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

SEATTLE-OAH

IN THE MATTER OF:

SPECIAL EDUCATION
CAUSE NO. 2013-SE-0093X

TACOMA SCHOOL DISTRICT

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Tacoma, Washington, on December 12, 13, 16, and 18, 2013. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Parent was accompanied and advised by Alton McDonald. The Parent was also accompanied and advised by Vanessa Lewis on December 16, 2013. The Tacoma School District (District) was represented by Carlos Chavez, attorney at law. Also present for the District was Linda Darling, assistant director of student services. The following is hereby entered:

STATEMENT OF THE CASE

The Parent filed a due process hearing request (Complaint) on October 18, 2013, which was assigned Cause No. 2013-SE-0093X. A Scheduling Notice-Expedited was entered on October 18, 2013, which set a prehearing conference for October 28, 2013, and a due process hearing for November 6, 2013. The District filed its Response to the Parent's Complaint on November 28, 2013. The prehearing conference was held on October 28, 2013, and a Prehearing Order was entered on November 4, 2013. That Prehearing Order determined the Parent's Complaint was not subject to the expedited timelines for hearing and decision as a matter involving the disciplinary exclusion of the Student from his educational placement, and accordingly struck the expedited status of the Parent's Complaint. The Prehearing Order also set another prehearing conference for November 14, 2013, set the due process hearing for December 12-13 and 16-18, 2013, and established a schedule to hear and decide the District's prehearing motion regarding the Student's stay-out placement.

The prehearing conference was held on November 14, 2013. A Second Prehearing Order was entered on November 14, 2013, which set forth the issues for the due process hearing, and confirmed the due process hearing would be held as previously scheduled. On November 27, 2013, an Order on Stay-Put was entered. The order determined that, in the event the Parent permitted the Student to return to the District, the District could place the Student in an Adjustment Classroom at Arlington Elementary School pending a hearing and decision on the Parent's Complaint.

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

On December 24, 2013, an Order Extending Due Date for Written Closing Arguments was entered, which extended the due date for the parties' written closing arguments to January 24, 2014.

DUE DATE FOR WRITTEN DECISION

On October 28, 2013, the District moved to extend the due date for a written decision in the above matter to the close of record plus thirty (30) calendar days. On October 29, 2013, the Parent objected, agreeing only to extend the due date to close of record plus twenty (20) calendar days. The District's motion was granted over the Parent's objection. Both parties requested time to file written closing arguments after the due process hearing, and agreed closing arguments would be due January 17, 2014. This agreement was prefaced on the hearing transcript being ready for the parties on January 6, 2014. On December 23, 2013, the ALJ was informed that due, to personal illness of the court reporter, the transcript would not be ready for the parties until January 13, 2014. Accordingly, the due date for filing of written closing arguments was extended one week, to January 24, 2014, and the due date for a written decision was extended to **February 23, 2014**, which is thirty calendar days after close of record with receipt of the parties' written closing arguments.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent Exhibits: P1 through P27, P29 through P31, P34 through P37;

District Exhibits: D1 through D19.

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

Renee Rossman, District principal;
Julia Bare, District assistant principal, Edison Elementary School;
Erin Seely, District general education teacher, Edison Elementary School;
Eileen Fredrickson, District special education teacher, Edison Elementary School;
April Amonson, District speech-language pathologist;
Constance Klie, District school psychologist;
Felipe Mendez, District assistant general counsel;
The Student's maternal grandfather;
Linda Darling, District assistant director of student services;
Marcia Carter, District school counselor;
The Parent;
Ann Uherek, Psy.D., clinical psychologist.

ISSUES

The issues for the due process hearing are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) during the 2012 – 2013 school year by:

- i. Failing to provide the Student with specially designed instruction (SDI) for written language, reading comprehension, math, and social skills;
 - ii. Failing to provide the Student with a 1:1 paraeducator;
 - iii. Directing District staff to collect data (daily reports) on the Student with the intention of using the data to change the Student's educational placement to a more restrictive setting;
 - iv. Providing the Student with inappropriate individualized education programs (IEPs) for the 2012-2013 school year;
 - v. Failing to evaluate the Student in all areas related to a suspected disability during an evaluation of the Student in November 2012;
 - vi. Implementing amendments to the Student's 2012-2013 school year IEPs without obtaining the Parent's consent;
- b. Whether the District violated the IDEA and denied the Student a FAPE by:
- i. Proposing to place the Student in a more restrictive environment (a self-contained classroom) for the 2013-2014 school year without conducting an evaluation before changing placement;
 - ii. Failing to provide educational services to the Student at his home from the start of the 2013-2014 school year through the filing of the Parent's Complaint;
 - iii. Scheduling an IEP meeting for September 18, 2013, without notifying the Parent;
 - iv. Conducting IEP meetings in a manner that did not allow the Parent to participate in the meetings as a member of the IEP team;
- c. And, whether the Parent is entitled to her requested remedies:
- i. Tutoring by a qualified individual to compensate for the denial of FAPE during the 2012-2013 school year;
 - ii. Assignment of a 1:1 paraeducator for the Student;
 - iii. Cultural competency training for District staff and administration;
 - iv. A functional behavioral assessment (FBA) of the Student conducted by an independent evaluator selected by the Parent and paid for by the District, followed by development of a positive behavior intervention plan (PBIP) to be incorporated into the Student's IEP;
 - v. An appropriate educational placement for the Student in his least restrictive environment for the 2013-2014 school year.

See November 14, 2013 Second Prehearing Order.

FINDINGS OF FACT

General Background

1. The Student attended first grade in the Bethel School District during the 2010-2011 school year. The Bethel School District evaluated the Student, and determined he was eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA). The Student qualified under the developmental delay eligibility category. The Bethel School District developed an individualized education program (IEP) for the Student, which placed him in a self-contained classroom with no time in general education. The Student received specially designed instruction in all academic areas, as well as adaptive, behavior, occupational therapy, and speech/language services. Exhibits D1p2, D2p18, P1pp1-3.²
2. The Student was placed in the self-contained classroom because he needed small-group instruction across all subjects, with social skills taught specifically as well as integrated throughout his daily instruction. Exhibit D1p14. The Student's IEP noted that he tried to instigate problems with his peers when he thought the teacher was not looking, had poked other students with pencils, taken things away from peers, and disrupted the learning of others in his self-contained classroom. Exhibit D1p3.
3. The Parent acknowledges she had a bad experience with the Student's self-contained classroom in the Bethel School District. The Parent believes the Student observed and learned to imitate or mimic the inappropriate behaviors of other students in his self-contained classroom. Testimony of Parent.
4. The Student enrolled in second grade at the District's Edison Elementary School for the start of the 2011-2012 school year. During the enrollment process, the Parent met with Renee Rossman, then the principal at Edison Elementary. The Parent told Principal Rossman that she did not want the Student placed in a self-contained classroom, as he had been the prior year in the Bethel School District. The Parent instead requested the Student be placed in a general education classroom, with additional supports provided. Exhibits D2p3, D4p1; Testimony of Rossman and Parent.
5. Based on the Parent's request, Principal Rossman placed the Student in a general education classroom. The Student was pulled out of his general education classroom to receive some special education and related services set out in his IEP³ in one of the District's Learning Resource Center (LRC) classrooms.

