

RECEIVED

OCT 28 2014

SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES



MAILED

OCT 24 2014

SEATTLE-OAH

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

One Union Square • 600 University Street • Suite 1500 • Seattle, Washington 98101
(206) 389-3400 • (800) 845-8830 • FAX (206) 587-5135 • www.oah.wa.gov

October 24, 2014

Parent
[REDACTED]

Dr. Judy Martinson, Superintendent
Dieringer School District
1320 – 178th Ave E
Lake Tapps, WA 98391

Parent
[REDACTED]

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

In re: Dieringer School District
Special Education Cause Nos. **2014-SE-0039, 2014-SE-0053**

Dear Parties:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Wacker".

Matthew D. Wacker
Administrative Law Judge

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

RECEIVED

OCT 28 2014

SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES

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

MAILED

OCT 24 2014

SEATTLE-OAH

IN THE MATTER OF:

DIERINGER SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NOS. 2014-SE-0039
2014-SE-0053

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 Lake Tapps, Washington, on September 16 and 17, 2014. The Parents of the Student whose education is at issue¹ appeared and represented themselves (*pro se*). The Dieringer School District (District) was represented by Jeffrey Ganson, attorney at law. Also present for the District was Dr. Judy Neumeier Martinson, District superintendent and director of special education. The following is hereby entered:

STATEMENT OF THE CASE

The District filed a Due Process Hearing Request (Complaint #1) on May 27, 2014. Complaint #1 was assigned Cause No. 2014-SE-0039. On May 28, 2014, a Scheduling Notice was mailed to the parties, setting a prehearing conference for June 9, 2014. The prehearing conference was held as set. An Order Setting Prehearing Conference and Striking Hearing was entered on June 19, 2014, which set another prehearing conference for June 24, 2014, and struck the due process hearing set for June 24, 2014.

The Parent filed a Due Process Hearing Request (Complaint #2) on June 16, 2014. Complaint #2 was assigned Cause No. 2014-SE-0053. On June 17, 2014, a Scheduling Notice was mailed to the parties, setting a prehearing conference for June 24, 2014. The District filed its Response to Complaint on June 20, 2014. At the June 24, 2014 prehearing conference, the ALJ moved *sua sponte* to consolidate the two Complaints for hearing, and the parties did not object. The two Complaints were consolidated for due process hearing.

The consolidated due process hearing was set and then first continued on the District's motion. The consolidated hearing was continued a second time on the Parent's motion, before finally being set for September 16 – 18, 2014. See First and Second Prehearing Orders entered June 25 and July 22, 2014.

////
////
////

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

DUE DATE FOR WRITTEN DECISION

The due date for a written decision in the above consolidated matters is close of record plus thirty (30) calendar days. See Second Prehearing Order entered July 22, 2014. The record closes on the last day of the hearing, or on the date when the parties file their post-hearing submissions. On the last day of hearing, the District moved to file written post-hearing closing arguments, to be due September 26, 2014. The District's motion was granted. Therefore, the due date for a written decision is **OCTOBER 26, 2014**.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

- Joint Exhibits: J1 through J8;
- Parent Exhibits: P1 through P7, and P10; and
- District Exhibits: D1 through D4.

RECEIVED

OCT 28 2014

**SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES**

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

- Janae Neumeier, District school psychologist;
- Marissa Scroggins, District psychometrist;
- Tara Staeheli, District general education teacher;
- Michelle Smith, District speech-language pathologist (SLP);
- Joan Ottinger, District occupational therapist (OT);
- Anna Jaques, District paraeducator;
- Jennifer Lewis, District special education teacher;
- Vicky Jacobs, District paraeducator;
- Judy Neumeier Martinson, District superintendent and director of special education;
- The Mother; and
- The Father.

ISSUES

The issues for the consolidated due process hearing are:

- a. Whether the District's May 2014 reevaluation of the Student was appropriate;
- b. Whether the District denied the Student a free appropriate public education (FAPE) by failing to implement his individualized education program (IEP) and place the Student in a general education classroom for 52% of the school day;
- c. And, whether the Parties are entitled to their requested remedies:
 - i. District: An order finding the District's May 2014 reevaluation of the Student was appropriate and denying the Parent's request for an independent educational evaluation (IEE) at District expense;

- ii. Parent: An order placing the Student in a general education classroom for 52% of the school day.

See June 25, 2014 First Prehearing Order.

FINDINGS OF FACT

General Background

1. Before age 3, the Student had diagnoses of [REDACTED] as his primary diagnosis, [REDACTED] Disorder, [REDACTED] of the [REDACTED] Exhibit P1p1.
2. The Student was initially evaluated and determined eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA) by the Auburn School District in October 2009. The Student was determined eligible under the developmental delay (DD) category. Exhibits J1p1, J5p1.
3. The Student was reevaluated by the Auburn School District during May 2011, and again determined eligible to receive services under the IDEA. The Student's remained eligible under the DD category. Exhibit J1.
4. The May 2011 reevaluation included an assessment of the Student's cognitive and adaptive functioning. The Student's cognitive functioning was assessed using the cognitive portion of the Assessment, Evaluation Programming System (AEPS). Exhibit J1p6. The Student's adaptive functioning was assessed using the Adaptive Behavior Assessment System-Second Edition (ABAS-II). Exhibit J1p5.
5. The Student transferred into the District during July 2011, and began attending school with the commencement of the 2011-2012 school year. The Student was enrolled in a developmental pre-kindergarten class. Exhibits J5p1, P1p13.
6. In February 2012, the Student was diagnosed with [REDACTED] Disorder as his primary diagnosis, Mixed Development Disorder, and ACQ Head Deformity. Exhibit P1p15. The physician noted that the Student did not:

[U]se any verbal language or any signs that I recognized...Developmental attainment appeared severely delayed in communication skills and to a lesser degree in other domains compared to his age based on parent report and observed spontaneous and/or structured performance today...[The Student's] overall neurobehavioral profile appears consistent with his degree of developmental delay...

