade year (2016-2017) and the present time in order to obtain a FAPE.
3. Whether the Open Sky wilderness therapy program constituted an appropriate program and placement for the Student from October 17, 2017, to January 3, 2018.

³ Exhibit P9 was offered and admitted during a post-hearing conference with counsel on June 25, 2019.

4. Whether Summit Preparatory Academy has constituted and constitutes an appropriate program and placement for the Student beginning January 5, 2018.
5. Whether the Parent is entitled to the following requested remedies, or other equitable relief as appropriate:
 - a. Reimbursement for tuition and all related services associated with the Student's placement at the Open Sky wilderness therapy program from October 17, 2017 to January 3, 2018 (e.g., tuition, room and board, transportation from the Seattle area to Open Sky, transportation from Open Sky to Summit Preparatory Academy, etc.);
 - b. Reimbursement for tuition and all related services associated with the Student's placement at Summit Preparatory Academy beginning January 5, 2018 (e.g., tuition, books, room and board, transportation between Summit and the Seattle area for home visits, outdoor and athletic activities, field trips, etc.);
 - c. Prospective placement of the Student at Summit Preparatory Academy and provision of all related services associated with the placement; and
 - d. Reimbursement for the evaluation of the Student conducted by Dr. Kevin Gonzalez Boas on November 7, 2017.

See April 6, 2018 First Prehearing Order.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence and the credibility of witnesses was considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted is determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue. See e.g., Finding of Fact 120.

General Background

1. The Student attended middle school in the District for the 2014-15 and 2015-16 school years. D1p1.⁴ The Student's cumulative GPA for seventh grade was 4.0, and for eighth grade was 3.83. *Id.* The Student's grades until high school were primarily A's, and he received awards for leadership and kindness. Father T23.⁵ The Student is a "pleaser" and a "perfectionist." *Id.*

⁴ Citation to the exhibits of record are by the party ("P" for the Parents and "D" for the District) and page number. For example, citation to "D1p1" is a citation to District's Exhibit 1 at page 1.

⁵ Citation to the testimony of record is by last name of the witness, except in the case of the Father, and the transcript page number (Txxx) where the testimony appears. For example, citation to "Father T23" is a citation to the Father's testimony at page 23 of the transcript.

2. In August or September 2016, the Student ended a relationship with his then-girlfriend. D33p1, Father T290. Apparently very distraught, the young woman at one point threatened to commit suicide, sending the Student a video of herself taking some pills. *Id.* Later in October 2016, the young woman followed the Student into the boys' bathroom at high school to try to speak with the Student, requiring a female security guard to remove her from the boys' bathroom. D33p1.

2016-17 School Year: Student is a Freshman at Edmonds-Woodway High School

3. The District's 2016-17 school year began on September 7, 2016. D44p1. The Student was a freshman at the District's Edmonds-Woodway High School (EWHS). P90p1. Molly Challman was the Student's high school counselor. Challman T962.

4. The Student, an avid soccer player, broke his foot in September or October 2016 and was unable to continue playing soccer. This was very frustrating for the Student. Father T293. The Student was unable to continue participating in his physical education (PE) class at EWHS and transferred to a computer-repair class taught by Sharmane Hastler. Ms. Hastler's computer-repair class was the only class that had available space for the Student. *Id.* at T27, T48, T293.

5. Although the exact date is not clear from the record, after breaking his foot, the Student began smoking marijuana.⁶ In late December 2016, the Parents returned to the family home and found the Student smoking marijuana in the family hot tub. This was the first notice the Parents had that the Student was smoking marijuana. Father T294.

6. The Student had no discipline problems and no major behavior issues at EWHS during the first semester of his freshman year. *Id.* at T289. Ms. Challman does not recall any issues or concerns for the Student at EWHS during first semester. Challman T965.

7. January 26, 2017 was the last day of the first semester at EWHS. D40p1.

8. The Student earned a cumulative GPA of 3.783 for his first semester of high school. The Student earned his GPA taking six classes, all of which were Advanced Placement, Honors, or International Baccalaureate classes. P126p1, P103p8.

Seattle Children's Hospital Admission

9. On the evening of February 6, 2017, the Parents found a marijuana pipe in a shoebox underneath a couch in the Student's bedroom. They confronted the Student and grounded him. Father T29, T294. The Student went into a bathroom and locked the door. When the Father was able to get into the bathroom, he found the Student slouched over the toilet with a kitchen knife nearby. There were also two large, open bottles: one bottle of ibuprofen and one bottle of acetaminophen. *Id.* at T29. The Student was responsive but moaning and groaning. He admitted to taking 10-20 ibuprofen pills, but denied taking any acetaminophen. *Id.* at T29-T31. The Father, who is a physician, quickly assessed the Student and then called and consulted with a medical

⁶ How often the Student smoked marijuana is unclear. At least one report supports the Student smoking marijuana on a daily basis after breaking his foot. See D38p24.

colleague. Relying on the Student's representation that he did not take any acetaminophen, the Father determined it was not necessary to seek any immediate medical attention, and had the Student sleep in the Parents' bedroom so he could observe the Student during the night. *Id.* at T31-T32. Later the same night, the Student began to complain of abdominal pain, and finally admitted he had taken a lot of acetaminophen. The Father immediately drove the Student to Seattle Childrens' Hospital (SCH). *Id.* at T33.

10. The Student was admitted to SCH and received treatment with an hour to spare.⁷ The Student stayed at SCH for one or two days, during which he had a psychiatric consultation. *Id.* at T34, P117p14.

11. The Student reported he had thoughts of hurting himself in the past, but not recently. P117p9. He denied any previous history of suicidal ideation or attempts. *Id.* at p16. He "reported only minimal previous symptoms of depression." *Id.* The consultation concluded that the Student appeared to have taken the overdose of pills "impulsively as a way of dealing with high-intensity distress." *Id.* He reported using marijuana three times over the past month, and tested positive for marijuana metabolites. *Id.* at pp15, 23.

12. On February 8, 2017, the Mother reported to the District that the Student was at SCH for "severe dehydration from a gastrointestinal illness." D3p1. This was not true. The Parents took the Student to SCH for treatment of his overdose. The Mother did not tell the District about the Student's overdose because she worried if the Student found out the Parents told his teachers about his overdose, it would have increased the Student's feelings of guilt and shame. Father T42.

13. An outpatient follow-up on February 10, 2017 to the Student's SCH admission noted "No signs/symptoms of depression and no concern for underlying mood disorder." P10p2, P89

14. Via email on February 12, 2017, the Mother informed Ms. Challman that the Student was "inordinately stressed" about his computer-repair class, and inquired if there were any other options for the Student. D2p7. However, four days later on February 16, 2017, the Mother informed Ms. Challman that the Student spoke with Ms. Hastler and "worked it out." D2p7, P1p1.

15. Via email on February 27, 2017, the Mother informed Ms. Challman that the Student was "suffering from some anxiety and depression," and that the Parents were taking him for an "evaluation." P2, D4p2. This was the first time the Parents informed the District that the Student was experiencing anxiety and depression. Father T302, Challman T967. The Parents still had not informed the District that the true cause of the Student's admission to SCH was his overdose. Father T302.

16. In a later email also on February 27, 2017, the Parents informed Ms. Challman that they were beginning "treatment for [the Student's] anxiety/depression." P3.

⁷ Unlike ibuprofen, an overdose of acetaminophen can lead to liver failure, and possibly death. There is only an eight- or nine-hour window to get effective treatment for an overdose of acetaminophen. Father T31.

17. The Father believes the “evaluation” referenced in the Mother’s email to Ms. Challman was an evaluation of the Student by Linda O’Toole. *Id.*

18. The Student consistently refused to attend EWHS beginning mid-March 2017. See P90, D31. The Student refused to attend school due to anxiety and depression. Father T23. This pattern of consistent refusal to attend and absences from school continued through the end of the Student’s freshman year. See P90pp1-2, D31pp1-2.

Student’s Counseling with Linda O’Toole

19. Linda O’Toole is a Licensed Mental Health Counselor and a Child Mental Health Counselor. O’Toole T893. Ms. O’Toole first saw the Student on March 14, 2017. *Id.* at T895. Ms. O’Toole conducted an “Assessment” of the Student the same day. P89pp14-15. The assessment appears to consist entirely of an interview(s) with the Student and the Parents on March 14. *Id.* Ms. O’Toole diagnosed the Student with generalized anxiety disorder and major depressive disorder – moderate. *Id.* at p15. She noted the Student was refusing to go to school, but was not interested in any medication at that time. *Id.* at pp14, 15.

20. Ms. O’Toole saw the Student on six occasions between March 14 and April 24, 2017. O’Toole T895, T902, T949, and see *generally* P89pp5-11 (3/14, 3/21, 3/23, 3/28, 4/11, 4/18, 4/24).⁸ The Father does not recall providing the District with any of Ms. O’Toole’s records documenting her assessment and counseling of the Student during the second semester of the 2016-17 school year. Father T107.

21. Ms. O’Toole appeared as a witness for the Parents at the due process hearing. O’Toole T892-T955. Ms. O’Toole has no knowledge of the regulations in the Washington Administrative Code (WAC) governing the provision of special education to children with disabilities. *Id.* at T926. She had no specific recommendations for what, if any, additional supports the Student might require at school. *Id.* at T934. She never reviewed any of the Student’s educational records with the District. *Id.* She never spoke with any of the Student’s teachers. *Id.* Ms. O’Toole could not opine whether the Student required a 504 plan, or an IEP. *Id.* at T950. There is no evidence that she utilized any standardized tests or assessment tools to inform her diagnoses or treatment of the Student.

22. During Ms. O’Toole’s testimony, Parents’ counsel read to her the definition of “Emotional/behavioral disability” (EBD) from the WAC. See T928-T930. When Parents’ counsel asked Ms. O’Toole if the Student exhibited any of the characteristics of an EBD “to a marked degree,” Ms. O’Toole replied in the affirmative with respect to several of the EBD characteristics. O’Toole T929-T930. On cross-examination, Ms. O’Toole was asked how she interpreted the term “to a marked degree.” T935. Ms. O’Toole replied that she interpreted the term to mean that the Student presented with a characteristic of EBD “more than the average.” O’Toole T935.

23. Based upon the above findings of fact, Ms. O’Toole’s opinions going to the Student’s eligibility as a child with a disability, any impact of the Student’s diagnoses on his education, and

⁸ It is unclear whether Ms. O’Toole included her first contact with the Student on March 14 when she testified she saw the Student on six occasions *between* March 14 and April 24, 2017.

any need for specially designed instruction are given very little weight. Ms. O'Toole only saw the Student six times over approximately a five-week period, giving her a very limited perspective. This is only compounded by her failure to contact the District and failure to review any of the Student's educational records. She is clearly not conversant with the education of students under the IDEA. She could not with a reasonable degree of certainty opine if the Student required an IEP or a 504 plan. Her definition of what constitutes "to a marked degree" was not compelling or persuasive.

24. Via email on March 14, 2017, the Mother informed one of the Student's teachers that "Our son, [the Student] is currently going through some anxiety and depression. We are seeking immediate treatment for him, obviously. This is the reason he has been missing class." The Mother asked the teacher if the Student could make up missed work. D5p1, P4p1.