² References to the exhibits are as follow: Exhibit D1p2 references District's Exhibit 1 at page 2. Parent's exhibits are similarly identified beginning with "P."

³ The Student's IEP at this time was his IEP from first grade in the Bethel School District.

6. The Student's general education classroom teacher was a Ms. Baxter. The Student's LRC classroom teacher was Eileen Fredrickson. Ms. Fredrickson is a special education teacher for the District, and was the Student's IEP case manager. P29p1; Testimony of Rossman, Parent, and Fredrickson. The Student also received speech-language services from District Speech-Language Pathologist (SLP) April Amonson, and counseling services from a District counselor. Testimony of Amonson and Fredrickson.

7. Over the course of second grade, the Student began to exhibit inappropriate behaviors at school. Ms. Baxter found she had to keep the Student physically close to her in her general education classroom. Classroom interventions during second grade to help the Student manage his behavior and succeed academically included multiple repetitions of directions, a posted schedule of his activities, directions written down, assignments broken into smaller parts, use of manipulatives, role-playing, so-called "friendship" groups, and the opportunity to signal his teacher when he needed to use the bathroom. Testimony of Fredrickson. Ms. Baxter was aware the Student was experiencing social challenges at recess on the playground. Testimony of Rossman.

8. By January 2012, Ms. Baxter had begun to collect data on the Student so she could discuss the Student's behavior with the Parent. Ms. Baxter's data consisted of informal notes about the Student's behavior in class, information provided to her from playground aides, and information from Ms. Fredrickson. Testimony of Rossman.

9. Despite the interventions by District staff, by the end of the school year the Parent was aware that staff had concerns for the Student's ongoing behavior problems at school. Testimony of Parent.

10. Although it is not present in the evidence of record, it appears as though the District developed a new annual IEP for the Student in October 2011.⁴

2012-2013 School Year: Third Grade at Edison Elementary

11. The Student began third grade at Edison Elementary School in September 2012 in a general education classroom, with pull-out time to receive additional services from Ms. Fredrickson. Ms. Fredrickson continued as the Student's special education teacher. The Student's third-grade general education teacher was Erin Seely. Exhibits D2p4, P6p1, P29p1, P30p1.

12. Despite the interventions by staff during second grade, by September 2012 the Parent was aware staff had concerns for both the Student's behavior and the Student's academics. Testimony of Parent.

⁴ A report of the Student's progress towards his annual IEP goals during second grade identifies an IEP dated "10/05/11." Exhibit P36p1. An IEP developed in October 2011 is consistent with the requirement that IEPs are developed on at least an annual basis, and the Bethel School District's IEP dated October 7, 2010. Exhibits D1, P1.

13. Julia Bare was an assistant principal in her first year at Edison Elementary. The Student's behaviors that concerned Ms. Bare included the Student hitting other students, spitting, making disrespectful remarks, difficulty following directions and making friends, and having toileting problems. Ms. Bare contacted the Parent on at least one occasion during second grade regarding the Student's behavior at school. Testimony of Bare.

14. Ms. Seely was concerned that the Student's behaviors were not age-appropriate and interfered with the Student's learning. The Student would spit, punch, kick and hit others, dump his desk out on the floor, use inappropriate language, and shout out. Ms. Seely's behavioral interventions with the Student during second grade included the use of social stories, role-playing, discussions with the Student, behavior charts, and sticker charts. Her academic interventions included reducing the number of spelling words for the Student, getting him 1:1 help with homework, changing topics when the Student became frustrated, and adjusting writing assignments. During the first two months of school, Ms. Seely had a 1:1 paraeducator come in to work with the Student during math, but this was not successful because the Student would dump the contents of his desk on the floor and yell. Testimony of Seely.

15. Ms. Fredrickson was also concerned with the Student's behavior, which included difficulty with transitions, outbursts, falling out of his chair, throwing pencils, incontinence, an inability to focus for more than ten minutes on tasks, frequent crying, and not completing assignments. Testimony of Fredrickson.

16. Ms. Seely and Ms. Fredrickson were in daily contact with the Parent regarding the Student's behavior at school. The Student had a daily assignment or agenda book which he took home each day. Both Ms. Seely and Ms. Fredrickson often wrote down their concerns in the daily assignment book to keep the Parent informed of what was happening at school. Testimony of Seely, Fredrickson. The Parent recalls the Student having a "behavioral book," which came home with the Student from Ms. Seely on a daily basis. Testimony of Parent.

17. SLP Amonson continued to provide SLP services to the Student during third grade. Her concerns for the Student's behavior included the Student constantly requiring redirection and repetition. The Student would distract other students in a small-group setting. Testimony of Amonson.

18. The staff's concerns for the Student's struggles with both his behavior and academics prompted the District to have Marcia Carter, a guidance counselor, begin working with the Student in September 2012. Ms. Carter initially worked with the Student twice a week across multiple settings, which included one-to-one, a lunch group, and in a classroom group. Towards the end of third grade, Ms. Carter increased her time working with the Student to three times per week. Ms. Carter's work with the Student was in addition to the services identified in his IEP. Testimony of Marcia Carter.

19. On September 25, 2012, the Student's IEP team, including the Parent, held a meeting to develop a new IEP for the Student. Exhibit D2pp1, 16. That same day, the team held a meeting to consider the results of a functional behavioral analysis (FBA) of the Student, and to develop a behavioral intervention plan (BIP) for the Student. Exhibits P2p1, D2pp18, 22, P4p1.

20. The Student was referred for an FBA due to reports of both the Student's behavior in second grade, and his ongoing behavioral problems at school since the start of third grade.

Testimony of Rossman, Fredrickson. The Parent provided ideas and input for the FBA. Testimony of Parent.

21. The Student's new IEP was effective October 1, 2012. (D2p1). The IEP noted the Student continued to need daily reminders about classroom, lunchroom and bus expectations for behavior, and that the Student was having difficulty with transitions, focusing on instruction, and off-task behaviors. The Student's primary need was improving his receptive and expressive language skills. The IEP included goals in math, reading, written language, speech-language, fine motor, social-emotional, and adaptive/self-help areas. Exhibit D2pp4-12.

22. The IEP provided the Student specially designed instruction and related services in speech-language, social-emotional, occupational therapy, adaptive/self-help, basic reading skills, math, and written language. Exhibit D2p12. The IEP placed the Student in a general education classroom 59% of the school day. Exhibit D2p12.

23. The Parent did not disagree with the Student's new IEP, FBA, or BIP. After the BIP was in place, the Student continued to have good and bad days in terms of his behavior at school, but the Parent believed there was some improvement in the Student's behavior at school. Testimony of Parent.