Exhibit P1p15.

² "NOS" is a diagnostic abbreviation for Not Otherwise Specified.

RECEIVED
OCT 28 2014
SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES

7. The Student began kindergarten in the District with the commencement of the 2012-2013 school year.

The Student's October 2012 IEP

8. On October 17, 2012, the Student's IEP team held a meeting to develop a new annual IEP for the Student. The final IEP noted that the Student:

[C]urrently exhibits loud noises throughout the day. We are currently working on modifying his behavior. [The Student] seems to use these loud noises to sometimes interrupt work or make it possible to leave an activity.

Exhibit J8pp4, 8.

9. The October 2012 IEP also noted that the Student was "primarily a non-verbal communicator...He does use a few words that are intelligible to a familiar listener...when context is known." Exhibit J8p8.

10. The IEP placed the Student in a "general education setting" for 50.81% of the school day to receive social/emotional/adaptive services. The IEP placed the Student in a "special education setting" for the remainder of the school day. Exhibit J8p18. The IEP stated that the Student "has the opportunity to participate with his non-disabled peers in general education activities as well as non-academic and extra-curricular activities such as assemblies, recess, PE and after school clubs." Exhibit J8p19.

11. The IEP states the Student spends a total of 1728 minutes per week in school. However, based upon the frequency and duration of the services identified in the IEP, the Student would apparently spend 1,685 minutes per week in a special education setting, and 865 minutes per week in a general education setting, for a total of 2,550 minutes per week in school. Exhibit J8p17. However, no evidence was offered at hearing to explain this apparent discrepancy.

Period at Issue for Denial of FAPE

Implementation of the Student's IEPs

12. The Student began first grade at the District's [REDACTED] Elementary School for the 2013-2014 school year. Exhibit J2p4, J5p1, J5p18. The Student was assigned a 1:1 paraeducator throughout the school day.

13. Tara Staeheli was the Student's first grade general education teacher. Ms. Staeheli was aware that the Student's IEP placed him in a general education setting for 52% of the school day.³ But the Student did not spend time in her general education class on a regular basis

³ Ms. Staeheli's belief that the Student's IEP placed him in general education setting for 52% of the school day may be a due to the fact that the Student's October 2013 IEP placed him in a general education setting for 52% of the school day. The IEP in effect at the time the Student started first grade (The October 2012 IEP) placed him in a general education setting for 50.81% of the school day.

RECEIVED

OCT 28 2014

Office of Administrative Hearings
One Union Square, Suite 1500
600 University Street
Seattle, WA 98101-3126
(206) 389-3400 1-800-845-8830
FAX (206) 587-5135

during the school year. By the second week of school, Ms. Staeheli began to inquire because the student was not attending her class. Ms. Staeheli went to her supervisor, Jennifer Lewis, who was the Student's case manager. Ms. Staeheli understood the Student's paraeducators were pulling the Student out of general education to receive services in a teacher work room or prep room. She would later report for the Student's May 2014 reevaluation that he did most of his work one-on-one with a teacher rather than in a classroom. Ms. Staeheli did not tell the Mother that the Student was not spending time in her classroom on a regular basis. Testimony of Staeheli.

14. The Parent first learned the Student was not attending Ms. Staeheli's general education class from other parents and students outside of school. Testimony of Parent.

15. Based upon her classroom experience with the Student, Ms. Staeheli believes the Student could have benefitted from more time in her general education class during the school year, particularly for development of the Student's social skills. But the Student did have a very hard time being in a group of people, and Ms. Staeheli believes her class did not always work for the Student. Over the course of the school year, Ms. Staeheli observed the Student biting or hitting himself. This would occur when he appeared under stress or was agitated. Testimony of Staeheli.

16. Vicky Jacobs was the paraeducator assigned to work 1:1 with the Student during the first half of the school day. Ms. Jacobs met the Student at the bus upon his arrival at school in the morning, and then went to Ms. Staeheli's general education classroom for 25-30 minutes. After that, Ms. Jacobs took the Student to the teacher prep room to work 1:1 with the Student. The Student was invited to Ms. Staeheli's classroom for activities like birthdays or holiday events. The Student also had "specialist time" every day, typically in the morning, for physical education, art, or music. At some point during spring 2014, Ms. Jacobs started taking the Student into Ms. Staeheli's general education classroom to provide 1:1 instruction. Testimony of Jacobs.

