

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

MAILED

FEB 07 2014

IN THE MATTER OF:

TACOMA SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NOS. 2013-SE-0115X
2013-SE-0116X

SEATTLE - OAH

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 January 22 and 23, 2014. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Parent was accompanied and advised by Alton McDonald. The Tacoma School District (District) was represented by Carlos Chavez, attorney at law. Also present for the District was Rob Vander Stoep, assistant director of student services. The following is hereby entered:

STATEMENT OF THE CASE

The Parent filed a due process hearing request (Complaint #1) on December 16, 2013, which was assigned Cause No. 2013-SE-0115X. A Scheduling Notice-Expedited was entered on December 17, 2013, which set a prehearing conference for December 24, 2013. The Parent failed to appear for the prehearing conference on December 24, 2013. The District appeared and moved to dismiss Complaint #1 based on the Parent's failure to appear. The motion was denied. A Notice of Prehearing Conference was entered on December 24, 2013, setting a new prehearing conference for January 2, 2014.

The District filed a due process hearing request (Complaint #2) on December 20, 2013, which was assigned Cause No. 2013-SE-0116X. A Scheduling Notice-Expedited was entered on December 23, 2013, which set a prehearing conference for January 2, 2014.

The Parent failed to appear for the prehearing conferences on January 2, 2014. The District moved to continue the prehearing conferences. The motion was granted. A Notice of Prehearing Conference for Complaints #1 and #2 was entered on January 2, 2014, setting a prehearing conference in both matters for January 9, 2014.

On January 9, 2014, the Parent appeared for the prehearing conference and represented herself. The Parent was accompanied and advised by Alton McDonald. The District was represented by Carlos Chavez, attorney at law. On January 10, 2014, a First Prehearing Order (PHO) was entered under both cause numbers. The PHO consolidated Complaints #1 and #2

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," and "Student."

for due process hearing, set forth a statement of the issues, and set the due process hearing for January 22-23, 2014.

DUE DATE FOR WRITTEN DECISION

Under the regulations which govern a complaint that involves the discipline of a student eligible for special education, the due process hearing must be expedited and must occur within twenty school days of the date the complaint is filed. The ALJ must then enter a final decision and order within ten school days after the hearing. WAC 392-172A-05160(3)(a). Ten school days after January 23, 2014, the last day of the due process hearing, is February 7, 2014.² Therefore, the due date for the written decision in these two consolidated expedited matters is **February 7, 2014.**

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent Exhibits: P1 through P15.

District Exhibits: D1 through D38.

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

Rosetta Harrilal, District school psychologist;
Jeff Fredrick, District dean of students, Stanley Elementary School;
Robin Frasier, District special education teacher, Edison Elementary School;
Julia Bare, District assistant principal, Edison Elementary School;
Allison Shepard, District principal, Edison Elementary School;
Marcia Carter, District counselor, Edison Elementary School;
Erin Seeley, District general education teacher, Edison Elementary School;
Dave Beling, program supervisor, Northwest School of Innovate Learning (SOIL);
Connie Klie, District school psychologist;
Cindy Johnson, District principal, Stanley Elementary School;
Rob Vander Stoep, District assistant director of student services;
Parent.

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² January 27, 2014, is a non-school day. Exhibit D38p2. Therefore, ten school days from January 23, 2014, is February 7, 2014.

ISSUES

The issues for the consolidated due process hearing under the Parent's Complaint #1 are:

- a. Whether the District denied the Student a free appropriate public education (FAPE) during the period September 2012³ through December 16, 2013,⁴ by:
 - i. Failing to provide the Student with specially designed instruction (SDI) in written language, reading, reading comprehension, math, and social skills;
 - ii. Failing to provide the Student an assigned 1:1 aide or paraeducator;
 - iii. Failing to provide appropriate staff and staff training to prevent the Student from leaving the school building during the 2012-2013 school year;
 - iv. Failing to conduct an individualized education program (IEP) team meeting to consider the results of a March 2012 independent educational evaluation (IEE) of the Student;
 - v. Failing to amend the Student's IEP or develop a new IEP for the Student prior to the end of the 2012-2013 school year;
 - vi. Failing to reimburse the Parent for transporting the Student to and from school;
 - vii. Calling the Parent on a daily basis during the 2013-2014 school year to take the Student home because of the school staff's inability to address the Student's behavior in school;
 - viii. Failing to provide the Parent with incident reports;
 - ix. Emergency expelling the Student three times during the 2013-2014 school year for a total period exceeding ten (10) school days;
 - x. Failing to conduct a manifestation determination to determine if the conduct for which the Student was emergency expelled was a manifestation of the Student's disability;
 - xi. Failing to conduct a functional behavioral analysis (FBA) and failing to develop a positive behavior intervention or improvement plan (PBIP);
 - xii. Using excessive physical force and failing to provide staff with appropriate training to use physical force with the Student;

³ September 2012 was used in the First Prehearing Order to identify the commencement of the 2012-2013 school year. The school year actually began on September 5, 2012. Exhibit D38p1.

⁴ December 16, 2013, is the date the Parent filed her Complaint.

- xiii. Failing to hold an IEP meeting to develop an IEP for the Student during the 2013-2014 school year;
 - xiv. Calling "911" on October 31, 2013, and November 18, 2013, which resulted in the Student being removed from school and taken to Seattle Children's Hospital;
 - xv. Failing to provide the Student with general education and special education (SDI and related aids and services) to meet the Student's individual educational needs;
- b. And, whether the Parent is entitled to her requested remedies:
- i. Tutoring by a qualified individual to compensate for the Student's lack of access to an appropriate education during the 2012-2013 and 2013-2014 school years;
 - ii. Provision of a 1:1 aide or paraeducator for the Student;
 - iii. Cultural and competency training for District administration and staff so the Student is not inappropriately placed in a more restrictive environment or denied access to age-appropriate general education peers;
 - iv. Development of an appropriate IEP for the Student;
 - v. Inclusion of a PBIP in the Student's IEP based on an FBA conducted by an independent educational evaluator;
 - vi. An appropriate educational placement for the Student;
 - vii. Or other equitable remedies, as appropriate.
- c. The issue for the consolidated due process hearing under the District's Complaint #2 is whether maintaining the Student in his current educational placement at Edison Elementary School is substantially likely to result in injury to the Student or others, and if so, whether the District is entitled to an order allowing the District to place the Student in an appropriate interim alternative educational setting (IAES) for not more than forty-five school days so the District can complete a reevaluation of the Student and development of a new IEP for the Student.⁵

See, January 10, 2014, First Prehearing Order.

⁵ See First Prehearing Order entered January 10, 2014.

FINDINGS OF FACT

Student Enrolls at Manitou Elementary School for Kindergarten: 2011-2012

1. The Student enrolled in kindergarten at the District's Manitou Elementary School on October 13, 2011. Exhibit D2p3.⁶
2. On November 14, 2011, the District received a letter from a Dr. Tan at Lakewood Pediatrics. Dr. Tan had diagnosed the Student with attention deficit hyperactivity disorder (ADHD) and prescribed Intuiv for the Student. Exhibit D1p6.
3. The Student had been screened by the District's Child Find Committee the prior school year and was referred for an evaluation to determine if he qualified to receive special education and related services, but the Parent did not provide consent for the evaluation. D1p1.
4. By December 5, 2011, the Student had been placed on emergency expulsion due to his violent behaviors, which included kicking, throwing objects at staff and other students, and cursing and screaming. Exhibit D1pp1,8.

Student's Initial Evaluation and Initial IEP at Manitou Elementary School

5. An initial evaluation to determine if the Student was eligible to receive special education and related services was completed by the District. Exhibit D1. The results of the evaluation were considered at a team meeting on December 5, 2011. The evaluation team determined the Student met the eligibility criteria for an emotional/behavioral disability (EBD), and recommended the Student be placed in an educational setting with a small student-to-teacher ratio, and that staff be trained to work with the Student's out-of-control emotional/behavioral issues. Exhibit D1p2. Specifically, the team recommended the Student be placed in a self-contained classroom, and that he receive specially designed instruction (SDI) in social skills. Exhibit D1p8. The Parent attended the evaluation review meeting on December 5, 2011, and signed the evaluation summary without indicating she did not agree with the evaluation.
6. The initial evaluation did not include any assessment of the Student's academic progress because, at that time, the Student's problems at school were all related to his inability to appropriately regulate his behavior and emotions. Testimony of Rosetta Harrilal.
7. The initial evaluation report noted that, due to the severity of the Student's behavior, a 1:1 paraeducator was requested for the Student.⁷ A 1:1 paraeducator had already started working with the Student beginning on his third day of kindergarten at Manitou Elementary School. Exhibit D2p3; D3p2. However, the record is unclear if this was a paraeducator assigned specifically to the Student, or if the paraeducator was assigned to the Student's kindergarten

⁶ References to the exhibits are as follow: Exhibit D2p3 references District's Exhibit 2 at page 3. Parent's exhibits are similarly identified beginning with "P."