25. Via email on March 23, 2017, the Parents informed Allison Larsen, an assistant principal at EWHS, that they wanted to schedule a meeting with Ms. Larsen and Ms. Challman as soon as possible "regarding the situation with our son," and that the Student's "therapist will be submitting forms for a 504 designation today."⁹ P6, D6p1. The Parents had learned about 504 plans from Ms. O'Toole. Father T49.

26. Ms. Larsen replied via email the same day, telling the Parents she and Ms. Challman could meet with them the next day at 8:30 a.m. *Id.* Ms. Larsen attached a "parent guide" about 504 plans to her email. D6pp2-6.

27. The Parents met with Ms. Larsen and Ms. Challman on March 24, 2017. P8, D7p1. This was Ms. Challman's first meeting with the Parents. Challman T968. The Parents, for the first time, informed the District about the Student's overdose leading to his admission at SCH on February 6, 2017, and that the Student had started counseling with Ms. O'Toole. Father T54-T55, T93-T94, T303, T307; Challman T969. There was a discussion about the Parents' concerns regarding the Student's anxiety and depression, school refusal, and grades. Challman T968; Larsen T1066. There was a discussion about possible interventions and accommodations the District could offer the Student to address his school refusal, including taking a lighter load of courses, changing honors classes to regular classes, and a later start-time for the Student's school day. Father T51, T307, T310, T318-T319. However, the Father did not believe any "formal arrangements" for interventions came out of the meeting. *Id.* at T51, T307, T310.

28. By the end of this meeting, the plan was to try some interventions with the Student to see if they might be effective in helping him attend school, and place him on the agenda for the Student Study Team (SST) meeting on May 2, 2017, to consider a 504 plan. Challman T970; Father T311; P8, D7p1. By the end of this meeting, Ms. Challman was also finally aware of the relationship between the Student's anxiety and depression and his refusal to attend school. *Id.* at T1013-T1014. The District asked the Parents to provide copies of any records for the SST meeting, and the Parents signed a release of information. Father T55, T307; Larsen T804.

⁹ The Parents' reference to a "504 designation" is a reference to Section 504 of the Rehabilitation Act of 1973.

29. After meeting with the Parents, Ms. Challman sent an email to the Student's teachers, informing them of the meeting, asking them to support the Student with time to make up work he missed when absent, and to provide an option for the Student to make up in-class participation points that were negatively impacting his grades. Ms. Challman also mentioned that the Student's situation would be addressed at the May 2 SST meeting. P8, D7p1.

30. The next day, March 25, 2017, Ms. Challman received records from Ms. O'Toole. P10. However, the records provided were medical records from SCH and Virginia Mason, not Ms. O'Toole's records regarding her assessment and counseling of the Student. P10. Challman T1014.

31. Circa April 2017, the Student gradually became more depressed and would not get out of bed at home. He engaged in self-harm by superficially cutting his arm(s). On two occasions, the Parents found the Student in his bedroom with a belt tight around his neck. On one occasion, the Parents found the Student in his closet with a piece of a bedsheet tied in a noose after he emailed the Parents, who were in the living room, "Goodbye, I love you." Father T75. The Parents ran into the Student's bedroom, opened his closet door, and found the Student "hanging."¹⁰ *Id.* at T75-T76. The Parents were "living in dread" that they would find the Student dead. *Id.* at T76. However, there is no clear evidence the Parents informed the District in a comprehensive manner about what was occurring outside of school circa April 2017.

32. The Student was still experiencing very significant anxiety about his computer-repair class with Ms. Hastler. P13, D8p1. Beginning April 12, 2017, the Parents communicated this to the District, and a meeting was held with the Parents, Ms. Hastler, Ms. Larsen, and Ms. Challman on April 18, 2017. See *generally* P13, P15, P16, D8pp1, 3; Father T92. The meeting was specifically intended to address how the computer-repair class was causing the Student an "extreme level of anxiety." Father T92.

33. At the meeting, Ms. Hastler offered to provide make-up work for the Student. The Parents were also told that the Student could withdraw from the computer-repair class with just a "W" and not an "F," and enroll in an on-line health course in its place. *Id.* at T62, T313.

34. Later on April 18, 2017, the Student emailed Ms. Hastler, Ms. Challman, and Ms. Larsen, thanking all them for being so understanding of his situation. The Student went on to say that he was withdrawing from the computer-repair class, enrolling in the on-line health class, and that going forward he had "high hopes that my choice will relieve some of the anxiety I have been dealing with." P17. However, the Student's attendance at EWHS did not substantially improve after withdrawing from the computer-repair class. P90p1; Father T62.

¹⁰ There is a reference to a "hanging attempt in the *last month*" in the Student's medical records from a visit to the emergency room at Swedish Hospital on July 11, 2017. P125pp26, 33 (emphasis added). This timeline is somewhat inconsistent with the Father's testimony the event occurred around April 2017. The Swedish Hospital records also state that the Student "was not seen in the hospital after the hanging incident." *Id.* at p33. There is also a reference to an "attempted hanging" in the SCH's records from the Student's admission on September 13, 2017. P177p3. However, it is unclear if this is another reference to the same incident described by the Father, or a reference to a second, independent incident.

35. Via email on April 20, 2017, the Father told Ms. Larsen that “[d]espite easing some of the burden we can’t get [the Student] to attend school over the past two days.” The Father went on to ask Ms. Larsen for “a list of alternative options” they could present to the Student. P19, D9p4. By this time, the Student had missed so much time in his other classes that he was overwhelmed and could not get out of bed. Father T63.

36. The same day, the Mother emailed Ms. Larsen, asking how soon a 504 plan could be put in place for the Student. She also inquired whether the Student could do his classes on-line from home. P18p1, P20p2, D9p4.

37. Via email on April 25, 2017, Ms. Larsen offered the Parents options to consider for the Student. The options included transferring to the District’s Scriber High School, an alternative high school, enrolling in the District’s on-line eLearning Academy, and Running Start during the Student’s junior and senior years.¹¹ Ms. Larsen also told the Parents that she would check with Ms. Challman about scheduling an appointment for a 504 plan, but that appointments in May might be full.

38. The Father responded to Ms. Larsen’s email later the same day, thanking Ms. Larsen for her email and telling her that the Student’s “first choice is to return to school and he is committed to start tomorrow.” D9p2, P21p1.

39. Ms. Larsen responded via email the same day, telling the Father that she dropped the Student from the computer-repair class and would give the Student information the following day about how to sign up for the on-line health class to replace the computer-repair class. D9pp1-2.

40. Concluding their email exchange on April 25, 2017, the Father told Ms. Larsen that assuming the Student returned to EWHS and resumed a standard curriculum, the Parents “would like to pursue the 504 ASAP. We would like to have that in place so that we don’t have to start from scratch if he stumbles again. We are hoping that it’s not to (sic) late for the May meeting, since that has been the plan since we first met.” P21, D9p1.

41. On April 26, 2017, Ms. Larsen emailed the Parents, telling them that the Student was on the agenda for the May 2 SST meeting, that the SST meeting is a District-staff-only meeting, and that she would call the Parents immediately after the meeting to tell them the outcome. P22. Apparently believing that parents were participants in District SST meetings, this was the Parents’ first understanding that an SST meeting only included District staff. Father N11.

Visit to Swedish Hospital Emergency Department

42. Over the course of the day on April 29, 2017, the Student appeared to become more and more depressed. That evening, the Student grabbed a knife from the kitchen and ran out of the house in bare feet, wearing only his pajama bottoms and a blanket over his shoulders. The Father immediately ran after the Student, but was unable to find him. Returning home, the Father got a car, and continued looking for the Student. Meanwhile, concerned the Student was depressed, had a knife, and a history of self-harm, the Mother called the police to report what happened. By

¹¹ Offering Running Start was not a realistic option, as the Student was only a freshman.

the time the Police arrived, the Student had returned home. Unable to locate the Student, the Father finally returned home to find the Student and police already there. The Student had cut himself on his left forearm, but by the time the Father returned home, the bleeding had stopped. Father T100-T104.

43. The Parents had a “contract” with the Student that if he self-harmed, he had to go to the emergency room for an evaluation. *Id.* at T795. The police took the Student to the emergency department at Swedish Hospital (Swedish) for a psychosocial evaluation. See P125pp1-25.

44. The Student arrived at Swedish at 10:32 p.m. *Id.* at p1. He was evaluated and discharged at 2:13 a.m. the next morning. *Id.* The Student admitted to cutting himself, but denied suicidal ideation and denied his self-cutting was a suicide attempt. *Id.* pp1, 7. The Student denied using alcohol or illicit drugs, but tested positive for marijuana metabolites. He later admitted to “occasional use of cannabis for the past few months.” *Id.* at pp2, 4. The cuts to his left forearm were described as “multiple linear superficial abrasions.” *Id.* at p2. The discharge assessment stated, in part, “[t]here is no evidence of grave disability.” *Id.* at p6. The Swedish records reflect that the Parents reported the Student’s overdose on February 6, 2017, was their first awareness of his depression. *Id.* at p7.

45. The Father did not inform the District about the events of April 29, or that the Student was taken to Swedish for an evaluation. He did not inform the District because no one from the District had “instructed” the Parents to tell them, “so it was my judgment about what to tell them or not.” Father T327, T871.

May 2, 2017 SST Meeting

46. The District’s SST met on May 2, 2017, to consider the Student’s case. Present at the meeting were Ms. Larsen, Ms. Challman, Nancy Varg, the school nurse, and Pamela Hamilton, a District school psychologist.¹² Larsen T1294, Hamilton T1240. The Parents were not invited and did not attend. Father T387-388.

47. Ms. Larsen and Ms. Hamilton each kept notes regarding the meeting. Challman T1027, P29p1; Hamilton T1240, P104pp1-3. Ms. Larsen’s notes reflect the SST was aware that the Student was reported to be suffering from extreme depression, had attempted self-harm in January, was on medication and seeing a therapist, could not get to school but was doing homework at home, and was moving to online classes to earn credits. *Id.* at T1034, P29. However, until the SST meeting, Ms. Challman was only aware of the Student’s admission to SCH in February 2017, and she had received no records for the Student except for the records she received on March 25, 2017 from Ms. O’Toole, which were limited to the SCH admission and follow-up care. *Id.* at T974.

48. The SST determined the Student should be referred for an evaluation to determine if he was eligible for a 504 plan. D10pp1-2.

¹² Ms. Hamilton also holds a master’s degree in special education and has 14 years’ experience as a special education resource-room teacher. Hamilton T1217-T1218.