24. Ms. Fredrickson, Ms. Seely, SLP Amonson, and an occupational therapist provided the specially designed instruction and related services called for in the Student's new IEP. Testimony of Fredrickson, Seely, Amonson.

25. A Prior Written Notice dated September 25, 2012, noted the team had agreed to continue discussion of the need to reevaluate the Student. Exhibit D2p14.

26. During a meeting on October 1, 2012, the Parent signed consent so the District could initiate a reevaluation of the Student. Exhibit D3p2. The Parent believes the reevaluation should have included audiology, vision, and mobility assessments of the Student. Testimony of Parent. The reevaluation was initiated to determine the Student's current academic needs, service needs, and to address the Student's inappropriate behaviors at school. Testimony of Fredrickson.

27. On October 3, 2012, a Behavior Intervention Team/Behavior Specialist Student Referral Form was completed by Ms. Fredrickson and approved by Assistant Principal Bare. Exhibit P6. The purpose of the referral was to get a District behavior specialist to work with the Student on his inappropriate behavior at school. Testimony of Fredrickson, Bare.

28. On November 26, 2012, a meeting was held to review the Student's reevaluation report. The Parent, School Psychologist Connie Klie, Principal Rossman, Ms. Amonson, Occupational Therapist Elaine Stafford, Ms. Fredrickson, Ms. Carter, and Ms. Seely all attended.⁵ Exhibits D4p5, P10p5.

⁵ Although her signature does not appear on the reevaluation summary report, Ms. Seely did attend the meeting. Ms. Seely had to leave the meeting just as the other team members were signing the report because she had to get her students. Testimony of Seely.

29. The reevaluation noted the Student's behaviors appeared to be impacting his academic performance as well as his interactions with peers and staff, and that staff had been in daily contact with the Parent. While he had responded well to small-group and one-on-one instruction and had made some progress in academic areas, the Student had not progressed in the areas of adaptive, social-emotional, and expressive language as hoped. The reevaluation determined the Student met the eligibility criteria for a specific learning disability (SLD). Exhibits D4pp1-2, P10pp1-2.

30. As part of the reevaluation, the Student had a medical-physical evaluation by a school nurse. The Parent declined to sign a medical release, so the nurse was unable to speak with the Student's physician, and the Parent did not provide any medical documentation. The Student's hearing and vision were screened on October 8, 2012. The Student's hearing in both ears was within normal limits, and his eyesight in each eye was 20/25. Exhibits D4p6, P10p6; Testimony of Parent.

31. The communication assessment conducted as part of the Student's reevaluation concluded that the Student's articulation, receptive, expressive, and pragmatic language skills "are significantly impacting his ability to communicate effectively in the educational setting, and affecting his peer interactions, oral communication skills, and classroom behavior." Exhibits D4p14, P10p14.

32. The reevaluation determined the Student qualified for special education in reading and math due to the Student's SLD, but recommended he also receive special education for written language. Exhibit D4p9. The reevaluation noted the Student's behavior had not improved over time with extra support, and that he would qualify for special education under the emotional-behavioral disability category. But the reevaluation recommended the Student be served under the SLD category due to his severe deficits in adaptive, academic, and speech-language areas. Exhibit D4p11.

33. The Parent was aware that District staff were conducting observations of the Student as part of the reevaluation. The Parent characterized the reevaluation meeting as a "good" meeting, and Ms. Klie explained the results of the reevaluation. Testimony of Parent.

34. On January 10, 2013, the Student hit another student in the face after recess, and appeared to be targeting other students. This followed an altercation during recess on November 5, 2012, when the Student and another student were kicking, punching, and shoving each other. Exhibit P14p3. The Student was suspended for three days for hitting the other student on January 10, 2013.

35. Responding to an email from Principal Rossman the same day, on January 10, 2013, Ms. Klie stated that, "[the Student's] behaviors have escalated in intensity and duration since September although we are attempting to provide interventions and support in a wrap-around fashion." Exhibit P13p1.

36. The District sent the Parent two meeting notices for January 15, 2013, at Edison Elementary School. One notice informed the Parent that a meeting would be held at 2:40 p.m. to discuss the Student's FBA. Exhibits D7p5, P16p1. A second notice informed the Parent that a manifestation determination meeting would be held at 2:30 p.m. Exhibit D6p7.

37. On January 15, 2013, a manifestation determination team (MDT) met to consider whether the behavior that led to the Student's suspension on January 10, 2013, was a manifestation of his disabilities. The Parent and Grandfather were present for the meeting.

38. The Parent and the Grandfather believed that the purpose of the January 15th meeting was to continue a discussion of the Student's November reevaluation, and to talk about his IEP. The Parent told the team that she would not discuss the Student's suspension because she planned to appeal it. Testimony of Parent, Grandfather.

39. The team ultimately determined the Student's behavior that led to his suspension was a manifestation of his disability. Exhibit D6p3.

40. The second meeting to discuss the Student's FBA followed the MDT meeting on January 15, 2013. The Parent did not attend this meeting.⁶

41. Ms. Fredrickson initiated the second meeting to discuss the Student's FBA due to her concerns about the Student's behavior at school since September and the start of second grade. The team intended to consider feedback from Susan McKenzie, the District behavior specialist who had been working with the Student since October, in order to develop new interventions to try with the Student. Testimony of Fredrickson.

42. The team developed a new FBA for the Student on January 15, 2013. The FBA concluded that the function of the Student's inappropriate behavior at school was to gain the attention of classmates, and to communicate his frustration. Exhibits D7, P18p2.

43. The team was aware the Parent was "distressed" with how the MDT meeting was handled, so the team and the Parent agreed to meet again on January 18, 2013. Testimony of Linda Darling.

44. A Prior Written Notice (PWN) was sent to the Parent on January 15, 2013. The PWN, in part, noted the Parent had been provided a draft of the Student's IEP, FBA, and BIP at the MDT meeting in order for her to prepare for an IEP meeting scheduled for January 18, 2013. Exhibit D6p5.

45. The Parent was provided a copy of the draft IEP, FBA, and BIP at the MDT meeting on January 15, 2013. Testimony of Parent.

46. Ms. Darling, the assistant director of student services, had a meeting with the Parent on January 17, 2013, to review the draft IEP. Ms. Darling confirmed with the Parent that she was available the next day for the meeting on January 18th. Ms. Darling informed the Parent and the

⁶ The record is somewhat unclear as to the exact sequence of events on January 15th. Although the Parent and the Grandfather appeared for the MDT meeting, the Parent testified that she did not attend the FBA meeting due to her car breaking down on the way to the meeting. Given that the two meeting notices identified Edison Elementary as the site for both meetings, it is unclear why a vehicle malfunction would have caused the Parent to miss the second meeting about the Student's FBA. In any event, the Parent's absence from the meeting to discuss the Student's FBA was confirmed by the Parent, Ms. Fredrickson, and Ms. Seely. Exhibits D7p5, P16p1; Testimony of Parent, Fredrickson, Seely.