⁷ The record is not entirely clear who made the request for a 1:1 paraeducator. It is not clear if the Parent made a request for a 1:1 paraeducator, or if the request was the *conclusion of the initial evaluation* by Ms. Harrilal.

classroom generally, and worked one-on-one with the Student at times during the school day. Even with this 1:1 paraeducator, the Student needed to be removed from his kindergarten classroom to work one-on-one with the paraeducator. Exhibit D1p5.

8. The evaluation team did not agree with the request for assignment of a 1:1 paraeducator for the Student, believing such an assignment would not be the Student's least restrictive environment. Instead, the team recommended the Student be placed in a self-contained classroom. Exhibit D1p5.

9. On December 12, 2011, an Individualized Education Program (IEP) team meeting was held. D2p12. The IEP included three social/emotional goals, but no academic goals for the Student. The IEP noted a 1:1 paraeducator had been working with the Student, but the IEP did not expressly assign a 1:1 paraeducator specifically to the Student. The IEP team placed the Student in a self-contained classroom.⁸ The Parent attended the IEP meeting as part of the IEP team, and signed the IEP on December 12, 2011. Exhibit D2pp1, 10.

10. A meeting was also held on December 12, 2011, to consider the results of a functional behavioral analysis (FBA) of the Student, consider a behavioral intervention plan (BIP),⁹ and to consider an aversive intervention plan (AIP) for the Student. Exhibits D3p5, D4p4, D5p4. The Parent attended this meeting and signed the FBA, BIP, and AIP. Exhibits D3p1, D4p1, D5p1.

11. At the meeting, it was noted that the Student will kick, spit, swear, and run. He would purposely escalate or increase his inappropriate behaviors when he became bored or tired of an activity, and had an extremely low frustration level. The Student required assistance right away or he "explodes more." The Student's shoes were removed to keep him from running outside, and he had kicked his pregnant reading teacher and his 1:1 paraeducator or aide. D3p1. The Prior Written Notice for the FBA states that "[the Student's] inappropriate behaviors have warranted a one-on-one aide being assigned to him." Exhibit D3p4.

12. The AIP provided for the use of physical restraints, a time-out room, and removal of the Student's shoes. It also states "[The Student's] behavior is so severe. (sic) He is a danger to himself and others. He swears and hits, kicks and spits." Exhibit D5p1.

Student's Transfer from Manitou Elementary School to Stanley Elementary School During Kindergarten: 2011-2012

13. Manitou Elementary School did not have a self-contained/TLC classroom. After completion of his initial IEP at Manitou Elementary, the Student transferred to Stanley Elementary School, another District elementary school that had TLC classrooms.¹⁰ The Student stayed at Stanley Elementary for the remainder of his kindergarten year.

⁸ The District identifies its self-contained classrooms as Therapeutic Learning Center (TLC) classrooms.

⁹ The acronym BIP is also used to identify behavioral *improvement* plans or positive behavioral improvement plans (PBIP).

¹⁰ The exact date the Student transferred to Stanley Elementary School is not clear from the record, but it must have occurred after December 12, 2011, when the Student's IEP team signed the IEP which placed the Student in a self-contained/TLC classroom.

14. The Student's special education/TLC teacher during the remainder of kindergarten at Stanley Elementary was Jeff Fredrick. Mr. Fredrick had one paraeducator assigned to work with him in his TLC classroom. Testimony of Jeff Fredrick.

15. Mr. Fredrick believes a man came with the Student from Manitou Elementary, and this man was the Student's 1:1 paraeducator. Testimony of Fredrick. So in total, there were three staff in the Student's TLC classroom at Stanley.

16. Mr. Fredrick implemented the Student's IEP which was developed at Manitou Elementary in December 2011, and worked with the Student on his social/emotional goals. Testimony of Fredrick.

17. Mr. Fredrick does not recall the Student running out of the school building during kindergarten at Stanley Elementary, but the Student would run out of his TLC classroom. Testimony of Fredrick.

18. Mr. Fredrick does not recall he had any concerns for the Student's academics during kindergarten at Stanley Elementary. Rather, it is Mr. Fredrick's recollection that it was the Student's behavior that impeded his learning. Testimony of Fredrick.

19. On June 3, 2012, a psychiatrist completed a report of his psychiatric evaluation of the Student. Exhibit D6. The evaluation was an independent educational evaluation (IEE) conducted at the request of the Parent. The psychiatrist reviewed many of the Student's records from the District, conducted an interview with the Parent and the Student, apparently had "school consultation as needed," and initiated a medication prescription. This was the extent of the IEE.

20. The IEE noted the Student had been expelled from five different preschools due to aggressive behavior, provocation, and hyperactivity. The Parent reported she had been called frequently to Manitou Park the prior year to pick up the Student because of his behavior. Exhibit D6p1.

21. The psychiatrist diagnosed the Student with ADHD, a rule out (R/O) diagnosis of Bipolar Disorder, and post-traumatic stress syndrome (PTSD) by history. The psychiatrist went on to state that the Student had no defined learning disability, and that his educational lag was due to emotional/behavioral interference. Exhibit D6p4.

22. In the discussion and recommendations sections of the IEE, the psychiatrist states:

[n] my opinion [the Student] needs to be more aggressively medicated in an effort to bring his behavioral disturbance under control. It's not likely that he can progress in the educational system solely from the effects of a more restrictive setting...Medications can be expected to moderate, but not fundamentally change [the Student's] emerging personality, which is devoid of empathy, and documented by impulsivity and aggressivity...I am recommending and providing a trial on Risperdal, an antiaggressive and antipsychotic medication used in children with ADHD and Autistic Spectrum Disorder...Behavioral shaping and modification of personality traits and habits will require the presence of a skilled and specialized classroom.

Exhibit D6p5.

23. The IEE does not speak to or make any recommendation for a 1:1 paraeducator specifically assigned to just the Student.

24. The IEE was received by the District on or about June 13, 2012. No IEP team meeting was held at Stanley to consider the results of the IEE. Testimony of Cindy Johnson.

25. The Student was seen by the psychiatrist again for a follow-up on July 24, 2012. The chart notes report that the Student had been kicked out of his daycare that same day, and that the Student was "uneducable and out of control." Exhibit P10p1. It is unclear when or if the District ever received this chart note.

26. The Student was scheduled to return to Stanley Elementary for first grade during the 2012-2013 school year. But during the summer between kindergarten and first grade, the Parent contacted Rob Vander Stoep, the District's assistant director of student services. The Parent told Mr. Vander Stoep that the Student had a good summer, she wanted the Student placed in a general education classroom for first grade, and she wanted the Student and his sibling placed at the same school. The District agreed to place the Student at Jennie Reed Elementary School for first grade. Testimony of Rob Vander Stoep.

First Grade at Jennie Reed Elementary School: 2012-2013

27. The Student began first grade at Jennie Reed Elementary School, but the Student was assigned to a TLC classroom rather than a general education classroom.¹¹ The Student's special education/TLC teacher was Terri Peterson.

28. Mr. Vander Stoep had a meeting with the Parent and her educational advocate, Alton McDonald, during October 2012, at which the Parent requested a 1:1 paraeducator be assigned to the Student. At the time, Ms. Peterson's TLC classroom had a total of three staff (Ms. Peterson and apparently two paraeducators), and between two and six students at any one time. The District, through Mr. Vander Stoep or otherwise, determined that an assigned 1:1 paraeducator for the Student was not necessary. Testimony of Vander Stoep.

29. An IEP meeting was held on November 30, 2012, to develop a new annual IEP for the Student. The Parent attended the meeting as part of the team and participated in the development of the IEP. Exhibit D7p1. The Present Levels of Educational Performance section of the IEP states, in part, that:

[The Student] continues to kick, throw things, and cry when he is redirected or does not choose to do the requested task. His out of control behavior includes, but is not limited to, screaming, running, kicking and throwing objects at staff. [The Student's] most significant behavior is running from the classroom which becomes a safety issue.

Exhibit D7p3.

¹¹ See, D7, p. 3: "[The Student] has been at Reed since September 2012 is in a self-contained classroom for his social [-] emotional needs."

30. The new annual IEP maintained the Student in a self-contained/TLC classroom at Reed Elementary, and included three social-emotional goals for the Student. Exhibit D7pp4, 8.

31. Also on November 30, 2012, the same team reviewed a new AIP for the Student. Exhibit D7p10. The AIP provided for the use of a time-out room and physical restraint of the Student to protect the Student or others from harm. If the Student did not regain self-control within 20 minutes of being placed in the time-out room, the Parent would be called to discuss options. If after another 20 minutes the Student was still displaying unsafe behaviors, the Parent would be called to discuss options for the remainder of the day, including picking up the Student and sitting with the Student. Exhibit D7p10. The Parent believes she may have attended this meeting. Testimony of Parent.

32. Although the specific sequence of events is not clear from the record, the Parent became dissatisfied with the Student's placement at Reed Elementary. The Parent was called "several times" by staff at Reed Elementary to pick up the Student due to his behavior at school, the Parent objected to the use of the time-out room, and the Parent was concerned for the Student's safety due to his running out of class. On several occasions, the Student ran out of the school building, and security was called to assist staff in catching the Student. Exhibit P15p2. The Parent ultimately requested that the Student be transferred back to Stanley Elementary School. Testimony of Parent.