17. Ms. Jacobs worked 1:1 with the Student on writing, spelling, and math throughout the school year. Ms. Jacobs did not follow a curriculum with the Student, but would ask Ms. Staeheli what material the Student was working on and then create her own lesson plans for the Student. *Id.*

18. Ms. Jacobs observed that the Student did not like noises or crowds, and would get agitated and bite himself. But Ms. Jacobs never saw him hit himself. At the beginning of the school year this behavior was more severe, but it got better as the year went on. *Id.*

19. Anna Jacques was the paraeducator assigned to work 1:1 with the Student during the second half of the school day. She worked with him from 1:00 p.m. until the end of the day. By the time Ms. Jacques began working with the Student during October 2013, the Student was already receiving instruction in the teacher prep or work room. Other than a few minutes at the end of each school day to pick up the Student's jacket or other belongings, Ms. Jacques spent no time with the Student in Ms. Staeheli's general education classroom until sometime in April 2014. And in contrast to Ms. Jacobs' observation, when a student in Ms. Staeheli's general education classroom had a birthday, someone would bring a cupcake for the Student to the teacher prep room. Testimony of Jacques.

RECEIVED

OCT 28 2014

20. Ms. Jacques first learned the Student was supposed to be spending time in general education from Ms. Jacobs. Ms. Jacobs and Ms. Jacques began working to get the Student into Ms. Staeheli's general education classroom. Starting in April 2014, Ms. Jacques began taking the Student into Ms. Staeheli's classroom for 15-20 minutes per day to use a computer for his math instruction. *Id.*

21. Ms. Jacques also observed that the Student would bite himself when he appeared under stress or agitated. But she never observed the Student hit himself. And there were times when the Student would yell or scream in Ms. Staeheli's classroom. *Id.*

22. Ms. Jacques worked 1:1 with the Student in the afternoon on writing, spelling, verbalizing words, math, motor skills, and handwriting. Along with Ms. Jacobs, Ms. Jacques created curriculum for the Student based on his IEP. *Id.*

23. Jennifer Lewis was the Student's special education teacher for first grade, as well as his case manager. She was aware of the Student's current IEP and would eventually write the Student's new IEP after his reevaluation in May 2014. Ms. Lewis is unable to estimate how much time the Student spent in his general education classroom on a day-to-day basis during first grade. Ms. Lewis cannot recall how often she tried to take or took the Student into his general education classroom. She was aware the Student's two paraeducators were pulling the Student out of general education to provide 1:1 instruction in the teacher prep or work room.⁴ Despite these removals from his general education setting, Ms. Lewis tried to implement the Student's IEP as written. Testimony of Lewis.

24. The Student enjoyed the company of other students at lunch and recess, but not in more structured academic or instructional settings like general education classrooms. In those settings, Ms. Lewis observed the Student becoming easily overwhelmed or agitated by groups of people and noises. When overwhelmed, the Student would bite himself, scream, and make vocalizations. When the Student was agitated or overwhelmed, his two paraeducators would take him to the teacher prep room for 1:1 instruction. *Id.*

25. Janae Neumeier is a District school psychologist. She also believes the Student was not in a general education setting in compliance with his IEPs during the school year. The Student did not spend the required time in general education because there were times when the Student could not remain in a general education setting. The Student would be removed for his own safety because he would get frustrated and bite himself on his arm. When the Student could not maintain appropriate behavior in his general education class, he would be removed to work with his paras in the teacher prep room. Ms. Neumeier opined that there had to be a balance between instruction at an appropriate level, and time in a general education setting for the Student's social development. Testimony of Neumeier.

⁴ It was Ms. Lewis who created the teacher prep or work room over the summer in anticipation of the Student's arrival in her first grade special education class. Ms. Lewis was aware the Student had a similar arrangement in kindergarten. The teacher prep or work room had a window and held bookshelves, a table, and a small desk for the Student and para working with him. Ms. Lewis tried to keep the room small and quite because she believed this was the Student's best learning environment. Testimony of Lewis.

RECEIVED

OCT 28 2014

26. Judy Neumeier Martinson is the District superintendent and also the District director of special education. Ms. Neumeier Martinson conceded that the Student did not spend the time in general education required under his IEPs during the 2013-2014 school year. She believes District staff were doing their best to balance the Student's inclusion in general education with his need for instruction on a day-to-day basis. There was no intent to amend or change the Student's educational placement, or limit the Student's time in general education. Testimony of Neumeier Martinson.

The Student's Progress

27. The Student was removed from general education in excess of the requirements in his IEPs over at least the majority of the 2013-2014 school year. Despite this, the evidence of record supports a finding that the Student made significant progress on his IEP goals while working 1:1 with his paraeducators in the teacher prep room.

28. The Student's progress towards his annual goals was reported during December 2013 and March 2014. By at least March 2014, the Student had already mastered two IEP goals, was making sufficient progress to achieve another 14 IEP goals by the end of the IEP, and was demonstrating emerging skills with 2 other IEP goals. The Student was demonstrating insufficient progress to meet 3 IEP goals. Looking more closely, the Student appeared to make more progress towards his cognitive, pre-academic, and communication goals, and somewhat less progress towards his adaptive and social skills goals. Exhibit J3pp1-11.

29. The Student's paraeducators and teachers were unanimous in their opinion the Student made progress towards his IEP goals over the 2013-2104 school year.

30. The Student made gradual progress over the school year on the communication goals in his IEPs. Testimony of Smith. The Student began the school year working at kindergarten level math, but later moved on to first grade math and was successful. The Student used only a few intelligible words when Ms. Jaques began working with him in October 2013. But by May 2014, the Student was using more intelligible language in a more spontaneous manner. Testimony of Jaques.

31. As most of her instruction for the Student occurred in the teacher prep room, Ms. Jaques believes the prep room was a productive environment for the Student, and that he made progress in math, writing skills, verbal language, spontaneous speech, and motor skills. *Id.*

32. The Student made progress with his social skills over the school year. By the end of the year, the Student was better able to take turns, and was more aware of others. The Student made progress in verbal skills, math, handwriting, and motor skills. Testimony of Lewis.