49. After the meeting, Ms. Challman wrote a Guidance Team Record dated May 2, 2017. D10pp1-2. The Guidance Team Record identified in-school interventions used to date: a class schedule change, a lighter course load, a later start for the school day, all online classes, and allowing Student to turn in work done at home despite absences. D10p1, Challman T973.
50. The Parents never received the Guidance Team Record prior to withdrawing the Student from the District. Father T76-T77. However, after the SST meeting the District contacted the Parents about scheduling a 504 meeting in June 2017. *Id.* at T317.
51. Ms. Challman also spoke with the Father on May 2, 2017, but it is not clear if she spoke to the Father before or after the SST meeting that day. D11. Ms. Challman told the Father that Ms. Larsen had agreed to the Student taking classes through the District's eLearning Academy. *Id.*
52. The Parents considered the options identified by Ms. Larsen in her April 25 email, and decided to enroll the Student in the District's eLearning Academy. The Parents believed the online learning option would relieve the Student's burden of getting up in the morning and having to face teachers and peers. Father T67-T68.
53. On or about May 8, 2017, the Student dropped all his classes at EWHS, except for his sport-marketing class, which he later would withdraw from as well. Father T79-T80.
54. Via email on May 9, 2017, Ms. Challman informed the Parents that June 20, 2017, was the only date she was able to secure for a 504 meeting. P34.
55. Via email on May 10, 2017, Ms. Challman informed Ms. Larsen and the Student's teachers that the Student and the Parents had decided to drop most of the Student's classes at EWHS and enroll in the eLearning Academy. P35, Father T68.
56. The Student's first week in the eLearning Academy began May 14, 2017. D13p1.
57. Switching to online classes helped relieve "a lot" of the Student's anxiety. Father T80. However, the Student later realized he began his online classes too late in the semester, and was far behind in terms of the time he had left in the semester to finish all the coursework. *Id.* at T81.
58. In a "Section 504–Notice of Meeting" dated May 23, 2017, a meeting was set for June 20, 2017, to determine if the Student was eligible for a 504 plan. The Notice of Meeting invited the Father, Ms. Challman, Ms. Larson, and a general education teacher to the meeting. P45p3.¹³
59. Via email on May 30, 2017, the Mother asked Ms. Challman about the status of a 504 plan for the Student. The Mother informed Ms. Challman that the Student was working through the eLearning Academy, and that his goal was to return to the District for the fall. D12p4, P39.

¹³ The record does not reflect evidence confirming whether or not the Father received this Notice of Meeting. However, the Father confirmed that the Parents were contacted by the District about scheduling a 504 meeting in June 2017. Father T317.

60. Ms. Challman replied to the Mother's inquiry via email the same day, telling her that a 504-team meeting was set for June 20, and a 504 plan could not move forward until the meeting was held. D12p4.

61. The Mother replied to Ms. Challman via email the same day, stating that the Parents were under the impression that the 504 meeting was the first week in May, but that she may have misunderstood. She confirmed the Parents would attend the 504-team meeting on June 20, and that "eLearning has been great." *Id.*

62. Via email on June 6, 2017, the Father informed Ms. Roberts, the Student's sports-marketing teacher, that the Student was withdrawing from her class, the last class at EWHS in which the Student was enrolled. P40, P41. The Father said the Student "is doing much better," but was withdrawing because he started his online curriculum two months into the semester, and was "playing major catch up with just that." *Id.*

63. Via email to the Parents on June 9, 2017, Ms. Challman mentioned that she was reviewing the Student's course selections for the 2017-18 school year. The Student wanted to take all Honors or International Baccalaureate classes. She suggested it might be a good idea to start with 1-2 Honors classes as the Student was transitioning back to EWHS. Ms. Challman was concerned taking all Honors or International Baccalaureate classes might be overwhelming for the Student. P42.

64. The Father replied to Ms. Challman via email, thanking her for her suggestion and telling her the Parents would speak with the Student about not taking so many ambitious classes. However, later the Father confirmed that the Student wanted to take the four Honors classes he had signed up for, although the Parents shared Ms. Challman's concern and would revisit the matter with the Student. P43.

June 20, 2017 504-Team Meeting

65. A 504-team meeting was held on June 20, 2017. The Father attended along with Ms. Challman, Terrance Mims, the EWHS principal, and Ms. Varg, the school nurse. Father T77, T320. Ms. Challman took notes during the meeting. P29p1, P46 (See notes in body of email), Challman T1028.

66. The Father reported the Student's current medication was working; he was more motivated with a better mood, and was working on the eLearning Academy. P29p1. The Father told the team that the Student had a new counselor. *Id.*, Father T81-T82, 796. Ms. Challman again raised her concern with the difficult course load the Student had selected to start the 2017-18 school year. The Father said the Parents would discuss it with the Student, but they would let the Student decide what classes he would take. Father T84. The Parents were concerned about the Student's emotional health if he was told he should not take Honors or International Baccalaureate classes. *Id.* The Parents were concerned about the Student's emotional health; they "had no concerns about his academic capabilities." *Id.*

67. The team did not reach a decision about a 504 plan for the Student. There is conflicting evidence of record why no decision was made. The Father testified no decision was made because the District team members wanted to wait until the fall so the team could have the

Student's teachers at the meeting¹⁴ and to get more information from the Student's new counselor. *Id.* at T87. The Father testified that Mr. Mims "suggested" that development of a 504 plan be put off until September. *Id.* at T85, T323. The Father testified it was not the Parents' choice to wait until the fall. *Id.* at T323. Ms. Challman testified that she was ready to write the Student's 504 plan at the meeting, but that the Father said let's "hold off" because the Student was going to see a new therapist over the summer and the Parents wanted to see what was working and if the Student disclosed more information about what was going on. T979, T995. Ms. Challman testified the decision to revisit the 504 plan in September was based on the Parents' request. T980. The only witnesses who attended the meeting are the Father and Ms. Challman. However, Ms. Challman's contemporaneous notes from the meeting independently corroborate her testimony. Also generally corroborating Ms. Challman's version of the events is her subsequent email to Ms. Larsen about the 504-team meeting. P46, D14p5. Furthermore, for reasons discussed in more detail below, the Father's credibility regarding other testimony is suspect, and this generally cautions reliance on the Father's version of the events at the 504-team meeting. Accordingly, after consideration of all the evidence of record, the undersigned finds as fact that the 504 team made the decision to hold off on development of a 504 plan for the Student until the start of the 2017-18 school year based on the Father's request.

68. June 22, 2017 was the last school day of the District's 2016-17 school year. D44p1.

69. The Student was scheduled to begin therapy with a new therapist, Dr. Ronald Cunningham, during the first week in July, but refused to go. Father T108-T109. On July 11, 2017, the Parents told the Student that until he agreed to see Dr. Cunningham, he could not have his iPhone. *Id.*, T330. The Student became upset, and threw a garbage can through his bedroom window. *Id.* Approximately 30 minutes later, the Parents found the Student on his bed crying and cutting his arm with a piece of glass. *Id.*

70. Per their contract with the Student regarding self-harm (Father T110, T795), the Parents took the Student to the emergency department at Swedish-Edmonds Hospital, where he was evaluated. P125pp26-59. The evaluation determined the Student did not meet the criteria for inpatient admission, was not currently a danger to himself or others, and "does not appear gravely disabled." *Id.* at pp30, 34. The Student tested positive for marijuana metabolites while at Swedish-Edmonds. *Id.* at pp32, 39-40.

71. The records from Swedish-Edmonds reference the Student cutting himself with broken glass. *Id.* at pp27, 30, 31, 32. However, the Student's physical examination did not note any cuts or abrasions of the skin. *Id.* at p27. This stands in unexplained contrast to the Student's records from his April 29, 2017 emergency department physical examination, which noted multiple linear superficial abrasions on his left forearm. *Compare* P125p2 with P125p27.

72. The Father did not report the Student self-harming and the trip to Swedish-Edmonds emergency department to the District for the same reasons he did not report the Student's April 29, 2017 self-harm and trip to the emergency department. Father T331, T872; See Finding of Fact 44.

¹⁴ By this time, the Student had withdrawn from all his classes at EWHS to enroll in the eLearning Academy, and had no teachers at EWHS. Challman T1042.

Student's Dialectical Behavior Therapy (DBT) with Dr. Ronald Cunningham

73. Dr. Ronald Cunningham is a licensed psychologist and a board-certified DBT clinician. P133p1. He earned his PhD from the University of Washington in 2005. Dr. Cunningham maintains a private practice and is the managing partner of Under One Roof Psychological Services PLLC in Seattle. *Id.* pp1-3.

74. The Parents offered what they identified as both Dr. Cunningham's "Diagnostic Presentation" (P48) and Dr. Cunningham's "Therapy Report" (P92) regarding the Student. The two exhibits are identical. The document is dated August 29, 2017, but Dr. Cunningham did not author the document until sometime after he stopped seeing the Student in September 2017; precisely how long is not clear from the record. Cunningham T261. Furthermore, Dr. Cunningham did not create the document at the Parents' request, and he did not share the document with the Parents until sometime after the Parents filed their request for a due process hearing. *Id.* at T275, T262. Dr. Cunningham wrote the document as part of the process for his certification as a DBT clinician. *Id.* at T275. Under these facts, the document is given little weight.

75. The Parents reached out to Dr. Cunningham because of the Student's suicide attempt and self-harming behavior. Cunningham T216. Dr. Cunningham first saw the Student sometime after July 11, 2017.¹⁵ Dr. Cunningham last saw the Student sometime between the end of August 2017 and mid-to-late September 2017. Father T337, T340; Cunningham T255. Dr. Cunningham provided therapy for the Student utilizing dialectical behavior therapy as his therapeutic methodology. Cunningham T216. Dr. Cunningham saw the Student twice a week: once a week for one-on-one therapy and once a week with the Parents in a skills workgroup along with other families. *Id.* at T216-T217.

76. Dr. Cunningham's therapy with the Student "went well" over the summer, but he had trepidations about the Student returning to school in the fall. *Id.* at T240. When school started in the fall, it was "really hard" for the Student. *Id.* at T241. The Student started refusing to go to school and refusing to see Dr. Cunningham for therapy. *Id.* at T244, T277. It is Dr. Cunningham's opinion that the Student was overwhelmed with the idea that he was letting everyone down, and this led to his refusal to attend school. *Id.* at T235. In Dr. Cunningham's opinion, the Student was at risk of suicide during the fall of 2017. *Id.* at T245-T246.

77. Once the Student began refusing to attend therapy, Dr. Cunningham concluded he required a "higher level of care." *Id.* at T244, T277. There are multiple higher levels of care available for the Student, including intensive outpatient therapy, partial hospitalization, and residential placement. *Id.* at T277-T278.

78. Dr. Cunningham gave inconsistent testimony regarding the Student's need for a residential placement. At one point, Dr. Cunningham opined that as of September 2017 when the Student refused to continue therapy with him, a residential placement was appropriate for the Student. *Id.* at T243-T244. Then later on cross-examination, Dr. Cunningham stated that if he

¹⁵ Dr. Cunningham testified he saw the Student once a week in June 2017. Cunningham T216. This is not possible as the record is clear he did not see the Student for the first time until *after* the Student's July 11, 2017 evaluation at Swedish-Edmonds Hospital.

had been invited to an IEP meeting, he would not have said the Student needed residential treatment. *Id.* at T257-T258. Rather, he would have argued for continuing DBT therapy. *Id.* Then later, Dr. Cunningham stated that as of the last time he saw the Student, it was his opinion that the Student needed a higher level of care, but not that the Student required residential treatment. *Id.* at T277. Finally, still later in his testimony Dr. Cunningham stated that he “probably” would have recommended residential treatment for the Student if the Parents had asked his opinion. *Id.* at T280. Dr. Cunningham did not play any part in the Parents’ decision to place the Student in a residential treatment program. *Id.* at T257, T278. Given his inconsistent and often conflicting testimony, Dr. Cunningham’s opinion regarding the appropriateness of a residential placement for the Student is given some, but not great or substantial weight.