Student's Transfer from Jennie Reed Elementary School to Stanley Elementary School During First Grade: 2012-2013

33. The Student was transferred from Reed Elementary School back to Stanley Elementary School. The exact date is not clear from the record, although it appears as though the transfer occurred at the start of or early into the second trimester of the school year.¹² The Student remained at Stanley in a TLC classroom for the balance of first grade.

34. Upon his return to Stanley Elementary, the Student's special education/TLC teacher was Eric Anderson. Mr. Fredrick, who was by now the dean of students at Stanley Elementary, knew the Student had returned to Stanley because of something that happened at Reed Elementary, and he may have known it involved the Student running out of the classroom. Testimony of Fredrick. Cindy Johnson, the principal at Stanley, knew upon the Student's return to Stanley that the Student had been running out of Reed Elementary. Testimony of Johnson.

35. Both Mr. Fredrick and Principal Johnson are aware of one time during first grade at Stanley when the Student ran out of Mr. Anderson's TLC classroom, and continued running outside the school building. After this one incident, Mr. Anderson's classroom was reconfigured with the teacher's desk placed near the doorway from the TLC classroom into the hallway. Once the teacher's desk was placed near the doorway, Mr. Fredrick and Principal Johnson are unaware of any other occurrences of the Student running out of the school building. Testimony of Fredrick and Johnson.

¹² See D9p2; the Student "is new to our TLC program this trimester."

36. Mr. Fredrick recalls one occasion during first grade at Stanley when 911 was called because the Student had an "odd" crisis. The Student was speaking but not making any sense, would not make eye contact with staff, and it appeared as though the Student might be experiencing some sort of medical issue. Paramedics arrived, followed by the Parent. Mr. Fredrick believes the Student eventually left school with the Parent. Testimony of Fredrick.

37. A meeting was held on March 12, 2013, to review a new BIP for the Student. The Parent attended the meeting and signed the BIP. Exhibit D8p1. The BIP noted the Student's behaviors included vulgar outbursts, running from class, and aggression towards peers. With respect to the Student's running out of class, the BIP states:

Running from class: Daily, we are having trouble keeping [the Student] in class...He will usually run, yelling down one of the halls in the school. Occasionally he has ran out the front doors of the [school] and down to the sidewalk, putting himself in danger from cars in the street or people outside...This behavior [running out of the classroom] occurs 3 times per day (average), which is a 1 point increase since his initial assessment.

With respect to the Student's aggression, the BIP goes on to state:

Aggression towards peers: Often, [the Student] will become violent with his peers...[The Student] will push, tackle, kick, and hit peers. Frequently [3 of 4 incidents] the violence is towards some of our younger, smaller students...Occasionally, these acts of aggression come [unprovoked] without any known trigger...He is engaging in these [aggressive] behaviors on average of twice per school day (which is the same as when initially assessed in January).¹³

Exhibit D8p1.

38. On March 12, 2013, the District sent the Parent a Prior Written Notice (PWN), informing her that the District was proposing to initiate a BIP. The PWN went on to state that "[the Student's] previous BIP was not reviewed at prior placements, so we needed to create a new one here." Exhibit D8p5.

39. The Student received an end-of-year Progress Report for the final two trimesters of first grade at Stanley. Exhibit D9. The Progress Report for the second trimester states the Student ran from class on average of three times per day, but it does not specifically note or mention the Student running out of the school building. Exhibit D9p2.

40. The Progress Report noted that for the final trimester:

[The Student] has [made] some fantastic improvements this trimester. He has improved his aggression, his compliance and his readiness to learn.

¹³ The references to the Student's "initial assessment" and then "when initially assessed in January" are confusing. It is not clear if these are references to the Student's initial evaluation in December 2011, or if these are references to some other assessment of the Student which post-dates his initial evaluation. The only other assessments in the record are the FBA of the Student in December 2011 and the June 2012 IEE. The record does not otherwise reflect any assessment of the Student post-December 2011.

He has been using his anger strategies and reducing his amount of physical aggression towards peers and staff (from 3/10 opportunities to 6/10 opportunities). His compliance has improved as well.

His academics have improved as well. He is strong in math and improving in reading. As his openness to lessons and learning continues to improve, he will be able to meet standard.

Exhibit D9pp2-3.

Second Grade at Edison Elementary School: 2013-2014

41. The District determined it would expand the number and location of District schools with TLC classrooms for the 2013-2014 school year. Edison Elementary School is one of the schools which received a new TLC for the school year. Edison Elementary is located considerably closer to the Parent and Student's residence. The District transferred the Student to the new TLC classroom at Edison Elementary for the 2013-2014 school year. The Parent was notified of the transfer by telephone and letter from the District over the summer vacation. Testimony of Parent, Vander Stoep, Johnson.

42. The Student's special education/TLC classroom teacher at Edison Elementary is Robin Frasier. Ms. Frasier reviewed the Student's IEP, BIP, and AIP before the school year started, and was aware of the 20-minute intervals for notifying the Parent. It was also Ms. Frasier's understanding that the Parent had requested she be contacted whenever the Student's conduct would escalate. While Ms. Frasier called the Parent multiple times during second grade, she does not recall ever asking the Parent to take the Student home because she could not handle the Student in her TLC classroom. Testimony of Frasier.

43. Ms. Frasier began the school year with one paraeducator in her TLC classroom. A second paraeducator was added to the TLC classroom during mid- to late-September. Ms. Frasier and the paraeducators all have current MANDT training.¹⁴ Testimony of Frasier, Allison Shepard.

44. Ms. Frasier met the Student on the first day of school, September 4, 2013. Testimony of Frasier; Exhibit D36. Initially, the Student was doing quite well. But by mid- to late-September, his behaviors at school got worse. The Student struggled with reading because of his behaviors and did not like to write, but did very well in math. Testimony of Frasier.

45. The Student attended Edison Elementary a total of thirty-three (33) school days from September 4 through October 29, 2013. On three of these days, the Student's attendance record reflects he had early dismissals between 2:20 p.m. and 3:00 p.m. (September 6, 9, and 11). Exhibits D36, D38.

46. On September 16, 2013, the Student got angry in Ms. Frasier's class, could not deescalate, and had to be MANDT-restrained twice due to harm to himself or others. This episode lasted about 45 minutes. Exhibits D10; P7p17.¹⁵

¹⁴ MANDT is not an acronym. It is a system of physical restraint taught to and used by staff District-wide.

47. An Incident Summary statement dated September 24, 2013, documents the Student's behavior gradually escalating over the course of the school day, culminating with the Student at least attempting to punch a school psychologist in the back,¹⁶ and then slapping an occupational therapist across the face. At one point, the Student attempted to escape the classroom through a second-story window. Exhibit D11. The Parent was contacted and Principal Shepard confirmed the Student went home with her, although Principal Shepard does not know if staff asked the Parent to take the Student home. Principal Shepard wrote the Incident Summary. Testimony of Shepard.

48. On September 24, 2013, Ms. Frasier completed and signed a Student Referral Form to request a District behavioral specialist work with the Student. Assistant Principal Julia Bare approved the referral. A District behavioral specialist was referred to work with the Student. Exhibit D12; Testimony of Bare.

49. On October 4, 2013, the Student was not allowed to go to recess due to his prior behavior. The Student became upset, grabbed a pencil, and stabbed another student in the head with the pencil. The Student had to be MANDT-restrained. At one point, the Student climbed up on a counter and opened a window. Staff pulled him off the counter and MANDT-restrained the Student two more times. The Student assaulted staff, then wrapped a headphone cord around his neck. The Parent had already been contacted, and arrived about five minutes later. The Student again tried to escape through the second-story TLC classroom window. The Parent restrained the Student multiple times. The Parent was eventually able to get the Student in her vehicle and leave the school. Before leaving, the Parent stated the Student's classroom was not safe because the Student could get out the classroom windows, and she would not return the Student to Edison until the windows were fixed. Exhibits D13, P7p5.

50. On October 4, 2013, the Student was emergency expelled by Principal Shepard, after she determined the Student posed an immediate and continuing danger to himself, other students, or staff. The Parent was notified of the expulsion on October 7, 2013, with a telephone call. Written notice was also mailed to the Parent. Exhibits D14, P8p1.

51. The Student remained on emergency expulsion for five school days; October 7 – 11, 2013. Exhibit D36.

52. A manifestation determination team (MDT) meeting was held on October 11, 2013. For reasons unknown, the attendance page of the manifestation determination form is unsigned. Ms. Frasier, Mr. Vander Stoep, Principal Shepard, Assist. Principal Bare, Marcia Carter, and the Parent all attended the MDT meeting. Testimony of Frasier, Vander Stoep, Shepard, and Bare.