33. At the start of the school year the Student used only 5-7 words. By spring 2014, the S was talking more and using more spontaneous speech. The Student's ability to regulate his behavior when he became agitated also improved over the year. Testimony of Jacobs.

34. The Student's October 2013 IEP noted he made progress on all his IEP goals from his last IEP, although he did not meet all of his goals. Exhibit J2.

RECEIVED

OCT 28 2014

35. The Student's May 2014 Reevaluation would later note that the Student had started to vocalize over the past year, and was beginning to use some words. Exhibit J5p5.

36. The Mother also observed the Student's increased vocabulary and use of spontaneous speech over the course of the school year. Testimony of Mother.

The Student's October 2014 IEP

37. The Student's IEP team held a meeting to develop a new annual IEP on October 15, 2013. The IEP noted the Parent's concern for the Student's behaviors and the effect those behaviors had on his peer relationships, and his communication difficulties. Exhibit J2p3. The Student was still exhibiting loud noises throughout the school day, although this behavior had decreased since the school year began. It appeared as though the Student used these loud noises to avoid work and class activities. The IEP noted the Student often worked towards his cognitive goals in a smaller special education setting where he could more easily focus on tasks. Exhibit J2p4.

38. The Student's IEP placed him in a general education setting for 52.02% of the school day for cognitive as well as social/emotional/adaptive services. It noted the Student was eligible to participate with non-disabled students in general/non-academic extracurricular activities open to his grade level without restrictions or limitations. Exhibit J2p19.

The Student's May 2014 Reevaluation

39. In anticipation of conducting a mandatory three-year reevaluation of the Student, Ms. Neumeier and Marissa Scroggins, District psychometrist, met to determine the scope of the reevaluation. They determined the scope of the reevaluation after consideration of the Student's age, his impairments, the Student's past evaluations and IEPs, the areas that needed to be assessed, and available assessment tools. Testimony of Neumeier, Scroggins.

40. The Parent signed consent for the Student's reevaluation on April 13, 2014. The consent form identified the areas which Ms. Neumeier and Ms. Scroggins determined would be assessed during the reevaluation. Exhibit J4p2.

41. Ms. Neumeier conducted the Student's cognitive assessment for his reevaluation. Ms. Neumeier's *curriculum vitae* or record of education, training, and experience appears in the record at Exhibit D2. After review of her education, training, and experience and her testimony at hearing, it is found that Ms. Neumeier was qualified to determine the scope of the Student's reevaluation with Ms. Scroggins, select the appropriate assessment tool, administer the assessment tool, and interpret the results.

42. Ms. Neumeier selected the Test of Nonverbal Intelligence-Third Edition (TONI-3) to assess the Student's cognitive abilities. It is common practice to assess a student's cognitive abilities using a single assessment tool. Ms. Neumeier selected the TONI-3 based on consideration of the Student's very limited language skills. The TONI-3 was developed as a language-free measure of abstract/figural problem solving, and assesses an individual's ability to solve problems without overtly using language. The directions, content, and responses are all language-free, which makes the TONI-3 an ideal assessment for individuals who have linguistic difficulties. Ms. Neumeier selected the TONI-3 in order to limit any effect of the Student's very

RECEIVED

OCT 28 2014

Office of Administrative Hearings
One Union Square, Suite 1500
600 University Street
Seattle, WA 98101-3126
(206) 389-3400 1-800-845-8830
FAX (206) 587-5135

limited language skills on the results of his cognitive assessment. Ms. Neumeier has used the TONI-3 for assessments of other students who were deaf or hearing impaired, and has prior experience working with and assessing students with significant communication limitations. Exhibit J5p14; Testimony of Neumeier.

43. Ms. Neumeier had not interacted with the Student prior to his reevaluation. The first time she met the Student was when she administered the TONI-3 to him. But it is not uncommon for Ms. Neumeier to assess or evaluate a student she does not know, or is not familiar with. Ms. Neumeier had reviewed the Student's records, which included prior evaluations and IEPs, before assessing the Student. *Id.*

44. Ms. Neumeier administered the TONI-3 to the Student in her office. She requested the Student's paraeducator accompany the Student to her office, and the paraeducator was present with the Student during the assessment. Ms. Neumeier went over the instructions for the TONI-3 with the Student using non-verbal gestures, which is the manner prescribed by the tool's creators. However, the Student was unable to respond to any of the sample items. Ms. Neumeier presented the instructions again, this time using both gestures and verbal instruction. Even using verbal and non-verbal instructions, Ms. Neumeier could not get a "clear response" from the Student. She then presented the first five test "sequences" to the Student, but the S could not complete any of the sequences. Per the TONI-3 scoring, this resulted in the Student earning a standard score of 67. A standard score of 67 means the Student scored more than two standard deviations below the mean, or average, score on the TONI-3. Exhibit J5p14; Testimony of Neumeier.

45. Despite "breaking protocol" and providing both verbal and non-verbal instructions, based upon her education, training, and experience, Ms. Neumeier opines, and it is found as fact, that the Student's score on the TONI-3 remained valid and reliable. Providing verbal as well as non-verbal instructions would only have the potential to increase the Student's score. Similarly, the presence of the Student's paraeducator with him in Ms. Neumeier's office did not affect the validity or reliability of the Student's cognitive assessment. *Id.*

46. Ms. Neumeier was aware the Student used an iPad to help him communicate at school, but she did not allow him to use the iPad for the TONI-3 because it is designed to be taken without the use of verbal responses. *Id.*

47. Marissa Scroggins is a psychometrist employed by the District. Ms. Scroggins conducted the Student's academic and adaptive assessments for his reevaluation. Ms. Scroggins' curriculum vitae or record of education, training, and experience appears in the record at Exhibit D3. After review of her education, training, and experience and her testimony at hearing, it is found that Ms. Scroggins was qualified to determine the scope of the Student's reevaluation with Ms. Neumeier, select the appropriate assessment tools for the Student's academic and adaptive assessments, administer those assessments, and interpret the results.

48. Ms. Scroggins selected the Kaufman Test of Educational Achievement, Second Edition (KTEA-II) to assess the Student's academic achievement, and the Vineland Adaptive Behavior Scales, Second Edition (VABS-II) to assess his adaptive behavior skills. Exhibit J5pp8-11, 15-17.

RECEIVED

OCT 28 2014

49. The Student's overall Comprehensive Achievement Composite standard score on the KTEA-II was 58, which is more than two standard deviations below the mean score of 100. The Student scored more than two standard deviations below the mean on all subtests except written language (SS = 73), math computation (SS = 73), and spelling (SS = 79). Any standard score of less than 70 is more than two standard deviations below the mean. Exhibit J5p15.

50. Based upon the Student's performance on the KTEA-II, it is likely that while the Student has a few relative strengths, he will not be able to understand and/or complete academic work at the same, or even comparable, rate as same age, general education peers. Exhibit J5p17.

51. The VABS-II provides a comprehensive assessment of personal and social skills abilities. The rating scale covers four domains, including communication, daily living skills, socialization, and motor skills. VABS-II rating scales were completed by the Student's special education teacher, Ms. Lewis, his paraeducator, Ms. Jacobs, and his Parent. The scales were scored by Ms. Scroggins. Exhibit J5p8.

52. The ratings of all three responders resulted in Adaptive Behavior Composite scores below a standard score of 70, which is more than two standard deviations below the mean score of 100. This indicates the Student's impaired adaptive skills are severely impacting his functioning across all four domains. Exhibit J5p9.

53. In addition to conducting cognitive, academic, and adaptive behavior assessments, the Students' reevaluation included communication, fine motor, gross motor, and social/emotional/behavioral assessments by qualified District staff.

54. A reevaluation team meeting was held on May 14, 2014, to consider the results of the Student's reevaluation. The Parent attended as a team member. By this time, the Student was approximately 7½ years old. After review and consideration of the results from his reevaluation, the team determined the Student continued to qualify for special education and related services. But after consideration of particularly the results from the Student's cognitive and adaptive behavior skills assessments, the consensus of the team, apart from the Parent, was that the more appropriate eligibility category for the Student was intellectual disability, or ID, not the Student's prior DD category. The Parent disagreed, believing the DD category was still the more appropriate eligibility category for the Student. Exhibit J5, Testimony of Parent,

55. The reevaluation report reflected the team's reasoning in the following passage:

[T]he evaluation team feels [the Student] is no longer best served by his DD eligibility. The reasons for this include: 1) [the Student] will be 9 in less than 1.5 years and will require a different eligibility category 2) the category of DD is no longer the best fit as [the Student's] evaluation data supports a diagnosis of Intellectual Disability as all of his scores in all areas are below 70.

Exhibit J5p5.

56. The reevaluation team also considered the fact that were he to remain eligible under the DD category, the Student would have to undergo another reevaluation in less than 1½ years because the District could not change the Student's eligibility category without conducting

RECEIVED

OCT 28 2014

another reevaluation. Except for the Parent, the team members did not believe another early reevaluation was in the Student's best interests.

57. The change in eligibility categories from DD to ID did not result in any significant changes to the Student's next IEP developed in June 2014, just one month after the Student's reevaluation. Exhibit J7; Testimony of Neumeier, Scroggins.

58. On May 21, 2014, the Parent requested an independent educational evaluation (IEE) at the District's expense. The Parent disagreed with the results of the Student's reevaluation because she believed the testing did not fully represent the Students' intellectual abilities. The Parent believed the scores and data collected during the reevaluation were not a reliable measure of the Student's true functioning. Her reasons for this belief included the fact that the assessments were done without assistive technology,⁵ there was a communication barrier, and disagreement over the Student's adaptive needs. Exhibit J6.

CONCLUSIONS OF LAW

The IDEA

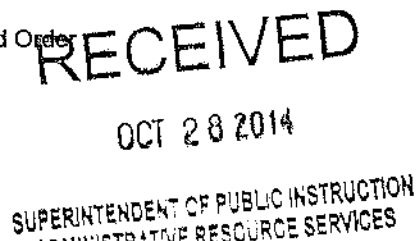
1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised 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 burden of proof in an administrative hearing under the IDEA is on the party seeking relief. Therefore, the District carries the burden of proof to establish the appropriateness of its reevaluation of the Student. The Parents carry the burden of proof to establish any failure by the District to implement the Student's IEP. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

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

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

⁵ The Parent's reference to assistive technology was the Student's iPad.



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

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

[A] "free appropriate public education" 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.

5. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201. An IEP must be "reasonably calculated to enable the child to receive educational benefits." *Id.*, 458 U.S. at 207. "Under the 1997 amendments to the IDEA, a school must provide a student with a 'meaningful benefit' in order to satisfy the substantive [FAPE] requirement." *M.M. v. Lafayette School Dist.*, 2014 U.S. App. LEXIS 18979 (9th Cir. 2014) (internal citation and quotation marks omitted).

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 WAC 392-172A-05105(2).

RECEIVED

OCT 28 2014

Substantive Compliance with the IDEA

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

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

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

...
[W]e clarify that the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.

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

Was the District's May 2014 reevaluation of the Student appropriate?

9. A school district must obtain informed parental consent prior to conducting any reevaluation of a student eligible for special education services. WAC 392-172A-03000(3)(a); 34 CFR §300.300(c). The Parent was provided a consent form that included identification of the areas to be assessed for the Student's reevaluation. The Parent signed the consent. It is concluded the District obtained the Parent's informed consent prior to initiating the reevaluation.

10. Once a student is determined eligible for special education, the student must be reevaluated at least once every three years unless the parent and the school district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). The reevaluation must also be completed within thirty-five (35) school days after the date consent is obtained from the parent. WAC 392-172A-03015(3)(a). The District has complied with these requirements.

11. Both the Washington Administrative Code and the Code of Federal Regulations set out procedures for evaluations and reevaluations. WAC 392-172A-03020 provides:

Evaluation procedures.

(1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010 that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

RECEIVED

OCT 28 2014

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

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

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

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

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

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

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

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

RECEIVED

OCT 28 2014

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

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

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

See also 34 CFR §300.303. Each of the requirements for an appropriate reevaluation of the Student will be examined in turn.

12. As already concluded above, the District provided prior written notice of the reevaluation to the Parent when it obtained her informed consent for the reevaluation.

13. The evidence clearly supports a conclusion that the District staff who participated in the Student's reevaluation were professionals qualified by their education, training, and experience to conduct the reevaluation and administer the reevaluation's component assessments.

14. The District staff who conducted the reevaluation used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student. The variety of tools and strategies used included multiple standardized assessments, observations, and record reviews.

15. The District staff did not use any single measure or assessment as the sole criterion for determining the Student's eligibility. With respect to the determination the Student's more appropriate eligibility category was ID rather than DD, the District principally relied upon the results of the cognitive assessment and adaptive skills assessment; two distinctly separate assessments.

16. After careful consideration, it is concluded that the District used technically sound instruments to assess the relative contribution of many factors. This is a point of disagreement for the Parent. One of the few specific arguments articulated by the Parent about her disagreement with the reevaluation was her disagreement with the use of the TONI-3 to assess the Student's cognitive functioning. But the Parent's concerns were amply addressed by the evidence offered by the District. The Parent was concerned that the Student, being functionally non-verbal, would not be fairly assessed. But Ms. Neumeier eloquently and compellingly explained why she chose the TONI-3 to

RECEIVED

OCT 28 2014

assess the Student. Ms. Neumeier recognized that the Student's very limited ability to communicate using verbal language necessitated an assessment tool that did not rely on verbal instructions or verbal responses. Based upon her education, training, and experience, Ms. Neumeier selected the TONI-3. The Parent has offered no evidence, such as contrary testimony from an equally well educated, trained, and experience individual, to rebut Ms. Neumeier's testimony that the TONI-3 was an appropriate tool to assess the Student's cognitive abilities. It is concluded that the TONI-3 was a technically sound tool to assess the Student's cognitive abilities.

17. There is no evidence upon which to conclude the assessment tools and other evaluation procedures used by the District were in any way discriminatory on a racial or cultural basis.

18. It is concluded that the District provided and administered the assessment tools in a mode of communication most likely to yield accurate information on what the Student knows and can do academically, developmentally, and functionally. All District staff were clearly aware of the complexities posed by the Student's very limited ability to communicate through spoken language. Thus the selection of the TONI-3 to assess the Student's cognitive skills. The District used the VABS-II to collect assessment data on the Student's adaptive skills across multiple domains. The VABS-II did not require any verbal interaction or responses on the Student's part. Observations of the Student also provided information about his skills and abilities. In light of the difficulty posed by the Student's disabilities, it is concluded the District met this requirement.

19. Multiple District staff, involved in the reevaluation and qualified by their education, training, and experience, established through their very credible testimony that the assessment tools and other reevaluation measures used for the Student's reevaluation were used for the purposes for which they are valid and reliable. Much of this has already been discussed in the context of related reevaluation requirements, and will not be repeated here.

20. Similarly, the evidence is clear that District staff who were involved in the reevaluation and who administered the assessment tools are trained and knowledgeable personnel. To the extent the administration of the assessment tools deviated from the instructions provided by the producer of the tools, it is concluded that such deviations were necessary and did not invalidate the assessment results. The clearest example of this was when Ms. Neumeier resorted to using non-verbal gestures in conjunction with verbal instructions for the TONI-3 only after the Student could not respond to non-verbal instructions alone. Ultimately, Ms. Neumeier's use of both verbal and non-verbal instructions would only have increased the chances the Student might have responded correctly to a sequence, thereby falsely inflating his standard score, not decreasing it.

21. As has already been discussed above, District staff that participated in the reevaluation and administered assessments did so in a manner so as best to ensure that the assessment results accurately reflected the Student's aptitude or achievement level. Staff carefully selected and administered the assessments in the best manner possible given the Student's very limited verbal language skills.

RECEIVED

OCT 28 2014

22. Finally, it is concluded that the reevaluation assessed the Student in all areas related to his suspected disabilities, and the evaluation was sufficiently comprehensive to identify all of the Student's special education and related services needs. The reevaluation was wide ranging in scope and covered all areas of social, emotional, general intelligence, academic status, communication, and motor abilities. The resulting reevaluation report offered ample information upon which to identify the Student's needs and recommend special education and related services for the Student's subsequent June 2014 IEP.

23. WAC 392-172A-03035 is applicable and provides:

Evaluation report.

(1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

24. After careful review of the reevaluation report (Exhibit J5), it is concluded the report meets these requirements. It was sufficient in scope to develop the Student's June 2014 IEP. It stated the Student has a disability which meets the eligibility criteria. It discussed the assessments and reviewed the data that supported the reevaluation team's conclusion regarding the Student's eligibility. It set forth how the Student's disabilities affected his involvement in the general education curriculum. It recommended the special education and related services needed by the Student, and included the information necessary to develop the Student's IEP. It was signed by the members of the team.

25. It is worthwhile to pause and consider in more detail a particular point of contention for the Parent. The Parent disagreed with the team's determination to

RECEIVED

OCT 28 2014

change the Student's eligibility category from DD to ID. The Parent argues there was no compelling reason to change the Student's eligibility category at that time, and that the change from DD to ID was incorrect given the concerns she raised over the cognitive assessment component of the reevaluation in particular. However, the District has presented sufficient evidence in support of the team's decision to change the Student's eligibility category. First, the District is correct that before the Student turns nine years old, his eligibility category would have to change. WAC 392-172A-01035(2)(d). And the District is also correct that the Student would have to undergo another reevaluation before any new eligibility determination is made. This would require the Student to undergo two reevaluations in a span of approximately 18 months. The District has presented the opinions of multiple staff, qualified by appropriate education, training, and experience, that conducting another reevaluation so soon is not in the best interests of the Student. Furthermore, the team's decision to change eligibility categories from DD to ID is better reflective of the reevaluation results. There is no question that the Student is experiencing developmental delays that adversely affect his educational performance in multiple areas. The reevaluation results clearly support a conclusion the Student is functioning at least two standard deviations below the mean in cognitive development, communication development, and adaptive development. It is concluded the change in eligibility category from DD to ID was appropriate given the facts in this case.

26. But the Parent can rest assured that regardless of the eligibility category selected by the team, no category is determinative of the special education and related services the Student will receive under his IEP. The services a student needs to receive FAPE are not driven by any particular eligibility category. Regardless of whether the Student's eligibility category is DD or ID, his IEP must include all the special education and related services necessary for him to receive FAPE. The determination of what services an eligible student receives must be based upon consideration of that student's unique disabilities, and his individualized service needs.

27. In summary, the District has established that its May 2014 reevaluation of the Student complied with all relevant regulations, and that the reevaluation was appropriate for the Student. Accordingly, it must be concluded that the Parent is not entitled to an IEE at the District's expense.

Did the District deny the Student FAPE by failing to implement his IEP and place him in a general education classroom for 52% of the school day during the 2013-2014 school year?

28. There is no question, and the evidence is abundantly clear, that the District failed to implement the Student's IEPs during the 2013-2014 school year because the Student was not in a general education classroom, setting, or location for 50.81% or 52.02% of the school day.⁶ Not one witness testified the Student was outside of the teacher prep or work room for even a majority of the school day. Ms. Neumeier Martinson conceded as much during her testimony.

⁶ To be clear, there were two IEPs in effect during the 2013-2014 school year. The October 2012 IEP was in effect from the commencement of the school year until October 15, 2013. The October 2013 IEP was in effect throughout the remainder of the school year, except for a very few days in June 2014. The two IEPs placed the Student in a general education setting or location for 50.81% and 52.02% of the school day, respectively.

RECEIVED

OCT 28 2014

In its closing brief, the District argued it is impossible to conclude that the Parent carried her burden of proof on this issue because “[n]o witness could testify to the precise number of minutes the Student spent in general education settings on any particular day.” District’s Closing Brief, p.15. The undersigned must respectfully disagree with the District’s position. There is overwhelming and uncontroverted evidence based on the testimony of the District’s own staff to find the Student did not spend the time in a general education classroom, setting, or location as required under his IEPs.

29. The more compelling argument raised by the District in its Closing Brief is that despite its failure to implement the Student’s IEPs, nevertheless the Student demonstrated progress towards his IEP goals over the course of the school year as the direct result of the instruction provided in the teacher prep room. With respect to the Student achieving progress towards his IEP goals, the evidence is equally clear and abundant; the Student did make significant progress. This is established both through the Student’s progress reports and the reports of all the witnesses who provided testimony on this point, including the Parent. Achieving progress towards IEP goals is certainly one strong indicia of a student obtaining an educational benefit, as the District argues. Following the reasoning in *Van Duyn, supra*, it could be argued that because the Student achieved progress towards his IEP goals, the District’s failure to fully implement the Student’s IEPs was not a *material* failure, and therefore the District did not violate the IDEA. In essence, the District argues “no harm, no foul.”

30. The premise that a school district can knowingly fail to provide an eligible student the time in a general education classroom, location, or setting required in the student’s IEP over the course of an entire school year but still not deny a student FAPE is troubling. *Van Duyn* recognized as much when it held that the materiality standard does *not* require that the child suffer demonstrable educational harm in order to prevail. The lack of such harm resulting from a school district’s failure to implement an IEP is not the lynchpin of the legal analysis. And *Van Duyn* is perhaps prophetic in its express recognition that:

IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute—not to decide on its own no longer to implement part or all of the IEP.

Van Duyn, supra, 502 F.3d at 822. This statement by the court echoes the facts in the Student’s case. There is no evidence to suggest removing the Student from his general education setting to the teacher prep room was done with any malicious intent. On the contrary, the Student’s paraeducators and teachers who testified appeared genuinely concerned that the Student could not tolerate the stress of academic instruction in a general education setting. So they removed him to the teacher prep room and diligently instructed the Student. Best intentions aside, however, this was not the answer to the problem and it violated the IDEA. Once the District realized the Student could not tolerate the amount of time in general education required under his IEPs, the proper course of action was to convene the Student’s IEP team to consider what changes might be appropriate.

31. Despite the Student making progress towards his IEP goals, after careful consideration it is concluded that the District materially failed to implement the Student’s IEPs, and this was a substantive violation of the IDEA. The District had clear knowledge and notice of the Student’s IEPs, the fact the Student was not in a general education classroom, setting, or location in

RECEIVED

OCT 28 2014

compliance with those IEPs, and its failure to convene an IEP team to address this over the course of virtually an entire school year all support this conclusion.

Remedies

Compensatory Education

32. 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.

33. The Parent has not requested compensatory education as a remedy for any denial of FAPE arising from the District's failure to faithfully implement the Student's IEPs. Even had the Parent requested compensatory education as a remedy, no such award would be ordered under the facts in this case. First, it is clear the Student made progress towards the large majority of his IEP goals despite the failure to implement his IEP and place him in a general education classroom, setting, or location. This appears likely due to the diligent instruction he received primarily from his two paraeducators in the teacher prep room over the course of the majority of school year. Second, the evidence of record was not sufficiently developed to determine what would be an appropriate compensatory education award for the Student. Even were the Student awarded compensatory education, likely more time in general education, such an award might place the Student in a position of being in a general education classroom, setting, or location too often during his school day. It is clear the Student likely requires some amount of 1:1 instruction in a quiet and more controlled environment. Ordering the district to provide more time in general education might actually be counterproductive for the Student's educational success.

34. The only remedy requested by the Parent was an order placing the Student in a general education classroom for 52% of the school day. For the following reasons, the Parent's only requested remedy should be denied.

35. First, the Parent's only requested remedy is prospective in nature. Ordering the Student to be placed in a general education classroom, setting, or location for some specific percentage of the school day may well not be in the Student's best educational interests, as discussed above. More importantly, there is an IEP in place for the Student at the present time; the June 2014 IEP. The appropriateness of that IEP is not at issue. Ordering prospective placement in general education in excess of what is called for in that IEP would effectively modify that IEP. Given that it has been concluded the District's reevaluation of the Student was appropriate, and the fact that the IEP developed from that appropriate reevaluation is not at issue here, such a modification is not appropriate.

RECEIVED

Findings of Fact, Conclusions of Law and Order
Cause Nos. 2014-SE-0039/-0053
Page 20

OCT 28 2014

SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES

Office of Administrative Hearings
One Union Square, Suite 1500
600 University Street
Seattle, WA 98101-3126
(206) 389-3400 1-800-845-8830
FAX (206) 587-5135

36. Second, awarding the Parent her requested remedy may limit the Parent's future options should the District fail to faithfully implement such an order placing the Student in general education for 52% of the school day. In Washington State, administrative law judges do not enforce their orders from due process hearings. If a parent believes a school district has not complied with an ALJ's order after a due process hearing, the parent must seek enforcement of the ALJ's order through the Office of Superintendent of Public Instruction (OSPI). A parent may not file another due process hearing request when the only issue is enforcement of an existing order from an ALJ. Were the undersigned ALJ to enter the order requested by the Parent and the District did not implement that order, the Parent would have but one option; seek enforcement of the order through OSPI. In contrast, by not entering the Parent's requested order, the Parent retains the right to file another due process hearing request should the District fail to faithfully implement the Student's IEP in the future. And in addition to retaining the right to file for another hearing, the Parent may always file a state citizen complaint with OSPI and seek direct intervention by OSPI if she believes the District is not faithfully implementing the Student's IEP in the future. WAC 392-172A-05025.

37. For the above reasons, the Parent's requested remedy should be denied.

Other Arguments

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

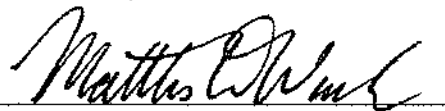
ORDER

The Dieringer School District's May 2014 reevaluation of the Student was appropriate.

The Dieringer School District materially failed to implement the Student's IEPs during the 2013-2014 school year, and this was a substantive violation of the IDEA.

No remedy is ordered for the Dieringer School District's violation of the IDEA pursuant to the above Conclusions of Law.

Signed at Seattle, Washington on October 24, 2014.



Matthew D. Wacker
Administrative Law Judge
Office of Administrative Hearings

RECEIVED

OCT 28 2014

SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES

////
////
////
////

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. *mdw*

Parent



Dr. Judy Martinson, Superintendent and Special
Education Director
Dieringer School District
1320 - 178th Ave E
Lake Tapps, WA 98391

Parent



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

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

RECEIVED

OCT 28 2014

SUPERINTENDENT OF PUBLIC INSTRUCTION
ADMINISTRATIVE RESOURCE SERVICES