Parent understood that if she did not attend the meeting on January 18th, the team would go forward with the meeting because the team had a deadline by which to finish development of the Student's IEP. Testimony of Darling, Parent; Exhibits D8p17, P24p1.

47. An IEP meeting was held on January 18, 2013. The Parent did not attend the IEP meeting due to car problems. The Parent called the morning of January 18th and informed the District her car had broken down. Ms. Darling offered to pick up the Parent and drive her to the IEP meeting, but the Parent declined Ms. Darling's offer. Testimony of Parent. The IEP meeting was held without the Parent in attendance because the District believed it had to develop an IEP for the Student within 30 days of the Student's reevaluation. Testimony of Fredrickson, Darling.

48. Without the Parent in attendance, the team developed a new IEP for the Student. The new IEP was effective January 25, 2013. The IEP noted the Student's present behaviors interfered with his social and academic progress in his general education classroom and the LRC setting. Exhibit D8p2. The IEP noted the Student required intense support in all areas in general education. The Student's present levels of educational performance (PLOPs) indicated he had delays in math, reading, written language, and social-emotional skills, and required intense support in all areas. Exhibit D8p3. The IEP included multiple goals for math, reading, written language, social-emotional, adaptive, and speech-language deficits. It placed the Student in a general education classroom only 11% of the school week. Exhibit D8p13. The IEP concluded that the Student "will not participate in general ed. setting during math, reading, [or] written language [because of his] increased need for more intensive academic support." Exhibit D8p14.

49. The January 2013 IEP very substantially increased the Student's special education and related services over that provided for in the Student's October 2012 IEP as follows:

IEP	SLP	Soc-Emo	Adaptive	Reading	Math	Writ. Lang.
10/12	50(min/wk)	60	30	225	120	225
01/13	90	300	150	450	300	300

Compare Exhibits D2p12 and D8p13. The January 2013 IEP also included a new BIP. Exhibits D8p2, P29p1.

50. A change in placement for the Student was discussed at the IEP meeting, but the team did not reach any decision. Testimony of Amonson.

51. The Parent agrees with all the academic goals in the Student's January 2013 IEP, but does not agree with the social-emotional goals. The Parent believes that staff allows the Student to "run amok," and that staff should be "stricter" with the Student. The Parent also believes the Student needs more SLP service minutes than provided for in the January 2013 IEP. Testimony of Parent.

52. The District implemented the January 2013 IEP, and the Student began spending almost his entire day with Ms. Fredrickson in her LRC classroom. Testimony of Seely.

53. The Student was making "gradual" progress with his articulation and language. Testimony of Amonson, Fredrickson. The Student's reading fluency improved with the increase in minutes of SDI under this IEP, but his reading comprehension did not seem to improve. The

Student made "limited" progress with his writing. Testimony of Fredrickson. The Parent saw some improvement in the Student's language abilities over the course of the school year, but he was still have difficulty towards the end of the school year.

54. As part of the IEP meeting on January 18, 2013, or on the same day, District staff also developed a new BIP for the Student. Exhibit D8p15. The Parent also did not attend the meeting to develop the Student's new IEP.

55. Beginning with the IEP meetings in January 2013, the Student's IEP team held monthly IEP meetings through the end of the school year in June 2013.⁷ During these meetings, the team answered as many of the Parent's questions as time allowed, and then agreed to meet again. Testimony of Amonson. Monthly meetings had been suggested by Ms. Darling following the January 2013 meetings. The Parent opined that the meetings she attended from January through June 2013 turned into "arguments" between Ms. Darling and the Parent's advocate, Alton McDonald. Testimony of Parent.

56. On February 13, 2013, the District received a request for an independent educational evaluation (IEE) from the Parent. Exhibit D9.

57. Another IEP meeting was held on or about February 13, 2013. The team began reviewing the January IEP with the Parent, but did not have enough time to finish the review. Testimony of Parent, Darling.

58. A PWN dated February 20, 2013, was sent to the Parent, proposing to continue review of the Student's IEP with the Parent and the team. Exhibit D10.

59. Another IEP meeting was held on either February 26 or 27, 2013, to continue review of the Student's January IEP.⁸

60. On February 26, 2013, the District agreed to pay for an IEE of the Student at the Parent's request. Exhibit D11pp1-2.

61. On March 4, 2013, Ms. Darling sent the Parent a certified letter.⁹ Exhibits D12, P19. The letter referenced a meeting the prior Wednesday, at which the Parent brought "third parties" to the meeting. These third parties were Alton McDonald and, apparently, Vanessa Lewis, both

⁷ There is conflicting evidence of record regarding the number of meetings and dates when those meetings were held. Ms. Darling noted the dates of all IEP meetings in a letter to the Parent on July 31, 2013. Exhibit P24p1. The list of meetings identified in Ms. Darling's letter, however, does not include a second meeting in February, any meeting in March, and two meetings in April for which there is no evidence of record other than Ms. Darling's letter to the Parent on July 31st.

⁸ The Parent testified a meeting was held on February 26, 2013. While there is no meeting invitation or notice of meeting for February 26, 2013, in the record, the Parent's testimony is generally corroborated by a letter from Ms. Darling to the Parent dated March 4, 2013, [Exhibits D12, P19p1] which references a past meeting on Wednesday, which would have been February 27, 2013.

⁹ It also appears that Ms. Darling sent the same information in the certified letter in an email to the Parent.

advocates for the Parent. Ms. Darling's letter informed the Parent that the District would require her to sign "releases" in order for her advocates to attend future meetings with the Parent.

62. Ms. Darling's reference to releases in her letter to the Parent was a reference to the District's CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION form. Exhibit P35. Ms. Darling had been advised by the District's office of general counsel to have parents sign these releases beginning in January or February 2013. Testimony of Darling.

63. The purpose of having parents sign such releases is to avoid unauthorized disclosure of confidential educational records or information during evaluation and/or IEP meetings in violation of the Family Records Education and Privacy Act (FERPA). Testimony of Felipe Mendez.

64. Another IEP meeting was held on May 29, 2013. The purpose of the meeting was to discuss annual goal completion, review the Student's current IEP, review his instructional needs, and to "[c]hange delivery of Speech Services (place)." Exhibits P20p1. The Parent believed the meeting was to discuss placing the Student at Arlington Elementary School for the 2013-2014 school year. Testimony of Parent.

65. A Measurable Annual Goals – Student Progress report covering the period March through June 2013, noted the Student was demonstrating either emerging skills, which were defined as progress that might not achieve his annual goal within the duration of his IEP, or was demonstrating sufficient progress, which was defined as progress that would allow the Student to achieve his annual goal within the duration of his IEP. The majority of the Student's IEP goals noted he was demonstrating only an emerging skill. Exhibit D13pp1-8.

66. A different Student Progress Report covering all of third grade noted that the Student's behavior was a concern in all areas. The Student was also performing significantly below end-of-year standards in reading and writing. The Student was approaching end-of-year standards in science and music. The Student was either performing significantly below end-of-year standards or approaching end-of-year standards in math. Exhibit D14.