¹⁵ Exhibit D10 is a Documentation of Aversive Methods form completed by Ms. Frasier. This form was not created by the District until sometime in October 2013. Testimony of Vander Stoep. In November 2013, Ms. Frasier was asked to complete a number of these forms documenting events, some of which predated the creation of the form (Exhibits D10, D13, D16, D17). In completing these forms, Ms. Frasier relied upon information from her own "notebook," which she maintains to document incidents involving discipline and use of aversive interventions with the students in her TLC classroom. Testimony of Frasier.

¹⁶ School Psychologist Connie Klie testified she is unsure if the Student made contact with her when he attempted to strike her.

53. The MDT determined the behavior which led to the Student's emergency expulsion was a manifestation of the Student's disability, and the emergency expulsion was changed to a short-term suspension. The MDT also initiated a review of the Student's IEP, FBA, BIP, and Safety Plan. The Student could return to school on October 14, 2013. Exhibit D15.

54. At the MDT meeting, the Parent stated she would not return the Student to Edison Elementary until the windows in the second-story TLC classroom were fixed to prevent the Student from trying to escape out the windows. Assistant Principal Bare told the Parent that the windows had been fixed the prior day (October 10, 2013). The Student returned to Edison Elementary the next school day, October 14, 2013.

55. On October 24, 2013, the Student ran out of the Edison Elementary School building and off the school campus. The Student only returned when a counselor found him. Exhibits D16, D35p4, P7p14; Testimony of Frasier. This was the only time during second grade when the Student ran out of the school building. Testimony of Frasier.

56. Principal Shepard recalls the Parent requesting a copy of the incident report documenting the Student running off campus on October 24, 2013. Testimony of Shepard. Principal Shepard gave the Parent a copy of one incident report, but the record is unclear as to whether it was an incident report associated with the Student running off campus. Testimony of Parent.

57. On October 25, 2013, the Student again became angry and ran out of his TLC classroom, but did not leave the building. At one point the Student climbed onto a counter in his classroom, started to kick a window, and Ms. Frasier used MANDT to restrain him. The Student appeared to calm down, but then climbed back up on the counter, began playing with the strings for the window blinds, and started hitting the window again. Mr. Frasier used MANDT again to restrain the Student. The Parent was contacted, arrived at school, and took the Student home. Exhibits D16, P7p14, Testimony of Frasier.

58. On October 29, 2013, the Student punched another student, flipped over desks, threw objects, and kicked, punched, and bit Ms. Frasier and a paraeducator. Ms. Frasier called the Parent. The Student was restrained twice using MANDT. Exhibits D17, D35p6, P7p11; Testimony of Frasier.

59. Although all the details of what happened do not appear in the record, on October 31, 2013, the Student became agitated at school, including hitting his younger brother in the hallway and, apparently, trying to jump out of a second-story window. Exhibit D18p4. The Parent, who happened to be at school for a meeting, asked Assistant Principal Bare to call 911. Testimony of Frasier, Bare.

60. The Student was taken to Seattle Children's Hospital (Children's) by ambulance on October 31, 2013, was admitted, and remained at Children's until he was discharged on November 7, 2013. Exhibit D18pp1,4.

61. The records from Children's reflect the Student was "unable to tolerate school work" during his admission. However, a Speech and Language Pathology evaluation completed at Children's concluded the Student was "clearly a capable learner." Exhibit D18p5.

62. The Discharge Summary from Children's included a diagnosis of disruptive mood dysregulation disorder, ADHD, combined presentation, and parent-child relational problem. Exhibit D18p5.

63. The records from Children's include recommendations for the Student's educational program and placement. Exhibit D18p1. However, the records do not discuss or recommend a 1:1 paraeducator or aide be assigned to the Student at school. The same recommendations noted that:

It will be important for [the Student's] community school staff to recognize that he is likely to test limits and may engage in a variety of problematic behaviors during this period of transition from hospital back to his community.

Exhibit D18p2.

64. The District held a meeting to plan the Student's reentry to Edison Elementary on November 13, 2013. The individuals who attended the meeting included Marcia Carter, counselor, Ms. Frasier, Assistant Principal Bare, Principal Shepard, the Parent, and the Student. Notes of the meeting were taken by Ms. Bare. Exhibit D19. The purpose of the meeting was to develop a plan for the Student's safe return to Edison Elementary. The team had concerns for the Student's safety if he returned immediately to a full-day schedule at school. Testimony of Frasier, Bare, Shepard.

65. The Parent told the team that the Student was no different, and his behaviors were more volatile than before he was admitted to Children's. The Parent requested a 1:1 paraeducator be assigned to help keep Student safe at school, and she was interested in options for a more contained facility than the TLC classroom. The team developed two options for the Student's return. First, the Student could return to Edison for 2 hours a day with a 1:1 paraeducator or aide in a separate room for a couple of days, then gradually increase the duration of time over the next few days in order to hopefully build on the Student's success. This option was intended only as a short-term transition back to a full school day. Second, the Student could receive tutoring for 2 hours a day at the Annex, a District administrative facility, to work on his behavior and academics, and then try to build on any success. The Parent was not interested in tutoring at the Annex. Exhibit D19; Testimony of Frasier, Bare.

66. Ms. Frasier, Ms. Carter, and Principal Shepard were scheduled to be out of the school the next two days (Thursday and Friday). The Parent said she would keep the Student home those two school days so that when the Student returned the next Monday (November 18, 2013), there would be familiar faces in his classroom. The team, including the Parent, agreed that the Student would start by returning to Edison with a 1:1 paraeducator and Ms. Frasier for two hours per day. Exhibit D19p2. Ms. Frasier developed a plan for the Student for 11:00 a.m. to 1:00 p.m. Exhibit P9.

67. On November 14, 2013, the Parent signed consent for the District to begin a reevaluation of the Student. Exhibit D20p2. The reevaluation was requested by the special education staff due to changes in the Student's behavior impacting his educational progress. Exhibit D20p1. To date, nothing has been accomplished for the reevaluation because the Parent has not made the Student available to the District. Testimony of Klie.

68. The Student returned to Edison Elementary on November 18, 2013, starting his school day at 11:00 a.m. Principal Shepard met with the Parent and the Student. The Parent told Principal Shepard that she was going to leave the Student for the remainder of the school day. This was not part of the re-entry plan agreed to by the Parent the prior week. Principal Shepard had to agree because the Student's IEP had not been amended. Testimony of Shepard. The Student started out well, but became increasingly frustrated and agitated, eventually throwing chairs at staff, kicking and attempting to bite staff, and banging his head against a window. The Student had to be restrained by multiple staff using MANDT. Principal Shepard called the Parent and told the Parent that she was going to call 911. Exhibits D21, D35p6, P7p2; Testimony of Frasier, Shepard.

69. The Student was emergency expelled on November 18, 2013, based upon Principal Shepard's determination that he posed an immediate and continuing danger to himself, other students, or staff. Exhibits D22, D35p7, P8p3.

70. An MDT meeting was held on November 25, 2013. The team determined that the behavior for which the Student was emergency expelled on November 18, 2013, was a manifestation of his disabilities. The expulsion was changed to a suspension, and the Student could have returned to school on November 26, 2013, had the team been able to develop a safety plan for the Student. Exhibit D23p3; Testimony of Shepard. The Parent did not attend the MDT meeting despite multiple attempts by the District to contact the Parent. Exhibit D23p7. These attempts included Ms. Carter calling the Parent during the MDT meeting and offering the Parent the opportunity to participate by speaker phone. The Parent declined to participate because she did not have her educational advocate present. Exhibits D23p4, P5p4; Testimony of Parent, Frasier, Bare, Shepard, Vander Stoep.

71. The meeting on November 25, 2013, was also intended as an IEP team meeting to discuss the Student's placement and review his IEP. Exhibits D23pp 4, 6, P5pp1,4. However, the team did not believe they could move forward with a review of the Student's placement and IEP without the benefit of the Parent's input.

72. On November 26, 2013, Ms. Frasier sent the Parent a letter, offering three different days for an IEP meeting. Exhibit D24p1. The Parent received Ms. Frasier's letter, but did not feel comfortable attending the meeting by herself. Ms. Frasier received no response from the Parent. The Parent contacted Assistant Principal Bare. The Parent told Assistant Principal Bare she could attend an IEP meeting on December 5, 2013, one of the dates proposed in Ms. Frasier's letter. Testimony of Parent.

73. An IEP meeting was held on December 5, 2013. Exhibit D26. The Parent attended with her advocate, Mr. McDonald. Meeting notes were taken by Principal Shepard. Exhibit D27. The meeting began with a discussion of the Student's placement. Mr. Vander Stoep identified the Northwest School of Innovative Learning (SOIL) as a possible option, because by this time the District was willing to consider a more restrictive placement for the Student, given the District had tried assigning a 1:1 paraeducator for the Student on November 18th, without success. The Parent was not interested in SOIL, because she believed a 1:1 paraeducator had not been tried. The meeting progressed to the Student's IEP, but when the Mr. Vander Stoep attempted to give the Parent and Mr. McDonald copies of a draft IEP, they both declined because it had not been provided to them prior to the meeting, and Mr. McDonald had another

engagement. Mr. McDonald said another meeting would have to be scheduled. Testimony of Frasier, Bare, Shepard, Vander Stoep.