79. Via email on August 17, 2017, the Father told Ms. Challman that “It’s been a good summer for [the Student]. He is in effective therapy and is gung-ho for school. He would like to be removed from consideration of the 504 plan at this point.” D15, D16p1.

Summer Vacation 2017

80. The Father sent this email to Ms. Challman after the Student confirmed with the Parents that he wanted to continue to take Honors and International Baccalaureate classes. Father T116. The Student also asked the Parents “if we could put the 504 plan on hold.” *Id.* The Parents “respected” the Student’s request. *Id.* As of this email to Ms. Challman, the Parents still had not told the District that the Student had been at Swedish-Edmonds Hospital on July 11. The Father did not tell the District because by this time, the Student had been seeing Dr. Cunningham for about a month, and this appeared to be helping the Student. *Id.* at T873. The Father believed the Student had greatly improved over the summer. *Id.* at T331.

81. Ms. Challman replied to the Father’s email on August 21, 2017, telling him that she was thrilled that the Student was well over the summer, and that if the Parents want to revisit a 504 plan to let her know as soon as possible. She confirmed the Student was enrolled in three Honors classes, one International Baccalaureate class, and two other classes for the fall. D16p1.

82. The Father replied via email the same day, stating, “We will confirm again that [the Student] wants to have a schedule that rigorous.” D16p1. The Parents spoke to the Student again, and he confirmed that he wanted a rigorous schedule of classes for the fall. Father T332.

83. Via email on August 24, 2017, the Student told Ms. Challman that, “I’m discussing the 504 with my therapist and we plan to talk more about it – so it’s not off the table.” P47, D16p3. This was after Dr. Cunningham told the Student that it was important not to put a 504 plan on hold and to continue the process. Father T116.

84. Via email on August 25, 2017, Ms. Challman told the Student that she had reserved the first 504 meeting opportunity on September 26, but when the Father emailed her that the Student wanted to be removed from consideration for a 504 plan, she took the Student off the list for September 26. Ms. Challman asked the Student to speak with the Parents and let her know if she should put the Student back on the schedule to meet about a 504 plan. D16p3. The Father was not aware of this email from Ms. Challman to the Student. Father T334.

2017-18 School Year: Student is a Sophomore at EWHS

85. September 6, 2017 was the first day of the District's 2017-18 school year. P129, D44p2.

86. Via email on September 11, 2017, the Father told Ms. Challman that the Student went to the first two days of school, and then quit. He told her that the Student tried online classes, but failed, and that home schooling was not an option. The Father asked Ms. Challman, "Is there anything else the school has to offer or have we exhausted our options?" P49, P50p2, D17p2.

87. Ms. Challman replied via email on September 13, 2017. P50p2, D17p2. She told the Father that she could add the Student to the agenda for the next 504 meeting, but that a 504 plan was only helpful if a student is at school, so they might want to consider other options. She identified the District's Scriber Lake High School, giving eLearning another try, and trying Running Start the next school year when the Student would be a junior. *Id.*

88. As of her September 13 email to the Father, the Parents had not informed Ms. Challman of any further incidents of the Student self-harming since his admission to SCH in February 2017, and Ms. Challman had received no additional records for the Student since she received the records from Ms. O'Toole in March 2017. Challman T986.

89. Via email later on September 13, 2017, the Father told Ms. Challman that the Student had failed the online option, and that Scriber Lake High School was not a good option for the Student because he needed a drug-free environment and crowd. P50p1, P51p1, D17p1. The Father went on to state that:

His mental illness is our primary concern now and we are looking into therapeutic boarding schools, where he can get the treatment he needs and continue to receive an education. He is so intelligent and has so much potential, and we don't want to see it wasted due to inadequate mental health support.

Id.

90. By this time, the Father had concluded that the District could not help the Student. Father T119-T120. His understanding from the District was that they could not help the Student unless he attended school. *Id.* at T335.

91. By this time, the Parents were looking into boarding schools for the Student, but did not have any particular boarding school in mind. *Id.* In mid- to late-September, the Parents met with Kristen Cajer-Kline, an educational consultant. *Id.* at T119. The Parents did not tell the District they were meeting with an educational consultant. *Id.* at T348. It was Ms. Cajer-Kline who eventually recommended that the Parents place the Student at Open Sky Wilderness Therapy, a residential wilderness therapy program in Colorado. *Id.*

92. In another email sent later on September 13, 2017, the Father told Ms. Challman that, "[The Student] has a diagnosed emotional disturbance (sic) (anxiety and depression)," and asked if the District could "offer help through the IEP process?" P51. The Father had learned about the IEP process through his own online research and from Ms. Cajer-Kline. Father T122. Up until this point, the District had never mentioned an IEP for the Student. *Id.* at T123.

Student's Admission to SCH on September 13, 2017

93. On the morning of September 13, 2017, the Father attempted to get the Student out of bed to go to school. This led to an argument over the Student going to school. P117p27.¹⁶ Later that morning, the Student reported taking approximately 20-30 acetaminophen pills. He did not tell the Mother about his ingestion until several hours later.¹⁷ *Id.* at pp7, 27. The Mother took the Student to SCH, where he was admitted. The Father met the Mother and the Student at SCH. Father T139.

94. The Student reported that his suicide attempt was triggered by several factors, primarily school. He reported enjoying school, being an excellent student, having good friends, and being happy once he is at school, but that the process of getting out of bed and going to school was very difficult for him. He could not identify anything at school that made him particularly anxious. He acknowledged that his emotions can be very intense and overwhelming, and that they happen quickly. P117p27. The Student was diagnosed with Unspecified Anxiety Disorder and Persistent Depressive Disorder. *Id.* at p28.

95. SCH recommended a treatment plan for the Student, which included referrals to therapy centers that provide in-home coaching and support for school refusal (Evidence Based Treatment Centers of Seattle and Brooks Powers), as well as a referral for the School Refusal Group that was offered as part of SCH's outpatient psychiatry. *Id.* at pp28-29. There is no evidence to find the Parents or the Student followed up with any of the referrals provided by SCH.

96. The Student tested positive for marijuana metabolites at SCH. *Id.* at p5.

97. The Father did not inform the District about the Student's September 13 admission to SCH. Father T341. The Father also does not believe the Parents informed the District that the Student refused to continue seeing Dr. Cunningham for DBT therapy. *Id.*

98. Via email on September 14, 2017, the Mother told Ms. Challman that the Parents were going to spend the next few school days "trying some new techniques with [the Student] to get him in to school." D18. The Mother did not mention the Student's admission to SCH the day prior.

99. Ms. Challman responded to the Mother's email the next day, asking, "What are your thoughts on revisiting the 504 process?" P52, D18p2.

100. The Mother replied to Ms. Challman the same day via email. P52, D18p2. The Mother told Ms. Challman that the Student was in DBT therapy, but only for two months, and loves his therapist. She went on to say the Parents were not sure what to ask for in a 504 plan, but that

¹⁶ The Student's medical records that appear at P117 are a combination of medical records from his prior SCH admission on February 6, 2017, and his admission on September 13, 2017. The medical records regarding his September 13 admission appear at P117pp2-8, 19 (in part), 21-23, 26-29, and 33-45.

¹⁷ The Student's report of taking 20-30 acetaminophen pills appears to have been inflated, as blood testing at SCH confirmed an acetaminophen level of 87, which was below the treatment threshold for acetaminophen ingestion and did "not correspond to reported intake." P117pp5, 7.

more time on assignments and tests would be good. She told Ms. Challman that, “We appreciate your support and grace and are working as hard as we can to get him back up to speed.” *Id.*

101. By this time, the Parents still did not understand the difference between a 504 Plan and an IEP. Father T124. They trusted that the District would be able to determine what was most appropriate for the Student. *Id.*

102. Via email on September 20, 2017, the Mother informed Ms. Challman that the Parents wanted to move forward as soon as possible with either a 504 Plan or an IEP for the Student. P56. While the Student wanted to return to EWHS, the Parents were not sure how realistic that was. *Id.* By this time, the District still had not responded to the Father’s inquiry a week earlier about an IEP for the Student. Father T124-T125.

103. Via email on September 20, 2017, Ms. Challman informed Ms. Larsen that the Parents wanted to “pursue the 504 route again...After our last 504 meeting, we determined to hold off until [the Student] had had (sic) his intensive therapy over the summer and we had a better idea of where he was at.” P55. Ms. Challman clarified during her testimony that the reference to “we” in her email was a reference to the 504 team, which included the Parents. Challman T1047.

104. Via email on September 27, 2017, Ms. Challman asked the Parents if they were looking into schools that could better support the Student, or would they like her to make an appointment to proceed with the 504 process. P58, D20p1.

105. The Mother responded via email the same day, telling Ms. Challman that the Student had “been diagnosed with an emotional disturbance (generalized anxiety disorder and depression) and this has caused him to fail to attend school. He is currently under the care of a clinical psychologist. We would like to begin the process for IEP eligibility. What is the first step?” P59, D20p1. This was the first time the Parents asked about eligibility for an IEP.¹⁸ Father T344.

106. Until she received the Mother’s email on September 27, Ms. Challman was still aware of only the Student’s admission to SCH in February 2017, and what was contained in the Student’s medical records she received from Ms. O’Toole. Challman T988-T989.

107. Ms. Challman replied to the Mother’s email the same day. P59, D20p1. Ms. Challman told the Parents that she connected with Pamela Hamilton, the District school psychologist who initiates the IEP process, and that Ms. Hamilton would call the Parents to explain the IEP process. *Id.* Ms. Challman also remarked that a 504 plan with accommodations in regular classes might be a better starting place for the Student, rather than an IEP. *Id.* The Father thought that based on Ms. Challman’s description, an IEP might be helpful to the Student. Father T126.

¹⁸ Although the Father testified this was the first time the Parents asked about *eligibility* for an IEP, the Father had asked if the District could offer help “through the IEP process” on September 13, 2017. See Finding of Fact 91; P51. In addition, via email on September 20, 2017, the Mother told the District that the Parents wanted to move forward as soon as possible with either a 504 plan or an IEP for the Student. See Finding of Fact 101.

108. The Father replied to Ms. Challman via email the same day, telling her that the Student's classes were not too challenging for the Student, it was simply that the Student was too anxious to attend school. P59.

109. On September 29, 2017, Ms. Hamilton called and spoke with the Father for about 45 minutes. They discussed the process to determine eligibility for an IEP. D32; Hamilton T1223; Father T127, T344. During the conversation, the Father mentioned that the Student was hospitalized multiple times. Hamilton T1229.

110. Until speaking with Ms. Hamilton on September 29, 2017, the Parents had never informed the District about the Student's hospital visits or admissions in April, July, or September 2017. Father T345-T346.

111. Via email on October 3, 2017, the Father inquired with Ms. Hamilton whether she had discovered an option or two for the Student, and told her that the Student continued to be "bedridden by his anxiety and depression." P64, P66p1, D21pp1-2. By this time, the Student's depression was the worst it had ever been, except for his acute incidents. Father T128-T129. The Student would not look at the Parents, and was "totally non-communicative." *Id.* at T129. The Parents believed the Student was "in the red zone," and needed to get started with whatever the District could provide. *Id.*

112. Ms. Hamilton replied to the Father on October 4, 2017. P66, D21. She told the Father that she spoke with the school nurse about providing the Student with services at home, and gave the nurse the Father's cellphone number. *Id.* The Father never received a call from the school nurse. Father T130.