67. Another IEP meeting was held on June 12, 2013. Exhibits D15p4, P21p1. The team decided to amend the Student's IEP. The team decided to place the Student in an Adjustment classroom at Arlington Elementary School for the 2013-2014 school year in order to meet his academic, social-emotional, and language needs.¹⁰ Exhibits D15pp2, 6, P22p12. Apart from placing the Student in an Adjustment classroom at Arlington, rather than an LRC classroom at Edison (Ms. Fredrickson's LRC classroom at Edison), the IEP amendment did not change the Student's IEP goals and objectives, or his special education and related services. Compare Exhibits D8, D15, and P22.

¹⁰ The District acknowledged that Adjustment classrooms in the District are classrooms where students receive all their academic instruction and special education and related services in one classroom. Some students may leave the Adjustment classroom for activities such as music, gym, or lunch. These Adjustment classrooms are more typically identified as self-contained special education classrooms.

68. The Parent attended the IEP meeting but did not sign the IEP Amendment. Exhibit D15p1.

69. Ms. Seely attended the IEP meeting and agreed with the team's decision to place the Student in an Adjustment classroom at Arlington. Ms. Seely believed the Student would have more support in a classroom with fewer students, and believed the Student would benefit both socially and academically. Testimony of Seely.

70. Ms. Fredrickson attended the IEP meeting and agreed with the team's decision to place the Student in an Adjustment classroom at Arlington. The team considered the Student's lack of academic progress and ongoing behavior problems as the basis for placing him in an Adjustment classroom. Ms. Fredrickson believes an Adjustment classroom is appropriate because her LRC classroom has a greater age-range of students (kindergarten through fifth grade), and students typically come and go throughout the school day to receive instruction. Having fewer younger students in the Student's Adjustment classroom would help the Student because he liked to "show off" for the younger students in her LRC classroom. And an Adjustment classroom would have the same students all day long. This would help the Student by decreasing the number of transitions or distractions each day. Finally, the Student's behaviors in her LRC classroom were negatively affecting the other student learning in her classroom. Testimony of Fredrickson.

71. On June 12, 2013, the Parent was sent three PWNs. Exhibits D15p6, P21p3, P22p12. While somewhat confusing due to their multiplicity, the PWNs informed the Parent that the Student would be placed at Arlington Elementary School in an Adjustment classroom for the 2013-2014 school year.

72. Aware the Parent had concerns with the team's placement of the Student in an Adjustment classroom, Assistant Principal Bare made an appointment for the Parent to visit an Adjustment classroom at Arlington. Testimony of Bare. Ms. Darling also attempted to schedule a meeting with the Parent on June 14, 2013, to set an appointment for the Parent to go to Arlington Elementary. Testimony of Darling.

73. Sometime after the school year ended, the Parent requested that the District provide the Student with educational services at the Parent's home. Testimony of Darling.

74. In a letter to Jennifer Traufler, the District's director of special education services, the Parent stated she did not agree with placing the Student in an Adjustment classroom at Arlington Elementary. Exhibit P23.¹¹

75. On July 31, 2013, Ms. Darling responded on behalf of the District to the Parent's letter. In her letter to the Parent, Ms. Darling identified the dates of all IEP meetings held during the 2013-2014 school year, and summarized the reasons why the team determined placement at Arlington in an Adjustment classroom was appropriate. Exhibit P24.

¹¹ The Parent's letter is dated July 25, 2013, but is stamped received, presumably by the District, on July 24, 2013.

76. The Parent responded to Ms. Darling's letter with a letter dated August 14, 2013. In her letter, the Parent stated she had "new medical information" that supported the Parent's position that the Student had not received the appropriate special education and related services since attending Edison Elementary. The Parent requested a meeting be scheduled prior to the start of the new school year. Exhibit P25.

77. The new medical information the Parent referenced in her letter was either the fact that the Student had been prescribed a new medication over the summer, or it was the first draft of the IEE by Dr. Uherek the Parent received in July 2013. Testimony of Parent.

78. The Parent did not provide the District with the "new medical information" referenced in her letter. Testimony of Darling.

79. Ms. Darling responded to the Parent's letter on August 15, 2013. In her letter, Ms. Darling informed the Parent that she could request a due process hearing if she disagreed with the team's decision to place the Student at Arlington in an Adjustment classroom. Ms. Darling went on to inform the Parent that the team could schedule a meeting at Arlington to discuss the Parent's request for a reevaluation of the Student, and the District proposed to schedule a meeting for the week of September 23 or September 30, 2013, so staff at Arlington would have an opportunity to work with the Student before the IEP meeting. Exhibit D16.

80. The Parent has no reason to believe the District did not provide the specially designed instruction called for in the Student's IEPs during the 2012-2013 school year. Testimony of Parent.

2013-2014 School Year: Fourth Grade

81. The Parent did not allow the Student to begin attending fourth grade at Arlington Elementary School with the start of the 2013-2014 school year in September 2013. As of the last day of the due process hearing in this matter, the Parent had not allowed the Student to attend school in the District during the 2013-2014 school year. As of the last day of the due process hearing in this matter, the Student had received no educational services during the 2013-2014 school year. Based entirely upon her "bad experience" when the Bethel School District placed the Student in a self-contained classroom for first grade, the Parent believes placing the Student in an Adjustment classroom at Arlington would do more harm than good. Testimony of Parent.

82. Although Ms. Darling continued trying to schedule a meeting with the Parent to go to Arlington Elementary School to observe the Adjustment classroom, the Parent has never observed the classroom. Testimony of Darling, Parent.

83. The Parent finally attended a meeting at Arlington Elementary School on September 18, 2013.¹² The Parent was provided advance notice of multiple possible dates for the meeting, and she selected September 18th for the meeting. The Parent was accompanied to the meeting

¹² Although the Parent finally attended a meeting at Arlington Elementary School, she did not observe the Adjustment classroom.

by her advocates, Alton McDonald and Vanessa Lewis. Exhibits D17p3, P27p1; Testimony of Parent. At the meeting, the District declined to provide home-based educational services for the Student.

84. On October 2, 2013, the Parent, for the first time, provided a copy of the Student's IEE by Dr. Ann Uherek to the District. Exhibits D18, P28. This was the IEE the District had agreed to fund in February 2013. Exhibit D11. The Parent received the first draft of the IEE in July 2013. Testimony of Parent. Dr. Uherek provided her final evaluation report to the Parent in late August 2013. Testimony of Uherek.

85. Dr. Anne Uherek is a clinical psychologist and holds a Psy.D. degree. Dr. Uherek evaluated the Student over five days from June to August 2013. The purpose of the evaluation was to determine the Student's "current cognitive functioning and to make recommendations for school placement and programming." Exhibit D18p1. Dr. Uherek remarked that a recent medical evaluation determined the Student had a 20% hearing loss in both ears, but her evaluation report does not contain any documentation to support this claim, and does not identify when, where, or who conducted the medical evaluation.

86. Dr. Uherek observed the Student's speech was intelligible and generally within normal range for rate, volume, prosody, and tone. His writing was often illegible. After conducting multiple assessments of the Student, Dr. Uherek determined he fell in the low average range of intelligence, that his receptive language was also in the low average range, and that he exhibited evidence of Dysgraphia. Exhibit D18p4. Although the Student has low average intelligence, Dr. Uherek determined he has specific areas of deficit that will interfere with his being successful in a school environment. Dr. Uherek concluded there was evidence of a language-based learning disability. The Student's auditory attention was also very poor, and he had slow processing speed. The Student demonstrated good visual attention and memory, but there was evidence of problems with his orthographic memory. Dr. Uherek opined the results of her evaluation should be considered evidence the Student has Dyslexia. There was not sufficient evidence to believe the Student has ADHD. Exhibit D18p7.

87. Dr. Uherek concluded that the Student's "recent behavior problems at school are a reflection of his poor verbal communication skills and ability to manage stress." Exhibit D18p8.

88. Dr. Uherek concluded the Student should be qualified for special education services in oral and written language expression, that he needs specially designed instruction for reading and accommodations for Dyslexia, and will need a quiet environment due to his poor attention and auditory processing problems. She recommended that teachers use a system of tracking assignments that encourages more independence from the Student. Exhibit D18p8. Dr. Uherek opined that the Student needed intensive speech-language therapy, with a minimum of two hours per week. She recommended an assistive technology evaluation and that occupational therapy services be provided to address the Student's poor fine motor skills in handwriting. Exhibit D18p9.

89. Dr. Uherek stated that the Student, "will need to have access to good peer role models for behavior and social skill development in group learning situations. He should not be placed in a class with other children who have challenging or disruptive behavior problems because he is likely to mimic this behavior, particularly if it leads to attention or escape from work." Exhibit D18p10.

90. Dr. Uherek did not speak with any District staff as part of her IEE, and did not have access to all of the Student's District records. All the documents she reviewed were provided to her by the Parent. Testimony of Uherek.

91. Dr. Uherek opined that the District's November 2012 reevaluation of the Student and her own IEE reached similar results, and that the District's data was "consistent" with her own data. Testimony of Uherek.

92. Dr. Uherek cannot determine if the District's January 2013 IEP or June 2013 IEP Amendment are appropriate for the Student because she has not observed him in those placements. Testimony of Uherek.

93. The Student needs peers with average intelligence, and good language skills. The Student needs a small, quiet classroom for instruction. Testimony of Uherek.

The Proposed Placement at Arlington Elementary School

94. The District's proposed placement of the Student at Arlington Elementary School is in the Adjustment classroom taught by Shirley Remien. Ms. Remien has 22 years of experience as a special education teacher at Arlington Elementary. Exhibit P31p1.

95. As of November 2013, Ms. Remien had eleven students in her Adjustment classroom, ranging in age from third to fifth grade, along with an adult paraeducator. All the students are served through IEPs. The primary focus of her classroom is individualized and small-group instruction for students who are generally two or more grade levels behind their same-age peers in academic content areas. Although some of her students exhibit challenging behaviors, her class is focused primarily on academic interventions. Exhibit P31p2.

96. Although her classroom is designated a self-contained Adjustment program, her students are integrated throughout the school day with typically-developing peers during music, physical education, library time, lunch, and recess. Exhibit P31p2.

97. Ms. Remien has reviewed the Student's January 2013 IEP and his June 2013 IEP Amendment. Based upon her review, it is Ms. Remien's opinion that she is able to implement the Student's IEP as written in her Adjustment classroom. Exhibit P31p3.

Student's Need for a 1:1 Paraeducator

98. The Parent believes the Student requires the assignment of a 1:1 paraeducator in order to receive an appropriate education. Testimony of Parent.

99. During the first two months of third grade, Ms. Seely had a 1:1 paraeducator come into her general education classroom to work with the Student, but it was not successful because the Student would yell and dump the contents of his desk on the floor. Testimony of Seely. Ms. Fredrickson worked with the Student one-on-one with some success, but the Student did not work well one-on-one with Ms. Fredrickson's paraeducator or student teacher. Ms. Fredrickson believes that a 1:1 paraeducator is not appropriate for the Student because the Student wants to appear like the other students in his classroom, and she believes that a 1:1 paraeducator is

not likely to have any more success working with the Student than her paraeducator or student teacher. Testimony of Fredrickson.

100. Dr. Uherek's IEE report did not recommend a 1:1 paraeducator be assigned to the Student. Exhibits D18, P34. In fact, Dr. Uherek's IEE report states that the Student's teachers "should use a system of tracking assignments that encourages more independence." Exhibit D18p8. Dr. Uherek's understanding of a 1:1 paraeducator is an adult who provides instruction for a student, and then checks back with the student to make sure the student has understood the instruction. Based on this understanding, Dr. Uherek opined at the hearing that the Student needs a 1:1 paraeducator and a quiet learning environment. Testimony of Uherek.

Collection of Data to Place the Student in a More Restrictive Setting

101. During discovery for this due process hearing, the Parent obtained copies of emails which led her to believe that District staff were collecting data on the Student with the intention of using that data to move the Student to a more restrictive educational placement. Testimony of Parent.

102. The only emails from District staff that appear in the record are those at Exhibit P13. In one of those emails, Principal Rossman states to other staff that:

[I'm] very worried about [the Student] and his escalation recently with behavior issues both in the classroom and at recess. He's becoming a serious target for students as he continues to "pick on" other[s] continuously. Today, [the Student] hit another student in the face after recess [redaction in original]. I've talked with 3 students who saw [the Student] target [redaction in original] and won't leave him alone. [Redaction in original] reported that he tells [the Student] to "stop" and to leave him alone. [The Student] follows [redaction in original] on the playground and lines up where [redaction in original] does, according to the witnesses. [The Student] has made enemies with [redaction in original] and many others in the class as he's so limited in his communication skills and easily angered when students ignore him or tell him to leave them alone. We need to move quickly with [the Parent] to get [the Student] placed in another program.

Exhibit P13p1.

103. Ms. Baxter started collecting "data" on the Student in second grade as he began to experience social challenges with other students on the playground during recess. Ms. Baxter's data consisted of informal notes about the Student's behavior in class, information provided to her from playground aides, and information from Ms. Fredrickson. The purpose of collecting this "data" was so Ms. Baxter could discuss the Student's behavior with the Parent. Testimony of Rossman.

104. The Parent was aware that staff were conducting observations of the Student as part of the November 2012 reevaluation. Testimony of Parent.

CONCLUSIONS OF LAW

The IDEA

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

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

[A] "free appropriate public education" [FAPE] consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act.

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

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

J.L. v. Mercer Island School Dist., 575 F.3d 1025, 1038, n. 10, (9th Cir. 2009).

5. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. Therefore, the Parent bears the burden of proof with respect to all the issues raised in her Due Process Hearing Request. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

Procedural Compliance with the IDEA

6. Procedural safeguards are essential under the IDEA:

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

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

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

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

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

Substantive Compliance with the IDEA

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

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

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

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

Did the District deny the Student FAPE during the 2012-2013 school year by failing to provide the Student with specially designed instruction (SDI) in written language, reading comprehension, math, and social skills?

9. This issue may be interpreted in two ways. First, did the Student's IEPs for the 2012-2013 school year call for the Student to receive SDI in these areas. Second, if the Student's IEP called for him to receive SDI in these areas, was that SDI provided to the Student? The answer to both these questions must be yes. The Student's October 2012 IEP, January 2013 IEP, and June 2013 IEP Amendment all call for the Student to receive SDI in all these areas. With respect to whether the SDI called for in the Student's IEPs was actually provided, the District witnesses all credibly testified they provided their respective services to the Student during third grade. This included Ms. Seely, Ms. Fredrickson, and Ms. Amonson. And during the Parent's testimony, she confirmed she has no reason to believe the District did not provide the SDI in the Student's IEPs. It is concluded that the District provided the specially designed instruction required under the Student's IEPs in written language, reading comprehension, math, and social skills, and did not deny the Student a FAPE.

Did the District deny the Student FAPE during the 2012-2013 school year by failing to provide the Student with a 1:1 paraeducator?

10. The only evidence to support a conclusion that the Student required assignment of a 1:1 paraeducator to receive FAPE is Dr. Uherek's opinion that the Student needs a 1:1 paraeducator. Dr. Uherek's understanding of a 1:1 paraeducator is an adult who provides instruction for a student, and then checks back with the student to make sure the student has understood the instruction. Testimony of Uherek. But Dr. Uherek's IEE report does not recommend the assignment of a 1:1 paraeducator. There is no mention of assigning a 1:1 paraeducator or adult in the report's recommendations for the Student's school placement or programming. To the contrary, there are multiple references to working with the Student to increase his independence at school. Dr. Uherek's opinion the Student needs a 1:1 paraeducator is further compromised by her lack of opportunity to observe the Student in his educational placement or classroom, her opportunity to review of only some District records for the Student provided to her by the Parent, and an absence of any contact with District staff to further inform her evaluation.

11. In contrast with Dr. Uherek's opinion are the experiences of District staff who worked with the Student providing direct instruction, and generally supervising the Student during his school day during third grade. The Student was not successful working with a paraeducator in Ms. Seely's general education classroom. While Ms. Fredrickson had some success working with the Student one-on-one, this success did not continue when the Student worked with either a paraeducator or a student teacher in Ms. Fredrickson's LRC classroom. Ms. Fredrickson opined an assigned 1:1 paraeducator for the Student would not be appropriate, and would likely not have any more success working with the Student than her paraeducator or student teacher because the Student wishes to appear just like any of his peers in the classroom.

12. After careful consideration of all the evidence, it is concluded more weight should be given to the opinions of District staff who have worked directly with the Student rather than Dr. Uherek's opinion. It is concluded that the Parent has failed to establish the Student required the assignment of a 1:1 paraeducator during the 2012-2013 school year in order to receive FAPE.

Did the District deny the Student FAPE during the 2012-2013 school year by directing staff to collect data (daily reports) on the Student with the intention of using the data to change the Student's educational placement to a more restrictive setting?

13. The evidence of record about this issue is exceedingly sparse. The Parent confirmed that her belief the District was collecting data with the intent to move the Student to a more restrictive educational placement is based upon her interpretation of emails which she received from the District during discovery for the due process hearing. The only emails of record are those that appear in Exhibit P13. Of those few emails, only Principal Rossman's email references placing the Student in another program when his behaviors escalated to include targeting and hitting another student at school. The evidence of any connection between staff collecting data *with the intention of placing the Student in a more restrictive setting* and the reference in Principal Rossman's email is so tenuous and ephemeral it cannot be concluded that the Parent has in fact established any such intent. It is concluded that the Parent has not established the District was collecting data with the intent to move the Student to a more restrictive setting.

Did the District deny the Student FAPE during the 2012-2013 school year by providing the Student with inappropriate individualized education programs (IEPs)?

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

15. The Parent has not clearly articulated, either in her testimony or her written closing argument, why she believes the Student's IEPs during third grade were not appropriate. Apart from the Parent's assertions that the Student required a 1:1 paraeducator, that the District failed to provide SDI in certain areas, and that the District conducted IEP meetings in a manner that did not allow her to participate, it is simply not clear in what other manner the Parent believes the IEPs were not appropriate. The issues of a 1:1 paraeducator and provision of SDI have already been considered above. The issue of how the District conducted IEP meetings will be considered separately, below. Given what was known to the IEP team when the Student's IEPs were created or amended during the 2012-2013 school year, it is concluded the Parent has failed to establish that any of the IEPs were procedurally or substantively inappropriate, or denied the Student FAPE.

Did the District deny the Student FAPE during the 2012-2013 school year by failing to reevaluate the Student in all areas related to a suspected disability?

16. A student must be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. WAC 392-172A-03020(3)(e); 34 CFR § 300.304(c)(4). The Parent asserts the District's November 2012 reevaluation of the Student should have included assessments of the Student's hearing, vision, and mobility. The reevaluation included a hearing test or screening by a school nurse. The screening determined the Student's hearing in both ears was within normal limits. The Parent, apparently, argues the District should have conducted further testing or assessment because it was aware the Student

had tubes in his ears. However, the Parent never provided any consent for the District to speak with the Student's medical providers, and never provided the District with any outside assessment or evaluation of the Student's hearing. Given the fact that the school nurse's screening showed the Student's hearing was within normal limits and the lack of any additional information provided by the Parent, it is concluded that the District had no reason to suspect the Student had any disability involving his hearing. The school nurse also performed a vision screening, and determined the Student's vision in both eyes was 20/25. The Parent has not identified any evidence that should have led the District to suspect the Student had any disability involving his vision. Finally, there is no evidence to conclude the District had any reason to suspect the Student had any disability involving his mobility. It is concluded that the Parent has not proven the District's November 2012 reevaluation of the Student was inappropriate, and therefore has not proven the District's reevaluation denied the Student FAPE.

Did the District deny the Student FAPE during the 2012-2013 school year by implementing amendments to the Student's IEPs without obtaining the Parent's consent?

17. The District correctly identifies in its closing written argument that parental consent is not required prior to implementing amendments to an IEP. Parental consent is only required for the initial provision of special education and related services. WAC 392-172A-03000(2)(a); 34 CFR §300.300(b)(1). If a parent disagrees with the amendment of a student's IEP and implementation of the amendment, the parent may request a due process hearing to contest the appropriateness of the amendment, or the implementation of the amendment. The District did not violate the IDEA or deny the Student FAPE by implementing amendments to the Student's IEPs without the Parent's consent during third grade.

Did the District deny the Student FAPE by proposing to place the Student in a more restrictive environment, a self-contained Adjustment classroom at Arlington Elementary School, for the 2013-2014 school year without conducting an evaluation before changing placement?