74. The District offered tutoring for the Student because the team was aware the Student was not currently receiving any educational services. The tutoring would be provided at a central administration building in conformity with the Student's December 2, 2012, IEP until a new IEP meeting could be held. Exhibit D28p1. The Parent did not allow the Student to access the District's offer of tutoring. Testimony of Shepard, Vander Stoep.

75. The Student was emergency expelled for a third time on December 5, 2013, because Principal Shepard determined that there was sufficient reason to believe the Student's presence at Edison Elementary School posed a continuing safety concern. Exhibit D29. By this time, staff at Edison Elementary no longer believed it was safe for the Student, other Students, or staff to allow the Student to return to Ms. Frasier's TLC classroom. Testimony of Frasier, Bare, Vander Stoep.

76. The Parent received Ms. Shepard's notice of emergency expulsion on December 6, 2013. Exhibit P2p2.

77. On December 6, 2013, Ms. Frasier sent a letter to the Parent, offering three new dates for an IEP meeting to continue reviewing and planning for the Student's new IEP. Exhibits D30, P7p1. The Parent does not recall receiving this letter, and Ms. Frasier received no response to this letter from the Parent. Testimony of Parent, Frasier.

78. On December 11, 2013, Ms. Frasier sent another letter to the Parent, offering three dates for an IEP meeting, two of which were new dates. Exhibit D31. The Parent does not recall receiving this, and Ms. Frasier received no response from the Parent. Testimony of Parent, Frasier.

79. On December 12, 2013, Ms. Frasier sent the Parent an IAES/Tutoring Intake Checklist form via certified mail. Exhibit D31; Testimony of Frasier.

80. On December 20, 2013, Principal Shepard sent the Parent a letter, advising the Parent that the Student was emergency expelled on December 5, 2013, and that the expulsion ended on the tenth school day from the day the Student was expelled. The letter went on to tell the Parent the District looked forward to the Student's return on January 2, 2014. Exhibits D34, P11. The Parent received this letter. Testimony of Parent.

81. Without the Parent's participation because she had not responded to any of the District's attempts to schedule another IEP meeting, the team at Edison Elementary decided that while there were still concerns for the safety of the Student, other students, and staff, with the addition of a "calming room," which was being constructed in Ms. Frasier's TLC classroom, and the addition of extra staff in the classroom, which Mr. Vander Stoep was prepared to implement, the Student could return to the TLC classroom after the winter vacation ended on January 2, 2014. Testimony of Frasier, Shepard, Vander Stoep.

The Northwest School of Innovate Learning (SOIL)

82. The Northwest School of Innovative Learning (SOIL) is an academic and therapeutic learning program designed for students from kindergarten through high school who are unable

to successfully navigate traditional school settings. It offers a comprehensive and therapeutic program that helps meet the academic, special education, and behavioral health needs of students from school districts throughout the Puget Sound region. A full academic curriculum is individually tailored, along with therapeutic treatment needs. It is approved through the Office of Superintendent of Public Instruction. Placements at SOIL are handled through school district representatives. SOIL has a campus in Tacoma. Exhibit D37.

83. Dave Beling is the program supervisor at SOIL. SOIL is associated with Northwest Hospital, and partners with Comprehensive Mental Health to provide more advanced therapeutic services as needed by the students placed at SOIL by their school districts. It is a locked facility, meaning students are not able to leave the facility once inside without staff knowledge. Testimony of Beling.

84. Although the exact date is unclear from the record, the Parent's advocate contacted Mr. Vander Stoep and requested that he approve a visit to SOIL by the Parent. Mr. Vander Stoep approved the visit. The Parent visited SOIL, and now believes SOIL is the "best placement" so far for the Student. The Student began attending SOIL's Tacoma campus on or about January 9, 2014, and continues there to date. The District is paying for the Student's placement at SOIL. Testimony of Vander Stoep, Parent.

85. The Student does not have a 1:1 paraeducator or aide assigned to him at SOIL, and Mr. Beling has not received any reports from his staff that the Student needs one. The Student's classroom at SOIL has 6-7 students and two staff assigned to it.

86. The District wishes to place the Student at SOIL as an interim alternative educational setting (IAES) for up to forty-five (45) school days, or until a reevaluation of the Student can be completed and a new IEP developed for the Student.

Student's Need for SDI for Academics

87. The Parent asserted in her Complaint that the District violated the Individuals with Disabilities Education Act (IDEA) because it failed to provide specially designed instruction in written language, reading, reading comprehension, and math. However, the evidence does not support a finding that that Student required any SDI in these academic subjects. As early as December 12, 2011, the District noted that the Student "presents as a very bright young boy, who unfortunately has many behavior issues." D2p11. A BIP also dated December 12, 2011, noted the Student "is very bright." Exhibit D4p1. In June 13, 2012, the IEE found the Student had no defined learning disability, and any educational lag was due to emotional/behavioral interference. Exhibit D6p4. Once the Student was placed at Stanley Elementary School, staff did not recall any concerns for the Student's academics. Testimony of Jeff Fredrick. The IEP from Jennie Reed Elementary dated November 30, 2012, stated that, since attending Reed the Student "has had great success academically," and the Student was "very capable academically, but his behavior continues to interfere with his academic progress." Exhibit D7p2. The IEP went on to state, "[The Student] is at or above grade level in all academic areas, although he does not always perform at that level." Exhibit D7p3. In March 2013, during a BIP meeting, it was remarked that the Student worked hard in academics, and showed strengths in certain areas, especially math. Exhibit D8p1. The Student's progress report at the end of first grade determined he was approaching, meeting, or exceeding end of year standards with very few exceptions. Exhibit D9p1. This is even more significant given the Student had 42 excused

absences and 50 tardies during first grade. Exhibit D9p2. The Speech and Language Pathology evaluation completed at Children's Hospital concluded the Student was "clearly a capable learner." Exhibit D18p5.

Failing to Reimburse the Parent for Transporting the Student to and From School

88. The Student's December 2011 IEP provided him with special transportation to and from school. Exhibit D2pp7, 9. The Student's November 2012 IEP also provided special transportation to and from school. Exhibits D7, P13.

89. The Student initially rode a District bus from his home to Stanley Elementary when he transferred during kindergarten. However, there were problems with keeping the Student in his seat during the bus ride, and the Student would release his seatbelt and move around the bus. Mr. Fredrick discussed options with the Parent, including use of a "long belt" or harness to keep the Student safely in his bus seat. Mr. Fredrick believed the Parent was not happy with these options. Testimony of Fredrick.

90. The Parent objected to the use of a harness on the bus after the Student urinated on himself twice during the bus ride to and from Stanley. Testimony of Parent. It is unclear whether the District was ever made aware the Student had urinated on himself during his bus ride.

91. At some point the Parent began to transport the Student to and from Stanley Elementary using her vehicle. Testimony of Parent. It is unclear from the record if she began transporting the Student during kindergarten, first grade, or during both school years when the Student attended Stanley Elementary.

92. Principal Johnson recalls the Student falling asleep on the bus, and recalls the Parent coming to her a couple of times to inquire about being reimbursed for driving the Student back and forth to Stanley Elementary. Principal Johnson told the Parent that she would have to talk to the District's central administration about any reimbursement for transporting the Student. To date, the Parent has received no reimbursement from the District for transporting the Student to and from Stanley Elementary School. Testimony of Parent.

93. There is no objective evidence in the record establishing how long it took the Student to ride the bus from his home to Stanley Elementary, and then back home at the end of the school day. The Parent stated it took "a little over one hour" each way on the bus. Mr. Vander Stoep stated the bus ride from the Student's home to Stanley took 30 minutes, and the ride home took 45 minutes. Principal Johnson recalls the Parent telling her the bus ride was 1½ hours for the Student, but it is not clear if this was one-way, or the total time to and from Stanley each day. Testimony of Vander Stoep, Parent, Johnson.

Parent's Allegation of Use of Excessive Physical Force by District Staff With the Student

94. On one occasion when she arrived to pick up the Student from school, the Parent observed the Student's outer shirt was off, and the fabric on the back of his undershirt was wrinkled in a pattern resembling what the Parent believed was a hand print.

95. On at least one occasion, the Student reported to the Parent that he had been hurt at school.

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 Complaint #1, and the District bears the burden of proof with respect to the issue raised in Complaint #2. *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.

...

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

Did the District deny the Student FAPE by not providing the Student with SDI in written language, reading, reading comprehension, math, and social skills?

9. A school district need only provide specially designed instruction (SDI) in those areas where the evidence establishes that a student requires SDI in order to obtain an educational benefit, and hence a free appropriate public education (FAPE). This is typically determined through the evaluation and IEP team procedures. In this case, the record is extraordinarily clear that the Student does not require SDI in any academic subject. The evidence supporting this conclusion is summarized at Finding of Fact 87. The evidence consistently reflects the Student has generally been quite academically successful, and it is only his very severe inability to control and regulate his emotions and behavior at school that has impeded further academic achievement for the Student. The Student's academic achievement by the end of first grade at Stanley is even more impressive given the very significant amount of time the Student missed due to absences or tardies that school year. With respect to SDI for social skills, both of the Student's IEPs provide goals and SDI targeted to address his social and emotional needs. It is concluded that the Student does not require SDI in academic subjects, and that he received appropriate SDI for social skills. The Parent has not established any violation of the IDEA or denial of FAPE.