113. The Father replied to Ms. Hamilton via email the same day. P66. The Father told Ms. Hamilton that he spoke with the Student about services at home on a 1:1 basis, but the Student refused. *Id.*, Father T130-T131. The Father also told Ms. Hamilton that he dropped off a letter (P67) that day, communicating the Parents' intent to withdraw the Student from the District, enroll him in a wilderness therapy and therapeutic boarding school, and were requesting District support. *Id.*

114. On October 4, 2017, the Father delivered a letter to the school "office." Father T132; P67, D22. This was the Parents' notice to the District of their intent to enroll the Student in a wilderness therapy school and a residential therapeutic boarding school, and to seek reimbursement for the expense from the District. The Parents stated that the Student "needs to be in a residential boarding school environment because he has severe school refusal arising out of his depression and anxiety," and that the Student "needs intensive daily therapy in a learning environment." *Id.* Ms. Hamilton received a copy of the Parents' letter. Hamilton T1262.

115. On October 6, 2017, the District's registrar sent an email to the Parents. P68. The email stated that the Student "has been withdrawn from Edmonds-Woodway as of 10/06/17." The reason identified for the withdrawal is "non attendance" (sic). *Id.* It stated that a "student who misses 20 days or more of school is automatically withdrawal (sic) for non-attendance." *Id.* The Father understood from the registrar's email that the Student had been withdrawn by the District. Father T133.

116. The Parents' educational consultant, Ms. Cajer-Kline, made the first contact with Open Sky Wilderness Therapy (Open Sky), a wilderness therapy program in Colorado. Father T353. Ms. Cajer-Kline recommended placing the Student at Open Sky in early October 2017. *Id.*

117. On October 13, 2017, the Father completed an online application for the Student to attend Open Sky. P112, D34; Father T866. The Parents applied to place the Student at Open Sky due to his anxiety, depression, school and therapy refusal, and suicide attempts. P112p2, D34p2.

118. On October 14, 2017, the Parents received an undated letter from Jean Mirabal, the District's Executive Director of Student Services. D23, P70; Father T134. Ms. Mirabal acknowledged the District's receipt of the Father's letter (P67, D22). D23, P70. Ms. Mirabal stated that before the District could address the Parents' October 4 request to pay for a private placement for the Student, the District needed to conduct an initial evaluation of the Student. If the Student was determined eligible for special education, the IEP team would meet, develop an IEP, and then determine an educational placement for the Student. *Id.* She went on to say that the "school psychologist will contact you to discuss the scope of the evaluation and then follow up by sending you consent forms." *Id.*

119. With receipt of Ms. Mirabal's letter, the Father understood that the District would contact the Parents about an evaluation to determine if the Student was eligible for an IEP. Father T134, T376. However, by this time the Father felt it was "too little too late." *Id.*

Student Leaves for Open Sky Wilderness Therapy in Colorado

120. Shortly after midnight on October 18, 2017, the Student was transported from the family home to Open Sky by a third-party transportation service, Right Direction. P127, P114; Father T137.

121. The Father appeared at the due process hearing over three days to complete his testimony: October 1, 2018; October 2, 2018; and May 29, 2019. See T22, T286, T792. Over the course of his first two days of testimony, the Father was asked and answered questions about why the Parents decided to take the Student out of the District and enroll him at Open Sky. When the Father returned to finish his testimony on May 29, 2019, Parents' counsel revisited the Father's earlier testimony about the reasons the Parents removed the Student from the District and placed him at Open Sky. The Father's testimony on May 29 was materially different from his earlier testimony, and manifestly more favorable to the Parents' case. Compare Father at T389-390 with T868-T870. The Father's proffered explanation for this material difference in his testimony is neither logically compelling nor credible. His explanation that he was trying to be brief and "wrap it up" (*Id.* at T868) is not credible. Rather, the undersigned finds that the Father's testimony on May 29 about the reasons why the Parent removed the Student from the District and sent him to Open Sky was an attempt to rehabilitate his earlier, less favorable testimony. In addition, finding that the Father's testimony on May 29 was not credible and was an attempt to rehabilitate earlier less favorable testimony also diminishes the credibility of the Father as a witness generally. To the extent that other findings of fact favor the District's evidence over the Father's testimony, it is due to this diminished credibility of the Father. Accordingly, with respect to the reasons the Parents removed the Student from the District and placed him at Open Sky, the undersigned enters the following findings of fact.

122. Open Sky had contacted the Parents when the first available space came open for the Student. Father T137-T138. If there had been space available earlier than October 18, 2017, the Parents would have sent the Student earlier. *Id.* According to the Father, the Parents “just knew for [the Student’s] safety that we had to get him out of there.” *Id.* at T138. The Father went on to explain that:

We would have let him go to wilderness [camp] as soon as possible whenever an opening came up because we were worried based on [the Student’s second overdose] a month previous and his current extremely depressed behavior that he was going to kill himself. It was pins and needles at our house.

Id. at T140.

123. The Parents assert they decided to send the Student to Open Sky because they did not feel the help offered by the District was adequate. However, they acknowledge they were afraid the Student would harm himself. *Id.* at T389. Indeed, they believed the Student was in imminent danger of hurting himself. *Id.* at T390. The Student’s use of illegal substances had also become a “big concern” to the Parents over the last couple of weeks before he went to Open Sky. *Id.* at T361.

124. Open Sky is a wilderness therapy program. The young men and women who are placed at Open Sky, the vast majority of whom are placed by their parents, spend 10-12 weeks living outside in the Colorado wilderness accompanied by “field guides.” Mitchell T695. These field guides are adults who supervise the students in the wilderness, but they are generally not qualified or licensed as any type of therapist or counselor. *Id.* at T771. Only very rarely are young men or women placed at Open Sky by their resident school districts. *Id.* at T770. Approximately 70% of the young men and women who go to Open Sky have substance abuse problems. *Id.* at T771. The young men and women receive no academic instruction during the time they are at Open Sky. *Id.* at T773, T1199. The primary focus at Open Sky is on emotional growth. *Id.* at T752. Every young man and woman at Open Sky receives the same amount of therapy. *Id.* at T782.

125. Jonathan Mitchell was the Student’s clinical therapist at Open Sky. *Id.* at T1193. Mr. Mitchell has a master’s degree in Transpersonal Counseling Psychology / Wilderness Therapy, and is a Licensed Professional Counselor in Colorado and Utah. P111p3.

126. Mr. Mitchell met the Student at Open Sky on October 24, 2019. Mitchell T713-T714. He conducted a Bio-psychosocial Clinical Interview with the Student the same day. *Id.*; P113. When the Student reported that he had no learning problems at school, that meant that the Student “does not have a difficult time learning or taking in information, per se, when at school.” Mitchell T715. Mr. Mitchell did not conduct any formalized assessments of the Student. *Id.* at T775.

127. The Parents offered an Open Sky “Treatment Plan Summary” document. P115pp1-2. This is a general treatment plan, and not in any way unique to, or individualized for, the Student. Mitchell T694, T770.

128. Mr. Mitchell developed an “Open Sky Wilderness Therapy” plan specifically for the Student. P115pp35, D37pp1-3. None of the goals Mr. Mitchell developed for the Student addressed academics in any manner. *Id.* All of the goals addressed the Student’s anxiety, depression, and marijuana or cannabis use disorder. *Id.* There is no evidence of record to find

the Student received any special education services or any specially designed instruction while at Open Sky.

129. After careful review and consideration of all the relevant evidence of record, it is found as fact¹⁹ that the Parents removed the Student from the District and placed him at Open Sky due to their fear that the Student was an imminent danger to himself, that they risked the Student committing suicide if they did not place him in a restrictive and highly controlled environment like Open Sky, and they were very concerned about his escalating drug use. The Parents did not place the Student at Open Sky for educational purposes, or due to the Student's refusal to attend school.

Dr. Gonzalez-Boas' Psychological Evaluation of the Student

130. While still at Open Sky, the Student had a psychological evaluation by Dr. Kevin Gonzalez-Boas (Dr. Boas) on November 7, 2017. D38, P102. Dr. Boas holds a PhD in Counseling Psychology from the University of Memphis, and is a licensed psychologist in Utah and Colorado. P33p1.

131. Dr. Boas noted that the "Student...is currently enrolled at Open Sky Wilderness Program in Colorado due to difficulties with depression, anxiety, and substance abuse." D38p28.

132. Dr. Boas determined the Student has a full-scale IQ in the high average range, and his academic achievement testing is consistent with his full-scale IQ. D38p19; Boaz T1087. He determined the Student does not need support for executive functioning with respect to academics. *Id.* at T1160. Any decline in the Student's grades in high school are attributable to his depression and anxiety, not to any nonverbal learning disorder. *Id.* at T1172.

133. Dr. Boas concluded that the Student is "able to demonstrate his true cognitive capacity...it's the mental health issues that are getting in the way of him getting in the classroom." *Id.* at T1113. Based on his evaluation of the Student, Dr. Boas opined that it "is clear that [the Student] is an academically capable young man, and that he will be successful in school if he is receiving regular mental health, executive functioning, and emotional support." D38p33.

134. Based upon his evaluation of the Student, Dr. Boas recommended that after Open Sky, the Student:

[A]ttend a specialized program that will be able to address his therapeutic needs and one that would include a supportive residential academic environment that can address his social-developmental needs...At home [the Student] has not been able to benefit from the academic setting due to clinical issues in response to situational variables and inherent challenges that have cascaded into symptoms of depression, anger, and conduct issues at home.

Id. at p31.

¹⁹ The necessity and purpose of a residential placement are factual findings. *Edmonds Sch. Dist. v. A.T.*, 2019 U.S. App. LEXIS 21342, ___ Fed. Appx. ___, 2019 WL 3231747 (9th Cir. 2019; Unpublished).

135. Dr. Boas reported that the Student's "daily marijuana use...started shortly after breaking his foot."²⁰ *Id.* at p24. In addition, the Student was "dabbing," using a concentrated form of THC, 3-5 times per week at his peak use. *Id.* at p6; Boas T1143. Marijuana use can exacerbate the symptoms of depression and cause a lack of motivation, and it made the Student's depression and anxiety worse. *Id.* at T1145, T1150, T1164.

136. Some of Dr. Boas' opinions are credible and have been afforded the appropriate weight, leading to some of the above findings of fact. That weight, however, is tempered by the fact that he never reviewed any of the Student's educational records from the District, did not speak with anyone from the District, did not review the Student's attendance records from the District, and does not know what grades the Student earned in high school. *Id.* at T1133, T1141, T1173. Given this lack of important information about the Student's experience while attending EWHS and the retrospective nature of his opinion concerning a period of time substantially before he ever saw or evaluated the Student, it is found that Dr. Boas' opinion that the Student required residential placement during the second semester of his sophomore year does not warrant significant weight and is not adopted. See Boas T1126-T1127.

137. While the Student was at Open Sky, the Parents and the District continued to communicate regarding an evaluation of the Student. On October 18, 2107, Ms. Hamilton sent a letter to the Parents. P74, P79, D25. Ms. Hamilton told that Parents that if they wished to pursue a special education evaluation for the Student to please sign and date the consent form she included with the letter. *Id.* The Father received Ms. Hamilton's letter, a consent form for an evaluation, and a Notice of Procedural Safeguards. Father T140-T141. This was the first Notice of Procedural Safeguards the Parents ever received. *Id.* at T144.

138. Ms. Hamilton wrote the letter at Ms. Mirabal's direction to offer to evaluate the Student once again. Hamilton T1233. While Ms. Hamilton knew the Student had left the District, she did not know that the Student was already at Open Sky when she wrote the letter. *Id.* at T1267.

139. Via email on October 18, 2017, the Father thanked Ms. Hamilton for reaching out to set up an IEP meeting.²¹ P72, D26.

140. Ms. Hamilton and the Father spoke over the phone later on October 18. P75, D26; Hamilton T1235, Father T136. The Father told Ms. Hamilton that the Student had left for Open Sky. Father T136. Ms. Hamilton told the Father that the Parents would be receiving paperwork she mailed, to hold onto the paperwork, and if the Parents wanted her to evaluate the Student when he returned she was glad to do so. P75, D26. Ms. Hamilton would later tell Ms. Mirabal that the Father thought she could conduct an evaluation of the Student without the Student being physically present for the evaluation. *Id.*

²⁰ The Student broke his foot in September or October 2016. See Finding of Fact 4.

²¹ The record is unclear if the Father's email and reference to setting up an IEP meeting is in response to Ms. Hamilton's letter to the Parents that same day, October 18, 2017. If the letter was in fact mailed to the Parents, it does not seem possible the Father's email to Ms. Hamilton at 1:22 p.m. (See D26) was in response to her letter.

141. Ms. Hamilton believes she discussed the evaluation process with the Father during their telephone call on September 29, 2017. Hamilton T1235. However, Ms. Hamilton also testified she only had one contact with the Parents, and that was her telephone call with the Father on September 29. *Id.* at T1223. That is clearly incorrect, as she also spoke with the Father on October 18. Ms. Hamilton's notes from their September 29 telephone conversation (P104pp2-3, D32pp2-3) largely reflect only what the Father reported to her, not what she explained to the Father. Ms. Hamilton's written statement regarding her conversation with the Father (P104p4, D32p1) is not afforded any weight in support of her assertion she explained the process and timeline for an evaluation with the Father, as she was unable to explain why, when, or at whose direction she prepared her written statement. Hamilton T1223-T1224. The Father testified that prior to his conversation with Ms. Hamilton on October 18, 2017, he did not understand that the Student needed to be present for the evaluation. Father T136. After considering the evidence, it is found as fact that the Father was not aware the Student needed to be physically present for an evaluation until October 18, 2017.

142. Via email on October 24, 2017, Ms. Hamilton informed the Parents that in order to conduct an evaluation of the Student, he would have to be available to the evaluation team at the District. She went on to tell the Parents that if they would like to proceed with an evaluation, to sign and return the consent form sent with her October 18 letter. P81, D27.

143. Via email the same day, the Father returned the consent form with his signature, and told Ms. Hamilton that he was working to complete release of information forms. P82, D29. The District received the signed consent form. P78, P84, D29p3.

144. On October 25, 2017, Ms. Hamilton created a Prior Written Notice (PWN). P77, P85, P86, D28. The PWN proposed initiating an initial evaluation of the Student because the Parents had unilaterally placed him in a program in Utah.²² It went on to state that the evaluation team needed to have access to the Student in order to complete the evaluation. It asked the Parents to let Ms. Hamilton know when they would be able to have the Student available for the evaluation. *Id.*

145. The Parents received the PWN. Father T351, T876. This was the first PWN the Parents had ever received from the District. *Id.* at T800. Based upon the PWN and his telephone call on October 18, 2017 with Ms. Hamilton, the Father understood the District was offering to evaluate the Student. *Id.* at T802.

146. Via email on October 30, 2017, Ms. Hamilton thanked the Father for the signed evaluation consent form, and asked the Father if he had completed the release of information form. P88p1, D29p2.

147. The Father replied via email the same day, telling Ms. Hamilton he signed the release of information form and was in the process of having the Student sign it. P87, D29p2.

148. Via email on November 21, 2017, the Father returned the release of information form signed by the Student. P88, D29p1.

²² The reference to Utah appears to be a mistake or misunderstanding, as the Parents placed the Student at Open Sky in Durango, Colorado.

149. Ms. Hamilton replied via email the same day, thanking the Father for the form and asking when he thought the Student would return from Colorado. D29p1.

150. Via email on November 22, 2017, the Father told Ms. Hamilton that he was not sure when the Student would return, and that it would depend “on recommendations and progress etc.” *Id.*

151. After receiving the Father’s email, Ms. Hamilton does not recall any further contact with the Parents, and she took no further action to evaluate the Student. Hamilton T1237-T1238.

152. Via email on December 12, 2017, the Mother informed the District that the Parents were going to Montana to “do two boarding school tours for [the Student]...He requested a school near a ski mountain and Co-ed.” D30.

Student Discharged From Open Sky – Enrolled at Summit Preparatory School in Montana

153. The Student was discharged from Open Sky on January 3, 2018. P114, D39. Mr. Mitchell prepared a Discharge Summary document for the Student. *Id.* In his Treatment Summary, Mr. Mitchell noted that:

[The Student’s] parents cited [the Student’s] history of mood and behavioral issues and substance use as primary reasons for seeking an out-of-home therapeutic intervention.

P114p2, D39p2.

154. The psychiatrist at Open Sky discontinued the Student’s Wellbutrin, Buspar, and Buspirone. Upon discharge from Open Sky, the only medication prescribed for the Student was Vistaril as needed (PRN). P114p6. Open Sky discontinued all of the Student’s medication for depression because they did not feel he needed them anymore. Father T362, T389. The Student has not been prescribed any medication to address his depression through the due process hearing. *Id.* at T389.

155. Upon discharge from Open Sky, Mr. Mitchell recommended the Student attend a “therapeutic boarding school to support continued growth and success.” *Id.* at p7. Mr. Mitchell did not believe the Student had the “emotional resilience to be able to go back into his life and be successful,” and believed a therapeutic boarding school had the “highest probability of success for the Student.” Mitchell T751. Mr. Mitchell recommends attendance at a therapeutic boarding school after discharge from Open Sky to the majority of the families he works with at Open Sky. *Id.* at T1180.

156. The Student earned no high school credits while at Open Sky. Father T355.

157. The Parents learned the Student would be discharged from Open Sky approximately two weeks before he was discharged. Father T364. Ms. Cajer-Klein, their educational consultant, recommended either Summit Preparatory School (Summit) or the Montana Academy as a placement for the Student after Open Sky. *Id.* at T155, T363. The Parents visited both, and chose Summit. *Id.* at T155-T156; P114p7. Mr. Mitchell was involved in the Parents’ selection of Summit by recommending the type of program the Student needed. Mitchell T755-T756. Mr. Mitchell also spoke with Ms. Cajer-Klein about his recommendation. *Id.* at T756.

158. The Parents picked up the Student at Open Sky on January 3, 2018, and flew to Kalispell, Montana. The Student was admitted to Summit on January 5, 2018. Father T154.

159. Jan Johnson is a co-founder and the senior clinical specialist at Summit. J. Johnson T413. Ms. Johnson is also a licensed clinical social worker (LCSW), which permits her to provide counseling services to students at Summit. *Id.* at T413-T414.

160. Summit is licensed by the state of Montana as a private alternative residential program. It is not licensed as a residential treatment program. *Id.* at T498-T499. The Summit campus is not a locked facility, but the students are always under supervision. *Id.* at T443, T536-T537. Summit only admits students in grades 9-12. *Id.* at T511. Students at Summit are typically academically capable, but have social and emotional problems. *Id.* at T499. The majority of students placed at Summit are placed by their parents. Less than five percent of students at Summit are placed by school districts. *Id.* at T501. Approximately 95% of the students currently enrolled at Summit attended a wilderness therapy program before their admission at Summit. *Id.* at T914-T915. Summit recommends that students attend a wilderness therapy program before admission to Summit. *Id.* at T515. Greater than 50% of the students at Summit have substance abuse problems. *Id.* at T527.

161. School at Summit is year-round and structured into four three-month blocks. *Id.* at T429-T430. Students take three core classes and a study hall, Monday through Friday. *Id.* at T447. Students participate in group therapy twice a week after school, and participate in individual therapy once a week. *Id.* at T447, T458. Students participate in family therapy once a week with their family via webcam or telephone. *Id.* at T459-T460. The teachers at Summit are all credentialed in the areas they teach. *Id.* at T448. Summit has one credentialed special education teacher on staff. *Id.* at T449. When the students are not in class, they are supervised by the "residential staff." Residential staff are not teachers or therapists. *Id.* at T449. Summit also has "clinical staff" who provide specific therapeutic services to students and families. *Id.* at T455. Ms. Johnson is unfamiliar with what constitutes specially designed instruction under the Individuals with Disabilities Education Act. *Id.* at T540. She does not know if the one credentialed special education teacher on staff, Steven Gesler, provided any specially designed instruction to the Student while he attended Summit. *Id.*

162. On January 30, 2018, Summit developed an Initial Treatment Plan for the Student. P120, D40p1. The Initial Treatment Plan identified objectives for the Student: establish a trusting relationship with his therapist; acclimate to the community; and set goals for treatment and begin work on these goals. *Id.* The longest duration of any of these goals was 4-6 weeks. *Id.* The Initial Treatment Plan makes no mention at all regarding academic needs or services for the Student. *Id.*

163. On March 28, 2018, Summit developed a Master Treatment Plan for the Student. P121, D40pp2-8. The Master Treatment Plan set out goals and objectives to address the Student's Major Depressive Disorder, Generalized Anxiety Disorder, Other Specified Neurodevelopmental Disorder, and Cannabis Use Disorder. *Id.* There are no goals or objectives regarding any academic need(s) or services for the Student. *Id.*

164. There is no credible evidence to find the Student received any specially designed instruction while he was at Summit. The only witness with any direct knowledge of the Student's instruction at Summit was Jessica Bruinsma. Ms. Bruinsma was the Student's English teacher at

Summit. P94p1.²³ She is licensed to teach secondary English for grades 5-12. *Id.* Ms. Bruinsma is not credentialed as a special education teacher. Bruinsma T839-T840. Ms. Bruinsma provided instruction to the Student in her classroom in the same manner that she provided instruction to all the other students in her English class. *Id.* at T843. Ms. Bruinsma provided the Student and all the other students in her class with preferential seating, extra time to complete assignments, and daily check-ins on an as-needed basis. *Id.* at T830, T843-T844. When questioned by Parents' counsel about whether the Student had an "academic plan" at Summit, Ms. Bruinsma confirmed that an "academic plan" at Summit is a plan that is specific to a particular student, and that any such "academic plan" is a "branch of the overall "treatment plan" at Summit. *Id.* at T832-T834. Ms. Bruinsma could not recall if the Student had an academic plan at Summit. *Id.* at T834. Accordingly, it is found as fact that Open Sky provided no specially designed instruction to the Student.