18. The District conducted an appropriate reevaluation of the Student in November 2012. This reevaluation was the basis for development of the Student's IEP in January 2013. The District amended the Student's January 2013 IEP in June 2013. The June Amendment moved the Student from Ms. Fredrickson's LRE classroom to Ms. Remien's Adjustment classroom at Arlington Elementary for the 2013-2014 school year. This was the only amendment or change made to the Student's January 2013 IEP. The Student's annual goals and objectives, type and amount of special education and related services, and time with typically-developing general education peers remained unchanged from the January 2013 IEP.

19. This issue *presumes* that the Adjustment classroom at Arlington Elementary School is more restrictive than the LRC classroom at Edison, and that moving the Student to Arlington would constitute a change in the Student's educational placement. That is not the case. The issue of whether Ms. Remien's Adjustment classroom is more restrictive than Ms. Fredrickson's LRC classroom, and therefore a change in educational placement for the Student, has already been considered in this case. The District filed a prehearing motion regarding the Student's stay-put placement pending the due process hearing and this Final Order. After briefing by the parties, an Order on Stay-Put was entered in this case. The order concluded that:

[T]he District's proposal to relocate the Student to an Adjustment classroom at Arlington Elementary School does not constitute a significant change in the Student's educational

program, and is therefore not a change in the Student's educational placement. Because it is not a change in the Student's educational placement, the proposed relocation of the Student to Arlington does not violate the stay-put requirements of the IDEA.

See Order on Stay-Put, Cause No. 2013-SE-0093X, November 27, 2013, p. 3.

20. As the Adjustment classroom does not constitute a change in the Student's educational placement, it cannot be a more restrictive environment than the LRC classroom. It is concluded that the District was not required to conduct an evaluation of the Student before moving him to Ms. Remien's Adjustment classroom at Arlington Elementary School. The District has not denied the Student FAPE.

Did the District deny the Student FAPE by failing to provide educational services to the Student at his home from the start of the 2013-2014 school year through the filing of the Parent's Complaint?

21. It was clearly the Parent's unilateral decision not to permit the Student to begin the school year at Arlington Elementary in Ms. Remien's Adjustment classroom. The Parent asserts that the *No Child Left Behind Act of 2001* (Public Law PL 107-110) required the District to provide educational services to the Student in his home effective with the start of the 2013-2014 school year. The Parent's reliance upon this law is misplaced. In order for the Parent to prevail on this claim, the evidence would have to establish that the District's proposed placement in Ms. Remien's Adjustment class was not appropriate, and that home-based educational services were appropriate for the Student. In order to reach resolution of this issue, however, it is not necessary to consider whether the District's proposed placement at Arlington was appropriate. There is simply insufficient evidence of record to conclude that only home-based educational services would be appropriate for the Student, or would be the least restrictive environment where the Student could obtain an educational benefit. It is concluded that the District did not violate the IDEA, and thereby did not deny the Student FAPE, by declining to provide educational services to the Student at his home.

Did the District deny the Student FAPE by scheduling an IEP meeting for September 18, 2013, without notifying the Parent?

22. The evidence clearly establishes the Parent was notified of the IEP meeting scheduled for September 18, 2013. It was, in fact, the Parent who selected September 18th as the date for the meeting at Arlington Elementary School from the three possible dates proposed by the District. It is concluded that the District notified the Parent in advance of the IEP meeting on September 18, 2013, and did not deny the Student FAPE.

Did the District deny the Student FAPE by conducting IEP meetings in a manner that did not allow the Parent to participate in the meetings as a member of the IEP team?

23. It is not entirely clear from the record in what manner the Parent believes IEP meetings were held that denied her the opportunity to participate as a member of the Student's IEP team. On one occasion, January 18, 2013, the IEP team held an IEP meeting without the Parent in attendance. The Parent was also concerned with the District's requirement that she sign releases so her advocates could accompany her to IEP meetings. And it is clear from the record that beginning in January or February 2013, the frequent IEP meetings were contentious,

argumentative, and likely unpleasant for all team members, including the Parent.

24. School districts are required to ensure that one or both parents are present at IEP meetings "or are afforded the opportunity to participate." WAC 392-172A-03100; 34 CFR §300.322. Districts must notify parents of a meeting early enough to ensure they will have an opportunity to attend, and schedule a meeting at a mutually agreed time. WAC 392-172A-03100(1),(2). The regulation goes on to state:

A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case the public agency must keep a record of its attempts to arrange a mutually agreed on time and place; such as:

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

WAC 392-172A-03100(6).

25. A school district that holds an IEP meeting without a parent or parents present may violate the IDEA. The violation would be a procedural violation of the IDEA. In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child, or caused a deprivation of educational benefit. WAC 392-172A-05105; 34 CFR § 300.513(a)(2).

26. Under the facts in this case, it must be concluded that the Parent has failed to prove the District violated the IDEA, or that she is entitled to any remedy because the District held the IEP meeting without her on January 18, 2013. There is no evidence to support finding the Student was in any manner denied FAPE or deprived of an educational benefit as a result of the District holding the IEP meeting without the Parent in attendance. It is also concluded that the Parent was not *significantly* impeded in her opportunity to participate in the decision-making process regarding provision of FAPE to the Student. The District scheduled and held multiple, if not monthly, IEP meetings between January and June 2013, all of which the Parent attended except January 18th. The evidence is clear that the Parent, either by her own efforts or the efforts of her advocates who accompanied her to many if not all of these meetings, was able to meaningfully participate in these IEP meetings and provide her input. The fact that other members of the IEP team did not agree with the Parent's input or positions does not establish the Parent was denied the opportunity to meaningfully participate in the decision-making process.

27. It is also concluded that the District did not violate the IDEA or deny the Student FAPE by requiring the Parent to sign releases so that District members of the IEP team could openly discuss otherwise confidential educational information at meetings involving the Parent's advocates. This was a simple requirement that did not significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the

Student.


28. Finally, with respect to the contentious, argumentative, and likely unpleasant IEP meetings during January and into June 2013, it is concluded the evidence does not support the Parent was unable to meaningfully participate in the decision-making process during these meetings. It appears that the Parent's advocate or advocates played a very significant role on the Parent's part during these meetings. The Parent herself characterized these IEP meetings as more like arguments between her advocates and District staff, particularly Ms. Darling. But the evidence does not support a conclusion that the contentious nature of these meetings denied the Parent an opportunity to provide input or participate in the decision making process.

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

ORDER

The Tacoma School District has not violated the Individuals with Disabilities Education Act or denied the Student a free appropriate public education. The Parent's requested remedies are DENIED.

Signed at Seattle, Washington on February 22, 2014.



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 the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

CERTIFICATE OF SERVICE

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

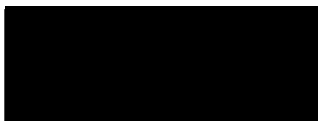
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cc: Administrative Resource Services, OSPI
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