Did the District deny the Student FAPE by failing to provide an assigned 1:1 aide or paraeducator?

10. The evidence is initially confusing, but when considered in its entirety it does appear as though the Student had a 1:1 paraeducator assigned to him during kindergarten. The most telling piece of evidence is Mr. Fredrick's belief that a man came along with the Student when he transferred from Manitou to Stanley Elementary School during kindergarten. But it is very clear that neither the Student's December 2011 IEP nor his November 2012 IEP assigned a 1:1 paraeducator to the Student. The period at issue for any denial of FAPE begins with the start of the first grade at Jennie Reed Elementary. There is no evidence that the Student had a 1:1 paraeducator assigned to him during first grade at either Jennie Reed, or when he transferred back to Stanley Elementary. And the Student did not have a 1:1 paraeducator assigned to him at Edison Elementary. The legal question or issue that must be answered is did the Student require an assigned 1:1 paraeducator during first or second grade in order to obtain an educational benefit, and hence FAPE? The evidence does not support a conclusion the Student did. The Student clearly made significant academic progress during first grade without an assigned 1:1 paraeducator. The first grade end-of-year Progress Report also noted the Student had shown improvement in his aggression, compliance, and readiness to learn. All this was accomplished without the assignment of a 1:1 paraeducator. The IEE obtained by the Parent at the end of first grade does not recommend the assignment of a 1:1 paraeducator, but rather more aggressive medication of the Student and a skilled and specialized classroom. The recommendations from Children's Hospital after the Student was discharged in early November 2013 do not include any recommendation for assignment of a 1:1 paraeducator. No District staff who appeared as a witness opined the Student required assignment of a 1:1 paraeducator. In summary, the evidence does not support a conclusion the Student required the assignment of a 1:1 paraeducator in order to obtain an educational benefit during first or second grade in the District. The District did not deny the Student FAPE by failing to provide an assigned 1:1 aide or

paraeducator for the Student.

Did the District deny the Student FAPE by failing to provide appropriate staff and staff training to prevent the Student from leaving the school building during the 2012-2013 school year [first grade]?

11. The Student's November 2012 IEP developed at Jennie Reed Elementary School notes the Student's most significant behavior was running from the classroom, which became a safety issue. The only evidence that the Student ran out of the building at Reed is the Parent's statement that on several occasions the Student ran out of the building, and Principal Johnson's testimony that she knew upon the Student's return to Stanley in first grade that he had been running out of Reed. Once the Student transferred to Stanley, both Mr. Fredrick and Principal Johnson are aware of one occasion when the Student was able to run out of Mr. Anderson's TLC classroom, and then continue out of the school building. After this, Mr. Anderson's classroom was reconfigured to with the teacher's desk near the classroom doorway to the hall. But a new BIP for the Student in March 2013 described the Student's current behavior to include running from class on a daily basis, and occasionally running out front doors of the school and down to the sidewalk, thereby placing him at danger from cars or people outside the school. The Student's end-of-year Progress Report noted that during the second trimester at Stanley the Student ran from class on average of three times per day, but it does not specifically note or mention the Student running from the school building. By the third trimester, the same Progress Report contains no mention of the Student running from the classroom or the building. This is the extent of the evidence regarding the Student running out of his school building during first grade in the 2012-2013 school year.

12. The purpose and intent of the IDEA is to provide a student eligible for special education with an IEP that is designed meet the unique needs of the student, supported by such services as are necessary to permit the student to obtain an educational benefit from the instruction. The legal question or issue then, is whether the program and services provided by the District during first grade enabled the Student to obtain an educational benefit despite those occasions when the Student ran out of his school building? The answer to question must be yes. The evidence supporting a conclusion the Student obtained an educational benefit during first grade has already been summarized and discussed above. While there likely was some loss of instructional time on those occasions when the Student ran out of his school building, this did not prevent the Student from obtaining an educational benefit. And the evidence supports a conclusion that the services provided by the District and its efforts with the Student likely led to a significant reduction in his running behavior by the end of the school year. This is reflected in the end-of-year Progress Report, which does not include any mention of the Student running during the last trimester. This conclusion that the Student was not denied FAPE due to any failure to prevent him from running out of school, however many times this may have occurred, is in no way intended to downplay the importance of insuring the safety of a student while attending school. But under the facts in this case, it cannot be found that the Student was denied FAPE.

Did the District deny the Student FAPE by failing to conduct an IEP team meeting to consider the results of the Student's March 2012 IEE?

13. The only IEE of the Student in the record is the *June* 2012 IEE by Dr. Sands. It appears likely that the statement of the issues misidentified the Student's IEE as occurring in March,

rather than in June 2012.

14. The District received Dr. Sands' IEE on or about June 13, 2012, but no IEP team meeting was held at Stanley Elementary to consider the IEE. There is no evidence to find the IEE was considered by the Student's IEP in preparation of the Student's IEP at Reed in November 2012. If a parent obtains an IEE, the result of the evaluation must be considered by a school district with respect to the provision of FAPE to a student. WAC 392-172A-05005(5)(a); 34 CFR 300.502(c)(1). Accordingly, it must be concluded that the District violated the IDEA because it did not convene an IEP team to consider Dr. Sands' IEE of the Student. This is a procedural violation of the IDEA. As discussed above, a procedural violation of the IDEA does not deny a student FAPE unless the violation impeded the Student's right to a FAPE, significantly impeded the Parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefit.

15. It is concluded that the District's failure to consider the IEE denied the Student FAPE because the Parent was effectively precluded from participating in the decision-making process. In fact, in this instance there was no decision-making process, because a meeting was never held.

Did the District deny the Student FAPE because it failed to amend the Student's IEP or develop a new IEP prior to the end of the 2012-2013 school year?

16. It is unclear why the Parent believes the District should have amended the Student's November 2012 IEP or created a new IEP prior to the end of the 2012-2013 school year. It is not clear that the District received the IEE in time to assemble an IEP team to consider the IEE and determine if the Student's IEP required amendment, or a new IEP needed to be developed. Review of the IEE reveals Dr. Sands relied heavily upon records created by the District. In fact, the only apparent source of information not already known to the District was Dr. Sands' interview with the Student and Parent. Dr. Sands' recommendations, apart from medication, were limited to the conclusion that the Student would require the presence of a skilled and specialized classroom. This was already provided for in the Student's IEP with placement in a TLC classroom. The November 2012 IEP developed and then implemented at Reed Elementary and later Stanley Elementary, provided the Student an educational benefit. The Student obtained an educational benefit both in terms of his academic achievement and behavioral improvement by the end of first grade at Stanley. It is concluded that the Parent has not established any legal duty on the part of the District to amend or develop a new IEP for the Student prior to the end of the 2012-2013 school year.

Did the District deny the Student FAPE by failing to reimburse the Parent for transporting the Student to and from school?

17. The Student's December 2011 and November 2012 IEPs provided transportation to and from his school as a related service. The Student began riding the bus to Stanley Elementary when he transferred there during kindergarten, but would not remain in his seat. The District offered the Parent options, including use of a long belt or harness. The Parent would not agree to this, and instead elected to transport the Student to and from Stanley during the remainder of kindergarten, and then again when the Student transferred back to Stanley for the last two trimesters of first grade. This was the Parent's right, but it does not obligate the District to reimburse her for her transportation expenses, provided the District was willing and able to

provide appropriate transportation that would allow the Student to access this educational programming at Stanley. The Parent essentially argued the bus ride to and from her home to Stanley was not appropriate because it was too long a ride for the young Student, citing the Student urinating on himself twice. There was no objective evidence presented by either the Parent or the District to establish how long it took the school bus to transport the Student to and from Stanley Elementary. Witness estimates ranged from 30 to 45 minutes, up to a little more than an hour one way. It appeared the Parent was arguing the bus ride was too long because the Student urinated on himself twice. But absent more clear and compelling evidence, this is insufficient to establish the District's offer of transportation was not appropriate for the Student. There could have been factors other than the length of the bus ride that caused the Student to urinate on himself, such as a medical condition. And it is unclear if the District was ever made aware of the Parent's belief that the length of time the Student spent riding the bus caused the Student to have an accident. If the District had been aware, the problem might have been solved as easily as including on the Student's IEP that he was to be reminded to use the bathroom at school before leaving on the bus for home.