165. Rick Johnson is a co-founder and the director of program development at Summit. Mr. Johnson was formerly licensed In Illinois as the equivalent of a clinical social worker or mental health professional, but allowed his professional accreditation to lapse many years ago. R. Johnson T668-T670. Mr. Johnson provides counseling to students at Summit only under the supervision of Jan Johnson. *Id.* at 670.

166. Mr. Johnson met the Student "informally" upon the Student's admission to Summit in January 2018. He became the Student's primary therapist at Summit on June 11, 2018. *Id.* at T575-T579. Mr. Johnson had no contact with the Student prior to the Student's admission to Summit. *Id.* at T631. Once he became the Student's primary therapist, Mr. Johnson worked with the Student on the goals in the Student's Master Treatment Plan. *Id.* at T645; P121, D40pp2-8. However, Summit does not have formal measures or reports of progress on Master Treatment Plan goals. R. Johnson T645.

167. Mr. Johnson opined that the Student required residential treatment before he entered Open Sky and after he left Open Sky. *Id.* at T627. Mr. Johnson's opinion deserves no substantial weight. His knowledge of the Individuals with Disabilities Education Act is very limited. *Id.* at T626. He is not an "academic expert." *Id.* at T627. Mr. Johnson was only tangentially involved with the Student upon his arrival at Summit, and did not become the Student's primary therapist until June 11, 2018. *Id.* at T575-T579. He had no contact with the Student before the Student was admitted to Summit. *Id.* at T631. He holds no current professional accreditation, and has not for many years. *Id.* T668-T670. He cannot make diagnostic determinations pursuant to the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) because he is unqualified to do so. *Id.* at T674. He is permitted to provide therapy or counseling services only under the supervision of a properly credentialed professional. *Id.* at T670.

168. Dr. Boas opined that he would have recommended a residential placement for the Student after Open Sky. Boas T1127. He opined that Summit met his recommendations for the Student because it offered "an academic, residential therapeutic component." *Id.* at T1130. However, Dr.

²³ While her declaration identifies her as the Student's English teacher, at hearing Ms. Bruinsma confirmed she taught the Student's World Literature class, and did not recall teaching any other classes for the Student. Bruinsma T822-T823. It is unclear from the record if this is a matter of semantics, or if Ms. Bruinsma was the Student's teacher for multiple different classes.

Boas' knowledge of Summit is based entirely upon his review of several declarations prepared by staff at Summit (P94, P95,²⁴ and P131), an unidentified "transcript," and the Discharge Summary from Open Sky (P114, D39). *Id.* at T1083. Apart from those sources of information, Dr. Boas is "not aware of what they do exactly there." *Id.* at T1148. For these reasons, Dr. Boas' opinion regarding the appropriateness of Summit as a residential placement is given little weight.

169. Summit discharged the Student on August 17, 2018. P132p1. Although students at Summit typically remain there for 15 months, the Parents choose to have the Student leave so he could start school at home in the fall. *Id.* at p3. Summit recommended the Parents seek a 504 plan at school. *Id.* at p4. Apart from noting the Student intended to pursue his high school education after Summit (*Id.* at p3), there is no mention of any aspect of the Student's education post-Summit in terms of any need for special education or specially designed instruction.

170. While Mr. Johnson characterized the decision to discharge the Student from Summit as a "collaborative decision" made by him and the Parents, this appears to be inconsistent with the Discharge Summary. *Compare* R. Johnson at T653 with P132p3. There is no mention of Mr. Johnson contributing to the discharge decision, or agreeing with that decision. Mr. Johnson had no academic recommendations for the Student upon discharge because he is not "the academic expert." R. Johnson T662.

171. The Student returned to the family home on August 17, 2018, and reenrolled in the District. Father T163, T369, T374, T878. The District requested a meeting with the Parents, who obliged. *Id.* at T374.

172. Although the Student reenrolled in the District, he elected to participate in Running Start at Edmonds Community College rather than return to EWHS. *Id.* at T162, T164, T379-T380. He is very engaged in his Running Start classes, and has not self-harmed or refused to attend Running Start since his return home. *Id.* at T166, T381.

173. On September 19, 2018, the District issued a PWN, proposing to initiate a referral for a 504 plan. P135. It noted that:

The team met to consider a referral for special education evaluation that was initiated before [the Student] left for boarding school. After discussing [the Student's] needs, the team determined that a 504 plan would most appropriately meet [the Student's] needs at this time.

...

The team fully discussed both an initial evaluation for special education and an evaluation for a 504 plan.

P135.

174. At present, the Father does not want the District to evaluate the Student to determine if he is eligible for special education and related services. Father T879.

²⁴ P95 is the Declaration of Ryan Ebersberger. The declaration was offered by the Parents, but excluded as an exhibit at the due process hearing because Mr. Ebersberger did not appear as a witness.

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

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

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

3. 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 *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

Rowley, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201.

4. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

Andrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Andrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," 137 S. Ct. at 994 (citation omitted), taking into account the progress of his non-disabled peers, and the child's potential.

M.C. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 583 U.S. ___, 138 S. Ct. 556 (2017).

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

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

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

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

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

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

The Student's Eligibility for Special Education and Related Services

7. First, it is critical to note that the Student has never been evaluated pursuant to WAC 392-172A-03005 *et seq.*, or determined eligible for special education and related services by a group of qualified professionals and the Parents. WAC 392-172A-03040. This is critical because absent a determination the Student is eligible for special education and related services, the District owes the Student no duty under the IDEA, and therefore cannot be held responsible for any remedy requested by the Parents. *Durbrow v. Cobb Cty. Sch. Dist.*, 887 F.3d 1182, 1193, 72 IDELR 1 (11th Cir. 2018)(The IDEA confers the right to a FAPE only upon "children with disabilities"). Cognizant of this eligibility issue, counsel for the parties were asked to brief the issue of whether the Student was at any time eligible for special education and related services in their closing briefs.

8. "Child with a disability or student eligible for special education" means:

A student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional/behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

WAC 392-172A-01035(1)(a).

9. Neither party argued for, nor does the evidence support, eligibility under any of the 13 eligibility categories apart from an emotional/behavioral disability (EBD). An EBD means:

A condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

Id. at (2)(e)(i).

10. The element that the behavioral characteristics be exhibited “over a long period of time” is not further defined in the regulations. Guidance from the U.S. Department of Education, Office of Special Education Programs (OSEP) indicates that a “long period of time” is generally considered to be from two to nine months, with the specific facts of each case being determinative of how long a particular student must exhibit the behavioral characteristics to establish an EBD. See Letter to Anonymous, 213 IDELR 247 (OSEP 1989).

11. Similarly, the element of “to a marked degree” is not defined in the regulations. OSEP has taken the position that it generally refers to the frequency, duration and/or intensity of the behavior in comparison to the student's peers and/or school and community norms. Terms such as acute, continuous, and/or pervasive are sometimes employed for clarification purposes. *Id.*

12. Given the facts as found in this case, it is concluded that the Student did not begin to exhibit the behavioral characteristics of an EBD until February 6, 2017, when he ingested an amount of ibuprofen and acetaminophen necessitating his admission and treatment at SCH. Prior to that, the Student's grades through the end of the first semester were superior and he reported only minimal symptoms of depression. Findings of Fact 8, 11. However, the record is clear that the Parents intentionally concealed their knowledge of the Student's overdose from the District until meeting with the District on March 24, 2017. Finding of Fact 27. In the interim, the Parents had only reported the Student was inordinately stressed, was suffering from some anxiety and depression for which he was being evaluated, and later that the Student was beginning treatment for anxiety and depression. Findings of Fact 14, 15, 16.

13. The Student's visit to the emergency department at Swedish Hospital on April 29, 2017, followed by his visit to the emergency department at Swedish-Edmonds Hospital on July 11, 2017, and then his second admission to SCH on September 13, 2017, in addition to brief periods of

counseling by Ms. O'Toole and later Dr. Cunningham, support the conclusion that the Student exhibited the behavioral characteristics of an EBD both over a long period of time and to a marked degree. Once again, however, the Parents intentionally withheld much of this information from the District.

14. Although the evidence supports finding the Student had an EBD, that is not the end of the eligibility analysis. To be eligible for special education, the EBD must have an adverse impact on the Student's education. WAC 392-172A-01035(1)(a). A general review of case law confirms that the legal threshold for what constitutes an adverse educational impact is quite low. Indeed, many decisions refer to a "two-part" eligibility test or analysis, seemingly assuming an adverse educational impact. In the Student's case, his grades significantly declined during the period when the evidence establishes he had an EBD. This is sufficient to conclude the Student experienced an adverse educational impact caused by his EBD. However, this conclusion also does not end the eligibility analysis.

15. In order to be eligible for special education, the Student must require the provision of special education and related services to ameliorate the adverse educational impact. *Id.* Furthermore, if the Student requires only the provision of related services but not special education, he will not meet the definition of a student eligible for special education. *Id.* at (1)(c).

16. Special education means specially designed instruction (SDI), at no cost to parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175(1). In turn, SDI means adapting as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction. *Id.* at (1)(c).

17. Related services include counseling services, parent counseling and training, and psychological services. WAC 392-172A-01155(1). Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. *Id.* at (3)(b). Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP. *Id.* at (3)(h). Psychological services includes:

- (i) Administering psychological and educational tests, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
- (v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and
- (vi) Assisting in developing positive behavioral intervention strategies.

Id. at (3)(j). It is significant that SDI and related services have separate, independent definitions. The IDEA obviously considers the two legally distinct from one another.

18. While the Parents' witnesses opined that the Student has an EBD and the Student requires a residential placement, none of those witnesses (Ms. O'Toole, Dr. Cunningham, Mr.

Mitchell, Ms. Johnson, Ms. Bruinsma, Mr. Johnson, and Dr. Boas) offered a compelling or persuasive opinion about whether the Student required SDI. This is not surprising given that, with the exception of Ms. Bruinsma, these individuals appear unqualified by their education, training, or experience to opine regarding a student's need for SDI under the IDEA. However, while Ms. Bruinsma is a trained and experienced educator, she is not a certificated special education teacher, she demonstrated little knowledge of the IDEA, and did not offer an opinion whether the Student required SDI as defined under the IDEA.

19. The Parents address the issue of whether the Student required SDI with multiple arguments. First, the Parents argue that the District recognized the Student's need for SDI when it suggested the Parents consider placing the Student at Scriber High School, the District's online eLearning Academy, or Running Start. All these placements, the Parents argue, are placements which delivered specialized instruction,²⁵ citing *L. J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 117 LRP 6572 (9th Cir. 2017). Parents' Post-Hearing Brief, p.80. The Parents do not dispute that all these placements are available to all students in the District. However, the Parents argue that because District staff viewed them as options to address the Student's refusal to attend school, the District was acknowledging the Student required SDI to address the adverse educational impact of his EBD. The evidence does not support a conclusion that these options would provide any services that were specially tailored to the Student. There is no evidence to conclude that if the Student had attended any of these placements he would have received any services that were not provided to all the students, including general education students, who attended the same placements. This argument by the Parent's is not persuasive.

20. The Parents next argue that SDI is not limited to instruction in a special education classroom by a special education teacher, citing the IDEA definition of SDI set forth above. The Parents are correct. SDI can be delivered in a classroom, in a home, in hospitals and institutions, and in other settings. However, that does not compel a conclusion that *all* instruction delivered outside a classroom, whether it be in the home, in hospitals and institutions, or in other settings, *is SDI*. For example, a general education teacher providing general education instruction to a general education student at his/her home because the student has two broken legs and cannot commute to school is not providing that student with SDI. The fact that such instruction is provided at a location outside a classroom in and of itself does not somehow transform general education instruction into SDI.

21. In support of their argument that merely a change in the location of instruction or change in the "learning environment" can constitute SDI, the Parents first cite to *Bd. of Educ. v. S.G.*, 2006 U.S. Dist. LEXIS 8566, 2006 WL 544529 (D. MD 2006), *aff'd*, 230 Fed. Appx. 330, 2007 U.S. App. LEXIS 9420 (4th Cir. 2007; Unpublished). Parents' Post-Hearing Brief, p.84. In *S.G.*, the District Court held that the statutory definition of special education does not include any requirement that instruction administered in alternative settings must be altered in either content or form to constitute "special education services." *Id.* at p 44-45. The undersigned respectfully disagrees. The entire definition of special education must be read together as a meaningful

²⁵ The Parents' Post-Hearing Brief uses the term "specialized instruction" with respect to this particular argument. The use of legally accurate terminology is critical when deciding issues involving special education under the IDEA. Many terms used in the IDEA are terms of art. It appears the Parents' use of the term "specialized instruction" is intended to capture or include SDI.

whole. The district court fails to include in its reasoning that the definition of special education is SDI, which *requires* adapting as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction. Without such individualization of instruction to address the needs of a particular student, instruction is not SDI, and hence not special education *regardless* of the setting where the instruction is provided. While in its unpublished opinion the Fourth Circuit Court of Appeals concluded the District Court correctly decided the legal issues, it did not specifically comment on the District Court's interpretation of the definition of special education. A diligent search for any citation to either of these cases from the Fourth Circuit did not identify any cases in the Ninth Circuit. Nor does it appear that the cases outside the Fourth Circuit which do cite to these two cases cite to them for the proposition that instruction delivered in alternative settings need not be altered in either content or form to constitute special education. The undersigned declines to adopt the analysis or interpretation of the District Court in S.G. as persuasive authority in the Student's case at hand.

22. The District Court in S.G. also cited to *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 24 IDELR 68 (9th Cir. 1996), for the proposition that although special education must address a student's unique educational needs, such needs must be broadly construed to include a student's academic, social, health, emotional, communicative, physical and vocational needs i.e., the concept of education encompasses more than just academic instruction. While the undersigned agrees this is the correct legal interpretation in the Ninth Circuit, it not at all clear how this supports the District Court's interpretation of the definition of special education in S.G.

23. To be clear, the undersigned does not find persuasive and does not adopt the District Court's conclusion that "general education instruction provided in a therapeutic setting constitutes 'special education' under the IDEA". S.G. at p47. The *location* where instruction is provided is not determinative of whether that instruction is general education or SDI, and hence special education.

24. The Parents next cite *Edmonds Sch. Dist. v. A.T.*, 2019 U.S. App. LEXIS 21342, 74 IDELR 218 (9th Cir 2019), where the Ninth Circuit affirmed a residential placement for a student with prodromal schizophrenia whose IEPs exclusively addressed the student's behavioral, not academic, issues. The central issue in *A.T.* was whether the school district must reimburse the parents for a unilateral residential placement. The Student's case at hand is fundamentally different from the facts in *A.T.* in this regard. In *A.T.*, the student had *already* been determined eligible for special education for many years prior to the litigation, and therefore whether the Student was eligible for special education was not an issue before the court. While the court in *A.T.* cogently articulated the current legal standard in the Ninth Circuit for reimbursement of a unilateral private placement, it did not speak to the issue of *eligibility* for special education. The undersigned agrees with the controlling legal authority set forth by the Ninth Circuit in *A.T.*, but that decision does not address the first and fundamental issue that must be decided in the Student's case at hand; was the Student eligible for special education?

25. It has been found as fact that the Parents removed the Student from the District and placed him at Open Sky not due to their concern for his education or refusal to attend school, but because they were living in dread, perhaps justifiably so, that if they did not do so the Student would harm himself or take his life. They were also fearful of his escalating drug use. Finding of Fact 129. Testimony from their witnesses at hearing supported the need to place the Student in a highly controlled environment where the Student would be under round-the-clock supervision, but those same witnesses generally failed to explain in a persuasive manner how the Student required SDI

under the IDEA, thereby making him eligible for special education. The services described by those witnesses reasonably appear to be better characterized as necessary related services, like counseling services, parent counseling and training, and psychological services, but not SDI.

26. The Parents appear to argue that the Student's need for a residential placement essentially confirms his need for SDI, and hence eligibility for special education. This line of argument, however, effectively places the so-called "cart before the horse." Here the horse, the Student's eligibility for special education, must be proven *before* a residential placement, the cart, can be considered. The Parents have not done so. Rather, the best evidence establishes the Student more likely than not requires related services, but the evidence does not establish the Student requires SDI. This necessarily leads to the conclusion that the Parents have not proven the Student was eligible for special education during any period of time he resided in the District, and therefore does not meet the definition of a "child with a disability or a student eligible for special education."

27. Because the Parents have not proven the Student was eligible for special education while he resided in the District, the District does not owe him any duty under the IDEA. *Durbrow, supra*. For this reason, it is not necessary to address or reach any determination on any of the remaining issues raised by the Parents. Therefore, it is concluded that the District has not violated the IDEA in any manner, and the Parents' requested remedies are denied.

28. Although dicta and not necessary for resolution of any remaining issues in this case, some comment is warranted regarding the Parents' unilateral placement of the Student at Open Sky and then Summit. Even were the undersigned to have concluded the Student was eligible for special education and related services and reached the other issues raised by the Parents, it is extraordinarily clear from the evidence that Open Sky was never an appropriate educational placement for the Student. It is manifest that Open Sky offered nothing in terms of an educational program or placement for the Student that would pass muster under the requirements of the IDEA. Fundamentally, this is because Open Sky operated under a "one size fits all" model for all of the young adults placed there. There is no evidence to find the program or placement at Open Sky was in any meaningful way individualized for the Student. Every individual at Open Sky receives the same amount and type of therapy. There is absolutely no academic instruction provided at Open Sky. It is also concerning and likely not coincidental that 70% of the young adults at Open Sky have substance abuse problems, and that the vast majority of them are placed there by their parents, not their school districts. It is accurate to say that Open Sky is the very antithesis of what an appropriate and individualized educational program and placement looks like under the IDEA.

29. The IDEA creates a strong presumption that children with disabilities be educated in regular classes with appropriate aids and services. However, the IDEA does not mandate full inclusion in regular classes. 71 Fed. Reg. 46,585 (2006). The IDEA requires that:

To the maximum extent appropriate, children with disabilities...are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. §1412(a)(5)(A); See also WAC 392-172A-02050. This is the so-called least restrictive environment (LRE) mandate. In Washington State, the LRE mandate is codified at WAC 392-

172A-02050. In the Ninth Circuit, the seminal case on LRE is *Sacramento Unified Sch. Dist. v. Rachel H.*, 14 F. 3d 1398 (9th Cir. 1994), *cert denied*, 114 S. Ct. 2679 (1994). *Rachel H.* adopted a four-part balancing test to determine a student's LRE:

1. What are the educational benefits available to the student in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom;
2. What are the non-academic benefits of interaction with students who are not disabled;
3. What is the effect of the student's presence on the teacher and other students in the classroom; and
4. What is the cost of mainstreaming the student in a regular classroom.

30. An IEP team's decision where to place a student on the LRE continuum is reviewed using the "snapshot" analysis to determine the appropriateness of an IEP; that is to say, a team's LRE decision is analyzed in light of what the team knew or reasonably should have known at the time the team made the LRE decision. *Baquerizo v. Garden Grove Unified Sch. Dist.*, 826 F.3d 1179, 68 IDELR 2 (9th Cir. 2016); *Adams v. Oregon*, 195 F.3d 1141, 31 IDELR 130 (9th Cir. 1999).

31. Although again dicta, with respect to both *Open Sky* and *Summit*, it is very, very difficult to reconcile the Parents' placement of the Student in such highly restrictive environments based solely upon his refusal to attend school before attempting less restrictive environments. There is no evidence to find the Parents meaningfully considered less restrictive options that were identified to them. Dr. Cunningham identified intensive outpatient therapy and partial hospitalization. SCH recommended a treatment plan for the Student that included referrals to therapy centers that provide in-home coaching and support for school refusal (Evidence Based Treatment Centers of Seattle and Brooks Powers), as well as a referral to the School Refusal Group that was offered as part of SCH's outpatient psychiatry. The Parents' apparent lack of interest, particularly with respect to groups and therapy specifically targeted for students with school-refusal issues, only lends additional support to the finding that the Parents did not place the Student at *Open Sky* and *Summit* due to his refusal to attend school in the District.

32. Another recurrent theme throughout this case is the Student's use of marijuana and what role that played in his depression, anxiety, school refusal, self-harm and suicidal behaviors. Dr. Boas reported the Student used marijuana on a daily basis beginning when he broke his foot in September or October 2016, when he was a freshman at EWHS. Later, this came to include using a stronger form of the active ingredient in marijuana by "dabbing." Dr. Boas confirmed that marijuana use can exacerbate the symptoms of depression and cause a lack of motivation, and that the Student's marijuana use made his depression and anxiety worse. The Parents conceded they did not know the extent of the Student's marijuana use. While it might be difficult to parse out the additional impact of the Student's marijuana use on his depression, anxiety, school refusal and self-harming behaviors, the IDEA does not require school districts to pay for chemical dependency treatment.

33. Finally, the Parents' multiple and intentional decisions to withhold relevant information about the Student from the District are troubling. Not informing or not timely informing the District of the Student's hospitalizations and evaluations at SCH, Swedish Hospital and Swedish-Edmonds Hospital, his self-harming behaviors, suicide attempts, and drug use significantly impeded the District's opportunity to proactively address the Student's school refusal in a meaningful way, including whether or not to move forward more expeditiously with an evaluation. Had the undersigned reached the issue of reimbursement for the Parents' private placements,

the Parents would not have come to that equitable determination with clean hands. This is not to say the Parents may not have had good intentions when they withheld information from the District. It appears as though they were very concerned that had the Student learned they shared such sensitive information with the District, the Student would have been very upset and embarrassed. Nevertheless, the lack of information or timely information contributed to the District being unable to proactively address the Student's school refusal in a timely manner.

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

ORDER

The Edmonds School District has not violated the Individuals with Disabilities Education Act and has not denied the Student a free appropriate public education. The Parents' requested remedies are DENIED.

Signed at Seattle, Washington on, October 3, 2019.



MATTHEW D. WACKER
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 this 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.

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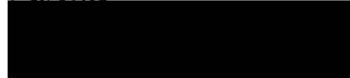
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CERTIFICATE OF SERVICE

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. *Ms. [Signature]*

Parents



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