18. The Parent did inquire with Principal Johnson at Stanley whether the District would reimburse her for transporting the Student, and Principal Johnson told the Parent that she would have to check with District administration. The record does not reflect any response from the District. But Principal Johnson's statement to the Parent did not create any obligation on the part of the District to reimburse the Parent. Ultimately, it appears as though the Parent was unhappy with the District's arrangement to transport the Student to and from Stanley Elementary during kindergarten and first grade, and made a personal decision to transport him herself. The evidence does not support a conclusion the District's bus to and from Stanley was not appropriate, or prevented the Student from accessing his educational program at Stanley. The Parent has not established a denial of FAPE.

Did the District deny the Student FAPE by calling the Parent on a daily basis during the 2013-2014 school year to take the Student home because of the school staff's inability to address the Student's behavior in school?

19. The evidence does not support a finding that staff at Edison Elementary called the Parent on a daily basis to take the Student home because staff could not control the Student's behavior at school. It is clear that staff called the Parent multiple times, but this was consistent with the Student's AIP and, over and above that, Ms. Frasier's understanding that the Parent wished to be contacted when the Student would escalate his behavior. On those occasions when she called the Parent, Ms. Frasier did not request that the Parent take the Student home because she could not handle the Student's behavior in her TLC classroom. The Student's Attendance Report for 2013-2014, while not dispositive, does not provide support to conclude the Student was leaving school early on a daily basis in 2013-2014. The report identifies only three days when the Student left early: September 6, 9, and 11, 2013. But it is clear from the facts that there were days the Student appears to have left school early without any indication on the Attendance Report. It appears as though the Student may have left school early with the Parent on September 24, October 4, and 25, 2013, when the Parent was contacted due to the Student's behavior at school, and after arriving at school she eventually left with the Student. It is concluded that there were occasions when the Parent took the Student home before the school day ended, but this more likely than not did not occur on a daily basis during the 2013-2014 school year at Edison.

20. But in order to resolve and rule on this issue, the critical legal fact is whether on those occasions when the Parent came to school and removed the Student before the end of the school day she was doing so at the request or direction of school staff, or whether it was her personal decision to do so? If the Parent was removing the Student from his educational placement (Edison Elementary) at the request or direction of staff, this would likely constitute a failure to implement the Student's IEP. Ms. Frasier denied directing the Parent to take the Student home. No other staff at Edison confirmed the Parent's assertion she was directed or told to take the Student home. And on those occasions when the staff at Edison Elementary determined his behavior posed a threat to his own safety or the safety of others, the Student was expelled. Absent additional evidence to corroborate the Parent's testimony she was asked or told to take the Student home, it cannot be concluded that District staff asked or told the Parent to take the Student home. The Parent has not established the District violated the IDEA or denied the Student FAPE by contacting her to take the Student home because staff could not control his behavior at Edison.

Did the District deny the Student FAPE by failing to provide the Parent with incident reports?

21. Principal Shepard recalls the Parent requesting a copy of the incident report documenting the Student running off campus on October 24, 2013, and she provided a copy of one incident report to the Parent. But it is unclear from the record which specific incident report Principal Shepard gave the Parent. It also is not clear from the record *when* the Parent requested copies of incident reports. Absent more clear and compelling evidence, it cannot be concluded the District failed to provide the Parent with incident reports, or that such a failure constituted a violation of the IDEA and denied the Student FAPE.

Did the District deny the Student FAPE by expelling the Student three times during the 2013-2014 school year, or by failing to conduct a manifestation determination to determine if the conduct for which the Student was emergency expelled was a manifestation of the Student's disability?

22. A school district may suspend or expel a student eligible for special education just as it may suspend or expel any other student. It is only *after* a student eligible for special education is suspended or expelled that the IDEA imposes additional legal duties on school districts.

23. As a preliminary matter, it is concluded that the Student's three emergency expulsions were clearly warranted based upon the Student's self-harming and assaultive behaviors at Edison. The Student's inability to control his behavior presented a real and substantial risk of harm to the Student, other students, and staff at Edison.

24. When a school district seeks to expel a student or suspend him from school for more than ten days for violation of a code of student conduct, a review must be conducted, within ten days of the decision, to determine whether the misconduct is a manifestation of the student's disability. WAC 392-172A-05145(f)(a). If it is determined that a student's misconduct was not a manifestation of his disability, the student is subject to the same sanctions for misconduct as a child without a disability. WAC 392-172A-051569(3). However, the student must continue to receive educational services that allow him to participate in the general education curriculum and to progress toward meeting the goals in his IEP. WAC 392-172A-05145(4)(a). These services may be provided in an interim alternative educational setting (IAES). WAC 392-172A-05145(4)(c). If it is determined that the student's misconduct was a manifestation of his

disability, the IEP team must either conduct a FBA and implement a BIP for the student or, if a BIP has already been developed, review the BIP and modify it as necessary to address the behavior. WAC 392-172A-05145(6)(a) and (b). The student must also be returned to the placement from which he was removed unless the parent and the school district agree to a change of placement. WAC 392-172A-05145(6)(c).

25. The District emergency expelled the Student on October 4, November 18, and December 5, 2013. The District timely held MDT meetings after the first two expulsions, and determined the conduct for which the Student was expelled was a manifestation of his disabilities. The Student was excluded from school for five school days after the October 4th expulsion, then allowed to return to his TLC classroom. The MDT meeting held on November 25, 2013, did not include the Parent despite multiple attempts to contact her, including calling her during the MDT meeting. The Parent declined to participate without her educational advocate present. Without the Parent's input, the MDT team did not believe it could develop a safety plan, which would have allowed the Student to return to Edison Elementary as early as November 26, 2013. Ultimately, the Student was expelled and not allowed to return to Edison Elementary until January 2, 2014. The period of time beginning November 18, 2013, until January 2, 2014, included twenty-one (21) school days. Adding the five days from the Student's first emergency expulsion on October 4, 2013, the Student was excluded from Edison for twenty-six (26) school days. Once the Student's exclusion from school exceeded ten school days (on November 25, 2013), the District was legally obligated to provide educational services to the Student. The District finally offered the Student tutoring at a District administration building on December 5, 2013, but the Parent did not allow the Student to access the tutoring. The record does not support a conclusion that the tutoring services offered were not appropriate for the Student. There were six school days from November 25th through December 5th, when the District offered tutoring services. It is concluded that the District violated the IDEA and denied the Student FAPE for six school days when it failed to offer tutoring services to the Student beginning November 25, 2013, through December 5, 2013.

26. The District did not hold an MDT meeting or reach any manifestation determination regarding the conduct for which the Student was emergency expelled on December 5, 2013. This is a procedural violation of the IDEA. However, it is clear that the conduct for which the Student was emergency expelled on December 5, 2013, was the same conduct for which he was expelled on November 18, 2013. When the team was unable to develop a safety plan for the Student's return to Edison, Principal Shepard made the decision that the Student continued to pose a continuing safety concern, and emergency expelled the Student on December 5, 2013. Although failing to hold another MDT meeting after December 5, 2013, was a procedural violation, it is concluded that under the facts in this case it did not deny the Student FAPE, significantly impede the Parent's opportunity to participate in the decision-making process, or cause a deprivation of educational benefit over and above the District's failure to provide educational services to the Student effective November 25, 2013, the eleventh school day the Student was excluded from his educational placement.

Did the District deny the Student FAPE by failing to conduct a functional behavioral analysis (FBA) and failing to develop a positive behavior intervention or improvement plan (PBIB)?

27. The District conducted an FBA and developed a PBIB concurrent with the Student's initial IEP in December 2011. The District also developed an AIP at that time. The Student's AIP was reviewed and amended as part of developing the Student's November 2012 IEP. The

Student's BIP was reviewed and amended on March 12, 2013. The Student's FBA and PBIB were reviewed at the October 11, 2013, and November 25, 2013, MDT meetings. The Parent did not identify when or why she believes the District failed to conduct an FBA or develop a PBIP. It is concluded the District did not violate the IDEA or deny the Student FAPE by failing to conduct a functional behavioral analysis (FBA) and failing to develop a positive behavior intervention or improvement plan.

Did the District deny the Student FAPE by using excessive physical force and failing to provide staff with appropriate training to use physical force with the Student?

28. The Parent's Complaint asserts the SD used excessive physical force and failed to provide staff with appropriate training to use physical force with the Student. In support of this claim, the Parent identified one occasion when she arrived to pick up the Student from school, the Student's outer shirt was off, and the fabric on the back of his undershirt was wrinkled in a pattern resembling what the Parent believed was a hand print. And on at least one occasion the Student reported to the Parent that he had been hurt. This evidence is not sufficient to conclude the District used excessive physical force with the Student, or failed to provide appropriate staff training. The well-established history of the Student's psychological disability and its effects on his behavior and demeanor at school, coupled with the Student's young age, compels a finding the Student is likely not a reliable reporter of events. The District staff who worked with the Student all had MANDT training, and the Parent has not shown MANDT was an inappropriate system to use to restrain the Student from injuring himself and others at school. And given the frequency with which District staff were required to use their MANDT training to restrain the Student from injuring himself or others, it is understandable how the Student may have believed, albeit mistakenly given his immaturity and extreme emotional state, that he was injured when in fact he was not. Absent more independent and objective evidence, such as bruises, other injuries or direct observations of physical force being used to restrain the Student, the Student's hear-say statements are not sufficiently reliable to conclude there was any inappropriate or excess use of force by District staff. Similarly, absent some independent evidence corroborating the use of inappropriate force, the Parent's observation of a pattern of wrinkles on the Student's undershirt is also insufficient evidence to conclude the District used excessive physical force to restrain the Student. The Parent has proven no violation of the IDEA, or any denial of FAPE for the Student.

Did the District deny the Student FAPE by failing to hold an IEP meeting to develop an IEP for the Student during the 2013-2014 school year?

29. WAC 392-172A-03100 requires school districts to ensure that one or both parents are present at IEP meetings "or are afforded the opportunity to participate." See 34 C.F.R. 300.322. Districts must, inter alia, notify parents of the meeting early enough to ensure they will have an opportunity to attend, and schedule the meeting at a mutually agreed time. WAC 392-172A-03100(1) and (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). Similarly, another regulation provides:

A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

WAC 392-172A-05000(3)(d); see 34 C.F.R. § 300.501.

30. Recognizing the Student's November 2012 IEP would soon expire, the District attempted to schedule and hold an IEP meeting on November 25, 2013. The District made multiple attempts to contact the Parent to participate as a member of the IEP team, but the Parent would not participate without her educational advocate. The District, primarily through Ms. Frasier, made multiple additional attempts to contact the Parent, but it was not until December 5, 2013, that the Parent and her advocate met with the District members of the IEP team. Ultimately, the team was unable to start the annual IEP review process on December 5, 2013, after the Parent and her advocate refused a copy of a draft IEP because they had not received it before the meeting, and the Parent's advocate had another matter to attend to. After the meeting on December 5th, Ms. Frasier again made repeated efforts to contact the Parent and schedule an IEP meeting, but received no contact from the Parent through December 16, 2013, the date the Parent filed her Complaint.

31. The District was confronted with a situation where it could either hold an IEP meeting and timely develop a new annual IEP for the Student without the Parent's attendance or participation, or wait until it could secure the Parent's attendance which would result in an untimely IEP. A parent's participation and input into developing a student's IEP is a critical component for ensuring an IEP is appropriate. The District's decision to wait to develop a new IEP for the Student until the Parent could participate resulted in the District failing to timely hold an IEP meeting. This is a procedural violation of the IDEA. However, under the facts in this case, it is concluded the procedural violation did not deny the Student FAPE because the District had already offered appropriate tutoring services on December 5, 2013, which the Parent did not permit the Student to access. The violation also did not significantly impede the Parent's opportunity to participate in the decision-making process. Indeed, the violation preserved the Parent's opportunity to eventually participate in an IEP meeting to develop a new annual IEP for the Student. And the violation did not cause a deprivation of educational benefit, as the Parent at the time was not allowing the Student to access tutoring services already offered by the District.

Did the District deny the Student FAPE by calling "911" on October 31 and November 18, 2013, which resulted in the Student being removed from school and taken to Seattle Children's Hospital?

32. As a preliminary matter, it is concluded the District's actions in calling 911 on each of these occasions is fully supported by the evidence as attempts to quickly obtain appropriate assistance for the Student, and were based upon a genuine concern for the Student's health and well-being. Furthermore, after careful consideration of the evidence it was found that

Assistant Principal Bare was asked by the Parent to call 911 on October 31, 2013. On November 18, 2013, when Principal Shepard called 911, the District was once again confronted with the Student, who had just recently been released after a week at Seattle Children's Hospital, attempting to assault staff and injure himself by banging his head against a window. It is concluded Principal Shepard's call to 911 was entirely justified under the circumstances. Furthermore, the Parent has not explained how a school contacting 911 and a resulting decision by a parent and/or hospital to admit a student violates the IDEA or denies a student FAPE.

Did the District deny the Student FAPE by failing to provide the Student with general education and special education (SDI and related aids and services) to meet the Student's individual needs?

33. This issue incorporates many of the same arguments and facts already considered in concluding the District did not fail to provide the Student with SDI in academic areas and social skills. To the extent this issue raises any new matters for consideration, it must be whether the Student was denied FAPE because the District did not provide any opportunity for the Student to participate in general education classes. The record is extraordinarily clear that the Student's almost total lack of ability to deescalate once he became upset or frustrated made it manifestly inappropriate for the Student to be placed in a general education classroom. It is concluded the District did not violate the IDEA or deny the Student FAPE by placing him exclusively in a self-contained TLC classroom.

Will maintaining the Student in his current educational placement at Edison Elementary School be substantially likely to result in injury to the Student or others, and if so, is the District entitled to an order allowing the District to place the Student in an appropriate interim alternative educational setting (IAES) for not more than forty-five school days so the District can complete a reevaluation of the Student and develop a new IEP for the Student?

34. WAC 392-172A-0560 is applicable and provides in relevant part:

Appeal of placement decisions and manifestation determinations.

(1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05145(5), or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

Emphasis added.

35. After careful review of all the evidence of record, it is concluded that returning the Student to his TLC classroom at Edison Elementary under his November 2012 IEP is substantially likely to result in injury to the Student, other students, and/or Edison Elementary staff. The well-documented history of the Student's self-harming and assaultive behaviors compels such a conclusion. The Student has banged his head against windows, attempted to escape out second-story windows, stabbed another student in the head with a pencil, and kicked, struck, and otherwise assaulted staff on multiple occasions.

36. The District has requested an order placing the Student at NW SOIL's Tacoma campus for forty-five school days, or until a reevaluation can be completed and a new IEP developed for the Student. The Student has actually been attending SOIL since January 9, 2014. Based upon the description and information provided by Mr. Beling, it is concluded that SOIL is an appropriate IAES for the Student.

37. It is concluded that the District is entitled to an order placing the Student at NW SOIL's Tacoma campus for forty-five school days, or until a reevaluation can be completed and a new IEP developed for the Student. The forty-five school days began on January 9, 2014. Based upon the District's 2013-2014 School Year Calendar (Exhibit D38p2), the District may keep the Student at SOIL through March 21, 2014, or until a reevaluation and IEP are completed.

Remedies

Compensatory Education

38. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia, supra*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid v. District of Columbia, supra*, 401 F.3d at 524.

39. The Parent has proven two violations of the IDEA which resulted in a denial of FAPE to the Student; the District failed to hold an IEP meeting to consider the results of the June 2012 IEE, and the District failed to provide or offer the Student appropriate educational services to the Student while he was emergency expelled from November 25 through December 5, 2013, a

period encompassing six school days.

40. For the failure to offer or provide services for six school days, the District will be ordered to provide the Student with 12 hours of 1:1 tutoring with a certificated teacher as compensatory education. This represents the 12 hours of tutoring the Student would have received had the District's offer of such services been timely made to the Parent. If necessary to ensure the Student or staff's safety, the District shall also provide a paraeducator to be present along with the teacher providing the tutoring. The tutoring will be provided at a district facility appropriate for the behavioral needs of the Student, likely requiring some degree of limited access and egress. The content of the tutoring will be determined by the certificated teacher such that it is congruent with the Student's IEP and academic goals. The tutoring shall be provided on a schedule to be jointly agreed to by the Parent and the District, but the 12 total hours must be provided within three months of entry of this order. If the Student will not be able to attend a scheduled tutoring session, the Parent shall provide at least 24 hours advance notice to the District, or the session shall be counted as provided to the Student.

41. For the failure to convene an IEP meeting to consider the results of the IEE, the District shall provide thirty minutes of training to all certificated and administrative staff at Stanley Elementary School and Edison Elementary School who participate in IEP team meetings as part of their normal and customary duties. The training shall review the applicable regulations governing the process and procedures for IEP teams meetings, and focus on a school district's duty to consider IEEs obtained either by parents or school districts. The training must occur within sixty school days of entry of this order, and attendance of all staff must be documented and maintained at the District.

42. 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 violated the IDEA and denied the Student FAPE by failing to convene an IEP meeting to consider the Parent's June 2012 IEE, and by failing to offer the Student educational services from November 25, 2013, through December 5, 2013, a total of six school days.

The Tacoma School District shall provide the Student twelve (12) of compensatory education in the form of tutoring pursuant to Conclusion of Law 40, above.

The Tacoma School District shall provide thirty minutes of staff training for all certificated and administrative staff at Stanley Elementary School and Edison Elementary School who participate in IEP team meetings as part of their normal and customary duties pursuant to Conclusion of Law 41, above.

The Tacoma School District has not otherwise violated the IDEA or denied the Student FAPE.

The Tacoma may place the Student at NW SOIL's Tacoma campus as the Student's IAES through March 21, 2014, or until a reevaluation of the Student is completed and a new IEP is developed for the Student.

Signed at Seattle, Washington on February 7, 2014.



Matthew D. Wacker
Administrative Law Judge
Office of Administrative Hearings

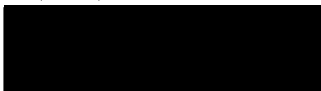
Right To Bring A Civil Action Under The IDEA

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*

Parent



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cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator