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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

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July 26, 2019

Parents

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In re: Lake Washington School District
Cause No. 2018-SE-0129
Docket No. 11-2018-OSPI-00643

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.

MATTHEW D. WACKER
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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

OAH - SEATTLE

IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0129

LAKE WASHINGTON SCHOOL DISTRICT

OAH DOCKET NO. 11-2018-OSPI-00643

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Redmond, Washington, over four days on February 25 – 28, 2019. The Parents of the Student whose education is at issue¹ appeared and were represented by Lara Hruska and Jinju Park, attorneys at law. The Lake Washington School District (District) was represented by Carlos Chavez, attorney at law. Also appearing for the District was Stacy McCrath-Smith, associate director of special education. A certified court reporter was also present at the due process hearing.

STATEMENT OF THE CASE

Procedural History

The Parents filed a Request for Due Process Hearing (Complaint) on November 16, 2018. On November 20, 2018, a Scheduling Notice was entered, setting a prehearing conference for December 17, 2018, and a due process hearing for January 2, 2019. On November 30, 2018, the District filed its Response to Hearing Request. The prehearing conference was held as scheduled on December 17, 2018.

On December 20, 2018, the First Prehearing Order was entered. The First Prehearing Order struck the due process hearing set for January 2, 2019, set a new due process hearing for February 25 – March 1, 2019, and set out a statement of the issues and remedies for the due process hearing. It also granted the District's motion to extend the due date for a written decision to the close of record plus thirty (30) calendar days.

Parents' Motion to Amend Complaint

Pursuant to the December 20, 2018 First Prehearing Order, a readiness prehearing conference was held via telephone conference call with the parties' counsel on February 13,

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

2019.² Earlier the same day, the Parents filed a Motion to Amend Issues for Hearing (Motion). Both counsel were heard on the Motion at the readiness prehearing conference. The Motion was taken under consideration. During opening remarks by the ALJ on the first day of the due process hearing, the Motion was denied.

The due process hearing was held and completed over four days on February 25 – 28, 2019.³ At the close of the hearing, the parties agreed to file written closing briefs/arguments by April 5, 2019.

Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See December 20, 2018 First Prehearing Order. The record of the hearing closed with the filing of post-hearing briefs on April 5, 2019. Thirty calendar days from April 5, 2019 is May 5, 2019. Therefore, the due date for a written decision in the above matter is **May 5, 2019**.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parents Exhibits: P1 - P27, P29 - P94;

District Exhibits: D1 - D50, and D52.

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

Stacy McGrath-Smith, District Associate Director of Special Education.
The Mother of the Student.
Dr. Lionel Enns, Clinical Child Psychologist.
Rachael Harper, Licensed Mental Health Counsel Associate.
Matthew "Matty" Bryant, Principal – Spark Academy, Heritage Community.
Lynetta Martindale, Licensed Marriage and Family Therapist – Spark Academy, Heritage Community.
Conrad Nebeker, Academic Advisor, Heritage Community.
Tari Stotesbery, District Special Education Teacher.
The Father of the Student.
Katie McAllister, District Special Education Teacher.
Christopher DiPaul, District School Psychologist.

² The ALJ misspoke during opening remarks on the first day of the due process hearing, identifying the readiness prehearing conference as held on February 3. See Transcript at page 19. The readiness prehearing conference was held on February 13.

³ The due process hearing was set for five days over February 25 – March 1, 2019. The hearing was completed on February 28, 2019. No hearing was held on March 1, 2019.

ISSUES AND REMEDIES

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

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) from November 16, 2016, through November 16, 2018, by:
 - i. Violating its Child-Find duty when it failed to identify a social-emotional disability and later a conduct disorder;
 - ii. Failing to provide the Student with specially designed instruction (SDI), related services, and accommodations to address the Student's autism spectrum disorder (ASD), social-emotional disability, and conduct disorder;
 - iii. Reducing services and SDI during the 2016-2017 school year;
 - iv. Failing to place the Student in her least restrictive environment (LRE) by first placing her at Eastlake High School, followed by Overlake Specialty School, and then failing to place her at Heritage School, a residential treatment center (RTC);
 - v. Failing to reevaluate the Student in December 2017, May 2018, and August 2018;
 - vi. Committing both procedural and substantive violations of the IDEA when it predetermined that the Student's placement at Heritage School was primarily medical in nature, thereby concluding that the District was not financially responsible for her placement at Heritage School, prior to completing any review of existing data or finishing an evaluation;
- b. And, whether the Parents are entitled to their requested remedies:
 - i. Declaratory relief that the District:
 - a. Violated its Child Find duty;
 - b. Failed to provide the Student FAPE;
 - c. Failed to place the Student in her LRE;
 - d. Failed to evaluate the Student in good faith;
 - ii. Compensatory education and supplemental services for denying the Student FAPE during the last two school years;
 - iii. Placement at Heritage School until the Student is approved for discharge;
 - iv. Transportation to and from Heritage School on an as-needed basis;
 - v. An appropriate reevaluation, IEP, and educational placement following discharge from Heritage School;

- vi. Reimbursement for the Parents' out-of-pocket costs, including travel expenses to and from Heritage School in August 2018, and attorney fees;
- vii. Or other equitable remedies, as appropriate.

See December 20, 2018 First Prehearing Order.

FINDINGS OF FACT

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

General Background

1. The Student has been enrolled in the District since at least the 2009-2010 school year, when she⁴ was in first grade. D4p1.⁵ During first grade, the Student was initially evaluated by the District and determined eligible to receive special education and related services under the Other Health Impairment (OHI) category, with a diagnosis of mild neurodevelopmental dyspraxia. The Student was determined eligible to receive specially designed instruction (SDI) in reading, social skills, organization, and math. *Id.*
2. In March 2011, Brien Vlcek, M.D., conducted a comprehensive pediatric neurological evaluation of the Student at Swedish Neuroscience Institute. Dr. Vlcek diagnosed the Student with attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD). D1pp1-2.
3. In November 2012, the District reevaluated the Student and determined she remained eligible for special education under the OHI category. The reevaluation recommended the Student receive SDI in organization and math. Based upon the Student's progress, the evaluation did not recommend SDI for the Student in reading or social skills. D4pp1-2.
4. The District next reevaluated the Student in November 2015, determined she remained eligible under the OHI category, and recommended continuing SDI. *Id.*

⁴ The Student is a [REDACTED]

⁵ Citation to the exhibits of record are by party (Parents, District) and by page number. For example, citation to D4p1 is a citation to District Exhibit 4, page 1.

5. In March 2016, the Student began seeing a therapist at [REDACTED]. The therapist recommended the Student have a psychological evaluation. D2; Mother T209.⁶

6. On March 28, 2016, Felice Orlich, PhD, conducted a psychological evaluation of the Student at Seattle Children's Hospital. D2.⁷ By this time, the Student [REDACTED], and Dr. Orlich diagnosed the Student with Autism Spectrum Disorder (ASD), ADHD, Unspecified Depressive Disorder, and [REDACTED]. D2p1.

7. Dr. Orlich's evaluation was the first diagnosis of the Student's ASD. Mother T114. The Mother shared Dr. Orlich's report with the District sometime during fall 2016. *Id.* at T115-116.

2016-2017 School Year: Eighth Grade at Inglewood Middle School

8. The Student attended eighth grade at the District's Inglewood Middle School for the 2016-2017 school year. D4p1; Mother T116. Tari Stotesbery was the Student's special education teacher, and taught the Student's academic support class in Ms. Stotesbery's special education resource room. Stotesbery T613-614, T625-626. Ms. Stotesbery did not observe any signs of anxiety or depression from the Student while at school. *Id.* at T620.

9. On September 22, 2016, Speech-Language Pathologist (SLP) Carrie Elliot conducted a pragmatic language evaluation of the Student at Mosaic Rehabilitation. D3. Ms. Elliot determined that the Student had mild deficits in social communication, and her impression was that the Student demonstrated a Social Communication Disorder. *Id.* at p3.

10. Lionel Enns, PhD, is a licensed clinical child psychologist. He is also a board certified behavioral analyst and a nationally certified school psychologist. P1. Dr. Enns first met the Student's family while he was employed at Mosaic Rehabilitation. Enns T320. Based upon a recommendation from the Seattle Children's Autism Center, Dr. Enns began providing parent support and "relational and cognitive behavioral therapy" for the Student at Mosaic Rehabilitation in September or October 2016. Mother T128; Enns T256, T297. Dr. Enns saw the Student on a weekly or biweekly basis until June 2018. Enns T295, T256.⁸

11. On October 20, 2016, the Student's Individualized Education Program (IEP) team held a meeting to develop the Student's new annual IEP. D5. The Mother attended the meeting. *Id.* at p1. The Student continued to remain eligible under the OHI category. *Id.* The Mother reported

⁶ Citations to the hearing transcript are to the witness's last name and to the page of the transcript where the testimony appears. For example, citation to "Mother T209" is citation to the Mother's testimony at page 209 of the transcript.

⁷ The copy of Dr. Orlich's evaluation in the record (D2) reflects extensive handwritten notations and underlining, all by Christopher DiPaul, District school psychologist. DiPaul T821.

⁸ Dr. Enns began providing therapy for the Student in 2016 while he was employed at Mosaic Rehabilitation. In January 2018, Dr. Enns left Mosaic Rehabilitation and started a private practice, "Under One Roof Psychological Services," where he continued to provide therapy for the Student until June 2018. Enns T257.

the Parents had received a final report from Children's Hospital that indicated the Student had a new diagnosis of high-functioning autism, and also that the Parents had recently observed more defiant behavior at home than was being observed at school. *Id.* at p2.

12. The IEP team created annual goals for math, reading comprehension and organization. D5pp5-6. The IEP placed the Student in general education classes at Inglewood Middle School for 85.96% of the school day. D5p11.

13. Based upon a "private evaluation,"⁹ the team determined it would open a partial reevaluation of the Student to determine if she was also eligible for social/emotional and speech-language services. D5p15.

Student's November 2016 Partial Reevaluation

14. The Mother signed consent for the partial reevaluation on November 2, 2016. D4p24. On or about November 4, 2016, the Parents provided their written input for the Student's partial reevaluation. P44. The District received the Mother's consent for the partial reevaluation on November 9, 2016. *See* D4p24 (Recd 11/9); DiPaul T819.

15. As part of the reevaluation, the Student, the Mother, and five of the Student's teachers each completed the Behavior Assessment System for Children, Third Edition (BASC-3). D4pp8-11. The BASC-3 is a multi-method, multidimensional system used to evaluate the behavior and self-perceptions of children and young adults, ages 2 through 25 years. It is designed to facilitate the differential diagnosis and educational classification of a variety of emotional and behavioral disorders of children and to aid in the design of treatment plans. *Id.* at p8.

16. The Student's responses on the BASC-3:

[P]roduced an F index score that falls within the Extreme Caution range...Extreme caution should be used when interpreting BASC-3 scale scores, as an elevated F index score typically indicates the presence of extraordinarily high levels of maladaptive behavior or emotional distress or may indicate that the respondent is presenting his or her problems as being more severe than they actually are.

D4p10.

17. Regarding the differences in BASC-3 scores between the Student's teachers and the Mother, Christopher DiPaul, the District school psychologist who reviewed the results, opined that:

In consideration of the disparities between individual reporters and the lack of significant numbers of strong positive correlations between any 2 individual observers, it is likely that no individual rater's score would appear to represent the full spectrum of [the Student's] observed behaviors across separate settings.

⁹ While it is not entirely clear from the record, the reference to "private evaluation" appears to be the evaluation conducted at Seattle Children's Hospital in July 2016 (D2). *See* Mother T117.

D4p11.

18. Mr. DiPaul confirmed the Student's elevated F index score indicates an unusual response pattern, which could mean the Student was presenting problems as more severe than they were. It could also indicate the Student was experiencing extraordinarily high levels of distress. DiPaul T824.

19. The Parents offered no witness with the appropriate education, training, or experience to support their assertion that the results of the Student's BASC-3 are not a valid and reliable assessment of the Student's social and emotional status, or that consideration of the Student's BASC-3 scores rendered the partial reevaluation inappropriate.

20. The Student's reevaluation team held a meeting on February 1, 2017, to review the partial reevaluation. D4.¹⁰ The Mother attended as a team member. D4p4; Mother T119, DiPaul T819. Mr. DiPaul was the primary author of the reevaluation report. DiPaul T818. The team changed the Student's eligibility category from OHI to Autism. D4p2. The team recommended the Student receive SDI in social skills and social-emotional functioning as well as reading and math, but no longer recommended SDI in organization. *Id.* at p3.

21. As of February 1, 2017, the Student was not exhibiting behavioral issues in her classes or at school that required District staff to intervene. Mother T122, T323. The Student's behaviors at school were "not severe." *Id.* at T213.

22. As of February 24, 2017, the Student was making sufficient progress to complete all three of her annual goals before the expiration of her IEP in October 2017. D6pp1-2.

Student's February 2017 IEP

23. The Student's IEP team held a meeting on February 24, 2017, to review the results of the partial reevaluation and to update the Student's IEP based on the recommendations from the partial reevaluation. D7p1.

24. The IEP team added SDI and annual goals in the areas of social/emotional and social skills, and added SLP services as a related service. The IEP team determined the Student would continue to receive SDI and have annual goals in the areas of math and reading comprehension. However, the IEP team reduced the number of minutes of SDI for reading comprehension from 200 minutes per week to 140 minutes per week. The team also determined that the Student no longer required SDI in the area of organization. *Compare* D5p11, D7p11.

25. The Student and the Mother attended the meeting as members of the IEP team. D7p1; Stotesbery T612; Mother T123, T216. The Mother had no concerns that this IEP did not meet the Student's educational needs. *Id.* at T216.

¹⁰ The February 2017 partial reevaluation identifies the date of the evaluation team meeting as November 19, 2015. *See* D4p1 ("Evaluation Group Meeting Date: 11/19/15"). However, the meeting was actually held on February 1, 2017. *Id.* ("Review of Existing Data, This is a partial re-evaluation dated 2/1/2017."); DiPaul T819.

26. From April 27, 2017, through February 2, 2018, the Student made progress on all of her annual IEP goals, but did not master any goals. D9.

Student's May 2017 IEP Amendment

27. In May 2017, the Student's IEP was amended after the Parents provided their consent to amend the IEP without holding an IEP team meeting. Mother T216.

28. Although the Student's IEP was amended in May, the amendments did not become effective until the start of the 2017-2018 school year, when the Student was expected to move to Eastlake High School for ninth grade. D8p3 (Services 08/01/2017-02/23/2018), D8p8 (These changes will take place during the next school year (2017-2018)).

29. The IEP amendments increased the Student's SDI for math from 240 to 249 minutes per week, decreased her SDI for reading comprehension from 140 to 120 minutes per week, and called for both math and reading comprehension SDI to be provided in a "co-taught" general education setting rather than a special education setting. This increased the Student's participation in general education from 84.21% to 97.07% of the school week. D8p3, p8.

30. The IEP amendments decreased the Student's SDI for social/emotional and social skills from 50 minutes each per week to 10 minutes each per week, provided in a "special education consult setting." The IEP continued to provide the Student with 30 minutes per week of speech-language therapy by an SLP as a related service. *Id.*

31. While the Mother asserted that she was "very concerned" about the amendment and communicated her concern to Alan Linney, the District special education teacher who drafted the amendment (Mother T125), there does not appear to be any evidence of record to find the Parents took any further action to address the Mother's concerns.

2017-2018 School Year: Ninth Grade at Eastlake High School

32. Danielle Meyer is employed by the District as an SLP. She earned her graduate degree in speech-language pathology from the University of Washington, and is nationally certified as an SLP. Meyer T831-T832.

33. Ms. Meyer provided the Student with her SLP therapy as a related service during ninth grade. *Id.* at T832. Specifically, Ms. Meyer provided social communication therapy in a social-skills group. *Id.* at T832-T834. Ms. Meyer considered the Student to be a "leader" in the social-skills group. *Id.* at T834. The Student was reaching out to other students in the group and trying to engage them, and was receptive to Ms. Meyer's coaching. *Id.* The Student had "relatively strong social skills in the context of my social skills group relative to...other students with autism." *Id.* at T839.

34. In a Progress Note dated September 9, 2017, Dr. Enns remarked that the Student reported she "felt happy at school, which is notable." Dr. Enns's Progress Note reflected there were not any "safety issues" regarding the Student. P5p1.

35. In a Progress Note dated October 7, 2017, Dr. Enns remarked that the Student reported a significant incident where another student "caused harm," and the Student placed the other

student's phone number on Snapchat. However, the Progress Note reflected there were not any "safety issues" regarding the Student. P6p1.

36. The Mother confirmed that some interaction occurred between the Student and another student at school, which the Student interpreted as threatening. In response, the Student posted the other student's telephone number on Snapchat. The other student's mother contacted the police, and eventually the Student and the other student both signed a no-contact agreement at school. Mother T130.

37. In November 2017, the Student, who had been [REDACTED]

[REDACTED]
Mother T133; Enns T266.

38. In a Progress Note dated November 18, 2017, Dr. Enns remarked that the Student had transitioned back to [REDACTED], her affect "appeared much lighter," and the Student reported she "was at 9/10 on the mood scale." However, when asked about any issues involving safety, the Student did not offer an answer. P7p1. It was about this time that Dr. Enns believes the Student's academic performance at school "really fell apart." Enns T269.

39. Once the Student began [REDACTED] "really went downhill." Mother T143. By February or March 2018, the school reported to the Parents that the Student was coming to school looking unkempt. *Id.* By March or April 2018, the Student was not regularly showering or brushing her teeth. *Id.* at T144; *see also* P21p2 (Mother reports that since about March 2018, the Student will go weeks without showering and refuses to brush her teeth).

40. In early December 2017, a guidance counselor at Inglewood High School informed the Mother that staff suspected the Student was smearing her feces in a bathroom at school. Mother T131, T142. The staff planned to monitor the Student coming in and out of the bathroom. *Id.* at T132. The Mother informed Dr. Enns of the District's suspicion as soon as she was told by the counselor. *Id.* at T220.

41. In a Progress Note dated December 9, 2017, Dr. Enns noted the Mother reported the Student had knocked the Father's eyeglasses off his face. The Progress Note also reflects there were "[t]hreats to others in the family." Dr. Enns noted the Mother's report about "a bathroom incident in which [the Student] had dirtied the bathroom." Dr. Enns also reported that "[h]ostility was palpable throughout the session." P8p1.

42. In Dr. Enns's opinion, feces-smearing expresses a regression in behavior and is suggestive of a deeply rooted pathology. It is a sign that somebody is in extraordinary distress. Enns T270. During sessions with the Student and Mother, Dr. Enns attempted to speak with the Student about the feces-smearing, but the Student denied it happened. *Id.*

43. Although the timeframe is unclear, Dr. Enns contacted staff at the high school concerning the feces-smearing. He advised staff that they could make it harder for the Student to engage in feces-smearing, but it would have to be "very blunt," like having someone watch the Student or having someone attend the bathroom with the Student. *Id.* at T307.

44. In January 2018, the Mother became aware of a report to the police that the Student had threatened to self-harm at school. The local police came to the family's residence to do a welfare check. Mother T329.

45. On January 2, 2018, the Parents had an initial visit with Lauren Plawner, M.D. P63.¹¹ The Student was not present. *Id.* at p1. The Parents wanted to "relay" the Student's history before bringing the Student the following week for an assessment by Dr. Plawner. *Id.* at pp1, 2. The Parents wanted Dr. Plawner to assess the Student to be sure nothing was "being missed." *Id.* at p1.

46. In a Progress Note dated January 27, 2018, Dr. Enns noted another "child had reported that [the Student] was threatening to harm herself. Police were called. [The Student] does not appear suicidal currently." P9p1.

47. Concerned about the Student's feces-smearing and deteriorating condition, and as their confidence in the Student's team at school waned, the Parents began to consider "other options." Father T650. The Parents initially considered placing the Student in a wilderness program, and then later extended their research to inpatient facilities. *Id.* at T650-T651. By February 2018, the Parents decided the Mother would visit two or three inpatient facilities in Utah. *Id.* at T652. In March, the Mother visited Heritage School Residential Treatment Center in Utah. Mother T243. In April, the Parents visited the Sunrise Residential program in southern Utah. Father T652, Mother T243.

Student's February 2018 IEP

48. The Student's IEP team, including the Mother, held a meeting to develop a new annual IEP for the Student on February 20, 2018. D10p1. The Mother had not asked for an IEP meeting prior to February 2018 during the 2017-2018 school year. Mother T222.

49. The Mother reported to the team that the Parents believed the Student was self-medicating, using either nicotine or cannabis as a coping mechanism. The Mother reported that at home there was an increase in the Student's "mood instability and aggressive behaviors." D10p3.

50. The IEP noted that the Student frequently left class for extended periods of time and requested to leave school due to claims of feeling ill. The Student was using the Health Room bathroom 5 to 7 times per day, and was now being monitored when she used the bathroom. The Student avoided using the bathroom when someone was there to acknowledge her presence. *Id.* at p6. The team agreed to increase the Student's SDI minutes for social-emotional and social skills from 10 minutes per week to 120 minutes per week for each area. *Id.* at p17.

¹¹ The Parents' Exhibit List identifies P63 as a "Neuropsychologist Eval by Dr. Plawner." Given that the Student was not present and Dr. Plawner had apparently never met the Student, the Parents' characterization of P63 as an evaluation is untenable. While Dr. Plawner was apparently scheduled to see the Student the following week for an assessment or evaluation, no such evaluation report or document was offered by the Parents.

51. The Mother spoke with Brenda Quayle, the Student's special education teacher and IEP case manager, right after the IEP meeting. The Mother told Ms. Quayle that the Student was "declining," and asked for some alternative school options. The Mother told Ms. Quayle that Dr. Enns mentioned Overlake Specialty School, but the Parents wanted to find a placement for the Student in the District. Mother T141-T142.

52. In a Progress Note dated February 24, 2018, Dr. Enns noted, "Drug use and aggression was a focus of the session. [The Student] continues to deny the negative effects of marijuana, nicotine, lactose." Dr. Enns noted that the Student's "delusions are increasing," and that "school alternatives" were discussed. P10p1.

53. Dr. Enns believed the Student was engaging in drug use, but he was unsure of the frequency. Enns T274, T317. This was the first time marijuana use by the Student was reported to him. *Id.* at T309. It is very difficult to parse out the effects of marijuana use from the symptoms of the Student's disabilities. However, Dr. Enns never suggested to the Parents that they seek drug treatment for the Student. *Id.* at T318.

54. In an email to Ms. Quayle on February 24, 2018, the Mother stated that since "our IEP meeting this past week and conversation afterward, we are looking into alternative school options for [the Student]." The Mother also again mentioned that Dr. Enns had suggested Overlake Specialty School as an option for the Student. D11p2, P45p2.

55. In March 2018, Associate Principal Darcie Breynaert contacted Stacy McCrath-Smith,¹² District associate director of special education. Ms. Breynaert wanted input or advice to discuss some "disturbing behaviors" with the Student, and to address concerns raised by the Parent. McCrath-Smith. T52.

56. In an email including Ms. Quayle and Ms. Breynaert on March 1, 2018, the Mother reported that the Student "has been telling everyone that she is transferring to Redmond HS but that is not something we've discussed." The Mother went on to state that the Parents "want to explore other alternative school settings either full-time or dual enrollment because she is clearly struggling." D11p1, P45pp1-2.

57. Sasha Ayad is a licensed professional counselor who provided weekly online therapy for the Student from July 2017 through March 2018 at the Parents' expense. D20. In a letter dated March 6, 2018, Ms. Ayad expressed her opinion that the Student "would benefit from a structured, highly-monitored environment where she can be held accountable, educated academically, taught self-regulation skills and kept safe from harm (both self-inflicted or otherwise)." D20p1. Ms. Ayad does not address or expressly recommend a residential placement for the Student. On the contrary, given her reference to an educational program for the Student where, as one component, the Parents would sign her out after school, it appears as though Ms. Ayad contemplated something other than a residential placement for the Student. *Id.* at p2.

¹² Stacy McCrath-Smith is also identified in the evidence of record as Stacy McCrath.

58. The Mother characterized a phone call she received from Ms. Ayad as Ms. Ayad "breaking patient-therapist confidentiality." Mother T226. However, Ms. Ayad had the Student's "written permission" to consult with the Mother, which she did on a monthly basis. D20p1.

59. The Mother testified that during the phone call, Ms. Ayad told her that the Student was not safe in her school environment at that time. Mother T226. Ms. Ayad did not appear as a witness at the due process hearing. The only evidence apart from the Mother's hearsay testimony is Ms. Ayad's letter. However, Ms. Ayad's letter does not expressly state an opinion that the Student was unsafe in her school at that time. Given the limited hearsay evidence, no finding is made regarding any opinion Ms. Ayad may have had vis-s-vis the Student's then-current educational program and any implications for the Student's safety.

60. On March 17, 2018, the Student and the Mother had an intake assessment at DBT Eastside, a private provider of Dialectical Behavior Therapy (DBT). P27pp6-10. During the intake, the Student reported using marijuana and dabs¹³ a few times a month. *Id.* at p7. The Student also reported a "self-harming" incident within the past three months where she shaved/cut her head. *Id.* at p8.

61. The Student began DBT therapy with Rachael Harper at DBT Eastside on March 27, 2018. P93¶4.¹⁴ Ms. Harper is a licensed mental health counselor associate (LMHCA) who contracts with Eastside DBT. *Id.* at ¶1; P25. Ms. Harper last provided counseling to the Student on July 31, 2018. *Id.* at ¶4. Ms. Harper's counseling focused on emotional regulation and interpersonal skills development for the Student. *Id.* at ¶5. In addition to Ms. Harper's 1:1 counselling, the Student also participated in group therapy through a weekly skills group. Harper T342-T343. Ms. Harper last saw the Student on July 31, 2018. P93¶4.

62. Although Ms. Harper provided weekly counselling to the Student over a period of four months, the Parents offered only a single Progress Note authored by Ms. Harper during the four-month period. P27p5.

63. Beginning in the spring and extending into summer 2018, the Student admitted to Ms. Harper that she was involved with shoplifting and starting fires, and was having problems with neighbors. She also admitted to increased drug use and continuing use of marijuana. Harper T375-T377.

64. In an email dated March 20, 2018, Ms. Breynaert reported that the prior Friday the Student accused another student of having a knife, and a second student of having a knife and cocaine. The District investigated and determined the Student's accusations were false. P47p1. This was one of the "bigger incidents" involving the Student during the 2017-2018 school year. Mother T137.

¹³ A dab is apparently a concentrated form of the active ingredient in marijuana.

¹⁴ Any citation to the exhibits of record that are declarations is by the exhibit and paragraph in the declaration. For example, citation to P93¶4 is a citation to Parents' Exhibit 93 (Ms. Harper's declaration) at paragraph 4.

65. Following the false accusations by the Student, the Mother provided Ms. Breynaert with Ms. Ayad's March 6, 2018 letter. D20.

66. On March 20, 2018, Ms. Breynaert spoke with Ms. McCrath-Smith about setting up an IEP team meeting to initiate a reevaluation of the Student about "getting more services for [the Student]." D12.

67. Ms. McCrath-Smith recommended setting up a team meeting to discuss initiating a reevaluation of the Student given "some of the challenges" the Student was experiencing, the intermittent fecal-smearing, the Parents' increasing concerns, and that the Student's then-current IEP did not include a functional behavioral analysis (FBA). McCrath-Smith T690-T691.

68. On March 27, 2018, a school counselor reported to Ms. Breynaert that the Student caused another incident involving "smearing feces on the toilet seat in the Health (room) bathroom this afternoon." P48.

69. On March 28, 2018, the same counselor reported to Ms. Breynaert that the Student smeared her feces in the Health room toilet that morning. P49p1.

70. Dr. Enns wrote a letter dated March 28, 2018, in which he stated, in part, that:

This letter is written in support of [the Student] and a likely change in educational placement. I have been working with [the Student] and her parents over the past few years...[The Student] defies ordinary interventions and would surely tax any educators (and any other adults) working with her...On the one hand, a small, contained, calm environment might be entirely suitable and meet her unique needs. On the other, there is concern that recent behaviors (such as feces smearing and other antisocial behaviors) might prevent [the Student] from remaining in a setting without rather significant behavioral (and perhaps) medical support...Considering the range of behaviors observed over the past year and the lack of clarity on [the Student's] state of mind (including concerns that she is persistently delusional), self-contained environments should be discussed.

P3.

Meeting to Initiate Partial Reevaluation of the Student

71. A meeting was held on March 29, 2018, to consider initiating a partial reevaluation of the Student. D14p3.¹⁵ It is unclear whether both of the Parents attended, or just the Mother. Compare D14p3 ("In attendance was...both of [the Student's] parents") with D14p1 (signature of only Mother). The meeting took place at 7:00 a.m., before the start of school. McCrath-Smith T691.

72. The Mother shared Dr. Enns's letter from the day prior, and the team reviewed it. McCrath-Smith T56, T691; Mother T149, T229.

¹⁵ The evidence of record regarding this meeting is limited to a Prior Written Notice (PWN) that recounts events at the meeting, and some testimony by Ms. McCrath-Smith. While this was likely an evaluation team meeting, it cannot be determined with certainty.

73. The Parents requested another more restrictive and therapeutic educational setting for the Student because of concerns about her current and emerging social, emotional, and behavioral challenges. The team agreed a partial reevaluation should be conducted to determine any need for an alternative placement. The team rejected initiating a full reevaluation of the Student because it believed enough other information was currently available, and because additional assessments would create unnecessary and disproportionate stressors at that time for the Student. The team acknowledged that not changing the Student's program was potentially unsafe for the Student, so the team approved a temporary diagnostic placement until the partial reevaluation could be completed. The team also discussed possible outcomes of the partial reevaluation, including placing the Student in the Eastlake High School Intervention Center program, Overlake Specialty School, or no change in placement. D14p3.

74. The same day, Ms. McCrath-Smith approved additional paraeducator support to be shared between the Student and another student at Eastlake High School while the partial reevaluation was pending. D13p1.

75. On March 30, 2018, the Mother signed consent for the partial reevaluation. P50; D32p23. The District received the signed consent on April 9, 2018. *Id.*

Student's Emergency Expulsion from Eastlake High School

76. On March 30, 2018, the Student handed her art teacher two printed statements she claimed to have found on a printer in the art room. P52pp1-2 (*See* Flagg email March 20, 2018 at 7:35 a.m.), P54pp1-2 (*See* March 30, 2018 entry). One note stated, "Hello Again, The anonumus (sic) man has once again continued his plan and he is likely to bring a gun tomorrow. Please help." P89p1. The second note stated, "Hey Man, don't worry, I got this school down, it will be burned to the ground and blown up on 4/15/18, so don't come here." P89p2.

77. The District immediately conducted an investigation of the threatening notes. The District concluded that the Student's explanation about finding the threatening notes that morning on the art-room printer did not match her art teacher's version of events, and that her explanation for how she came to find the notes did not seem plausible. The District determined the Student's explanation constituted "Interfering with a School Investigation," and she was emergency expelled later on March 30, 2018. D15, P51.

78. The Student never returned to Eastlake High School after her emergency expulsion on March 30, 2018. McCrath-Smith T695.

79. On April 10, 2018, the Parents informed the District that they had retained legal counsel and were requesting that a manifestation determination meeting be held on April 16, 2018. D16p1.

80. In a letter from their attorney dated April 12, 2018, the Parents informed the District that they believed the Student now required an alternative placement, and requested that the District place her at Overlake Specialty School (OSS) as an interim alternative educational placement (IAES) until a full reevaluation of the Student was completed. D18p1. The Parents expected that a full reevaluation of the Student would "support long-term placement at OSS until the Student is able to stabilize outside of a more restrictive therapeutic setting." *Id.* The Parents believed that OSS would be an appropriate placement for the Student at that time. Mother T152. It was not

until many months later that it became apparent to the Parents that placement in a day school would not offer the Student enough support. *Id.* at T153.

81. On April 12, 2018, Dr. Enns wrote another letter regarding the Student. P4, D19. Dr. Enns opined that the behaviors leading to her emergency expulsion on March 30, 2018 were a "direct manifestation of a complex mental health condition," and that the behaviors "are a direct result of her disability." *Id.*

82. Dr. Enns went on to propose "an interim placement, such as Overlake Specialty School, where [the Student's] complex needs can be met adequately. [The Student] requires a stable, contained environment where behaviors can be monitored, positive relationships can be fostered and maintained, and psychiatric care can be provided." *Id.* Dr. Enns believed that OSS would have a "level of control" to address the Student's behaviors that he did not. Enns T301. In his opinion, OSS is a "really respected hospital school." *Id.* at T276-T277.

83. OSS is a therapeutic day school for students in grades K-12 associated with Overlake Medical Center. It is a Nonpublic Agency (NPA) approved through the Office of Superintendent of Public Instruction (OSPI), enabling it to contract with school districts to provide services to students. OSS coordinates with school districts, and is committed to Positive Behavior Interventions and Supports (PBIS) for students who are behaviorally and emotionally challenged. D29p19; D30p1. OSS restricts access/egress to the facility during the day when students are present by locking down the facility, meaning the students are not free to come and go as they like. Father T634. OSS is highly structured, and its year-round program is specifically designed to serve students eligible for special education who are significantly impacted by academic, social, emotional and/or behavioral disabilities. D34p5.

Manifestation Determination Team Meeting and IEP Amendments

84. On April 16, 2018, a manifestation determination team met to determine if the conduct leading to the Student's emergency expulsion was a manifestation of her disabilities. D21. The Parents attended the meeting as members of the team. *Id.* at p4. The Mother gave Dr. Enns's April 12, 2018 letter to the team at the meeting. Mother T153; D21p5

85. The team determined that the Student's conduct leading to her emergency expulsion was a manifestation of her disabilities, and that the Student could return to Eastlake High School. However, the Parents did not feel comfortable returning the Student to Eastlake. D21pp 5-7.

86. The team agreed to continue with the FBA for the Student that was already in progress as part of the partial reevaluation. *Id.* at p7.

87. The team also discussed placing the Student at OSS or at Ryther.¹⁶ *Id.* The Parents wanted the District to place the Student at OSS. Mother T152. However, OSS had a waiting list, and the team wanted time to gather more information about Ryther. The team finally agreed the District would provide in-home tutoring services until a decision could be made regarding the Student's educational placement moving forward. In addition, the District would help with the cost

¹⁶ Ryther is another NPA approved by OSPI that offers a day-treatment program. D21p7.

of the Student's participation at Aspiring Youth, a social-skills group for girls, to provide the Student with her SDI for social and emotional development. D21p7. The Parents informed the other team members that they would discuss the merits of a residential placement versus a day-treatment program like Ryther with the Student's therapists and doctors. *Id.*

88. In an email exchange with the District on April 18, 2018, the Parents agreed to tour OSS on May 7, 2018. D23pp1-3.

89. By April 30, 2018, the District had placed the Student on the waiting list for OSS. McCrath-Smith T698. By May 1, 2018, the District came to understand that an opening for the Student at OSS would not be available until the beginning of the summer session at OSS. D25p20. Until there was room for the Student at OSS, the District wanted to arrange academic instruction and support for the Student at Yellow Wood Academy, another NPA. McCrath-Smith T698. The Mother did not object to an interim placement at Yellow Wood Academy. Mother T232.

90. On May 1, 2018, the Student's IEP was amended to place her at Yellow Wood Academy after the Parents agreed to the amendment without first holding an IEP team meeting. The Student was scheduled to start attending Yellow Wood Academy on May 4, 2018. D25p20.

91. With the Student's interim placement at Yellow Wood Academy, Katie McAllister, District special education teacher, became the Student's IEP case manager. Ms. McAllister is the District staff person who serves as case manager for all of the District's students placed at NPAs. McCrath-Smith T697.

92. Ms. McAllister has worked with OSS for about 14 years in her capacity as a case manager for approximately 70 District students placed at OSS. OSS meets a range of needs for students who have average cognition but are struggling with social-emotional and behavioral issues that impact their access to an education. McAllister T778, T799. Christopher Hibbeln is the mental health counselor at OSS. *Id.* at T779.

93. On May 7, 2018, the Parents and Ms. McAllister toured OSS. McAllister T777; D28p1. Later the same day, Ms. McAllister received a message that OSS had a contract unexpectedly end early and the Student could start at OSS as early as May 14, 2018. *Id.*

94. The Student's IEP team held a meeting on May 9, 2018 to amend the Student's IEP. The Mother attended as a member of the team. D29p1.

95. The amended IEP provided annual goals and SDI for math, reading comprehension, social/emotional, and social skills. *Id.* at pp7-8, p12. It also provided for extended school year (ESY) services. *Id.* at pp14-16. Finally, the IEP placed the Student at OSS. *Id.* at p13. The Parents agreed with the amendment placing the Student at OSS. *Id.* at p19.

Placement of the Student at OSS

96. The Student began attending OSS on May 14, 2018, and last attended on August 16, 2018. D29p19; P82p6.

97. OSS staff warned the Parents that the restrictive nature of OSS could have "repercussions" outside of OSS, and that they might see an increase in the "volatility" of the

Student's behaviors. Staff encouraged the development of a "Home Safety Plan." P75; Father T634, T670.

98. During the time she attended OSS, the Parents were concerned that the Student remained at risk of self-harming when she was at home. *Id.* at p672. The Father believed that OSS was "efficient" at controlling the Student's behaviors when she was at OSS, but that OSS was not effective at addressing the underlying cause of the Student's maladaptive behaviors. *Id.* at T683.

99. In her declaration, Ms. Harper asserted the Student told her that at OSS the Student had increased access to drugs and "risky attitudes." P93¶6. The Student did not testify at the due process hearing. Therefore, Ms. Harper's testimony on this point is hearsay evidence. Absent independent corroboration through some other non-hearsay evidence of record, no finding is made regarding what the Student reported to Ms. Harper regarding access to drugs and risky attitudes at OSS.

100. Ms. Harper also testified that the Student shared her "plan" with Ms. Harper to get through her time at OSS so she could leave and go to another school. In essence, the Student planned to do nothing that would call attention to herself or create any controversy while at OSS. The Student wanted to leave OSS because she felt like she was "under lockdown." Harper T354. Again, this is hearsay evidence from Ms. Harper, and no finding will be made absent other corroborating evidence of record.

May 2018 Partial Reevaluation of the Student

101. The Student's evaluation team met on May 15, 2018 to consider the results of the partial reevaluation that the team approved on March 29, 2018. D31, D32p1.¹⁷ The Mother attended along with the Parents' attorney, Lara Hruska. *See* D32p5. Ms. McCrath-Smith also attended the meeting. *Id.*; McCrath-Smith T700.

102. The partial reevaluation included consideration of the following: Dr. Enns's April 12, 2018 letter; Ms. Ayad's March 6, 2018 letter; an interview with the Mother on April 30, 2018; the results of the BASC-3 from the Student's District math, history, and English teachers, the Student, and one of the Parents; a phone consultation with Dr. Enns on May 10, 2018; and an assessment of the Student's handwriting by a special education teacher on April 17, 2018. D32pp15-22.

103. The team also considered the results of an FBA of the Student. *Id.* at pp20-22. The FBA considered the cause and function of the Student's feces-smearing on the walls, toilet seat, and floor in the health room bathroom at Eastlake High School,¹⁸ and the written threats leading to her emergency expulsion. *Id.*

¹⁷ D32p1 identifies the evaluation group meeting date as "11/19/15." That is incorrect. The correct meeting date is May 15, 2018.

¹⁸ This behavior occurred 8 times during the school year, with four incidents occurring prior to December 7, 2017 and the last 2 incidents occurring on March 27 and March 28, 2018. D32p20.

104. The team recommended SDI in the areas of math, reading comprehension, social/emotional, social skills, writing, and behavior. *Id.* at p3.

105. On May 24, 2018, the Mother emailed Christopher Hibbeln, the Licensed Mental Health Counselor (LMHC) at OSS, stating the Student “became enraged and punched another hole in the wall, attacked both [the Father] and I physically, and then took [the Father’s] wallet and the cash he had. She took off on her bike with the cash...” P67p1; P66p2. The Mother characterized the Student’s behavior as her first “really big incident” that involved physical attacks, stealing money, and then leaving the family home. Mother T161-T162, T164. The Mother also reported the Student’s behavior to Ms. Harper. Harper T365-T366.

106. Dr. Enns stopped seeing the Student in June 2018. Enns T256, T292. He stopped seeing the Student because of “a certain sense of failure” at that point. The Student’s maladaptive behaviors had “amplified,” and Dr. Enns concluded that the services he provided the Student were not enough. Dr. Enns recommended the Student try DBT, which is designed to provide highly structured support.”¹⁹ *Id.* at T292. Dr. Enns’s intent in recommending DBT was to “intensify the therapy, (and) to intensify the interventions” available to the Student. *Id.* at T294.

107. On June 8, 2018, the Mother emailed Mr. Hibbeln at OSS. The Mother reported that the day prior the Student was upset over not having access to her cell phone, became verbally abusive, turned over furniture in the family home, and “ransacked” the Mother’s home office. P67p1

The Student’s June 2018 IEP

108. The Student’s IEP team met on June 15, 2018, to create a new annual IEP for the Student. D34p1. The Parents attended as team members. *Id.*; McAllister T782. The Student had been attending OSS since May 14, 2018. D29p19.

109. The IEP noted that the Student “is a positive, pro-social member of the OSS community,” and “demonstrated the desire to develop pro-social relationships with peers and staff.” D34p3. The IEP noted the Parents concerns “about her behavior in the home, specifically citing physical and verbal aggression.” The Parents were also concerned about the Student’s social skills and isolation. *Id.*

110. The team determined the Student required SDI in the areas of social/emotional, behavior, social skills, reading comprehension, writing, and math, and that she required speech-language therapy as a related service. *Id.* at pp5, 7. The team created new goals for writing and behavior, and updated the Student’s existing goals, but recognized that she had been at OSS for only a month, current data to develop goals was limited, and that it might be necessary to amend the IEP goals once more data was collected at OSS. *Id.* at pp12-14; McAllister T782.

¹⁹ While it appears Dr. Enns recommended DBT at the time he stopped seeing the Student circa June 2018, the Student first saw Ms. Harper at DBT Eastside on March 27, 2018. P93¶4. The record is unclear if the Student was seeing both Dr. Enns and Ms. Harper concurrently for the approximately two-month period between the end of March and June 2018.

111. The team also considered another FBA of the Student and a new Behavioral Intervention Plan (BIP) for the Student. D34pp21-24, pp25-26. The purpose of the FBA was to gather information about the Student's behavior and provide the foundation for a BIP. *Id.* at p21, D32p20. The FBA was done at OSS. The FBA noted that:

Since joining Overlake Specialty School (OSS), [the Student] has started forming positive relationships with peers and staff. During lunch and recreational activities, [the Student] is social with the community, often seen laughing/smiling/having conversations. She has shown the ability to communicate directly and assertively to have her needs met. When she has received non-preferred information at school, [the Student] has managed herself and remained safe and engaged throughout the day.

D34p21.

112. The FBA went on to note that:

[The Student] has not engaged in any unsafe behaviors at OSS. However, family reports that [the Student] has engaged in unsafe behaviors at home...It is expected that [the Student] (will) display more significant behaviors at school as [the Student] becomes more comfortable with the staff, peers and classroom environment.

Parents report that at times [the Student] struggles at home. Difficulties most often occur when she receives non-preferred information. During these instances, parents report [the Student] will steal items, engage in verbal aggression towards her parents and at times, becomes physically assaultive towards parents. OSS and the family have started to coordinate in supporting [the Student], linking safety/expectations at home to privileges at school.

Id. at p23.

113. Ms. McAllister visited OSS approximately three times per week in her role as IEP case manager for all District students attending NPAs, and had the opportunity to see the Student on a "routine basis." McAllister T784. Based on her observations, the Student appeared to have "acclimated quite quickly" to OSS. *Id.* At the IEP team meeting, the Parents did not raise any concerns about the Student attending OSS or ask for a different educational placement for the Student. *Id.* at T783-T784; Mother T332.

114. In an email to Mr. Hibbeln and others on July 9, 2018, the Mother stated, "[the Student] did not display any physical or verbal aggression this past week and weekend." However, the Student was still leaving home for up to four hours at a time, and the Parents were concerned about her personal health and safety. P69p1.

115. On July 10, 2018, the Student was absent from OSS. D43p25. The Parents left the Student alone at the family home that morning, expecting the Student would take the District-provided bus to OSS. The Parents later returned home and found that the Student had skipped going to OSS and engaged in fecal-smearing in her bathroom. This was the only incident of fecal-smearing at home. Mother T184-T185.

116. On July 11, 2018, the Student demanded money from the Parents to go to the store. When the Student came back, she had a bicycle that the Parents believed she had stolen. When

questioned, the Student threw a container of water at the Father, became angry, got a copy of the OSS Home Safety Plan, and lit it on fire in the garage. P70p2.

Reckless Burning in Neighborhood Park and Threatening Notes

117. On or about July 24, 2018, a neighbor of the Parents reported a fire in a nearby park. The Mother and the Student returned home later the same day after a therapy session with Ms. Harper. The Student left the family home, apparently walking toward the park. The Student returned home a short time later with a fire investigator who had stopped the Student while she was walking toward the park. The Mother believed the neighbor who reported the fire might have identified the Student as being at the park earlier in the day and involved with the fire. Mother T187-T188.

118. In an email to Ms. Harper and OSS staff on July 30, 2018, the Mother stated that a fire investigator had contacted her late the prior week and informed her that he would be providing a report to the juvenile prosecutor's office and the Student would be charged with reckless burning for the fire in the park. P74 (Email at 7:52 a.m.). The Student was criminally charged, but eventually received a "diversion" from the prosecutor's office. Mother T241.

119. In another email on July 30, 2018 to the same individuals, the Mother stated that a police detective called her the prior day to notify her that the same neighbor who reported the fire in the park had found a threatening note in the neighbor's backyard. The note threatened the neighbor's three daughters and blamed them for getting the Student in trouble. The detective told the Mother that the neighbor might request a no-contact order against the Student. P74 (Email at 7:49a.m.). The Mother recognized the Student's handwriting on the threatening note. P88p1; Mother T188.

120. In an email to Ms. Harper and OSS staff on August 2, 2018, the Mother recounted that a police officer came by and told the Parents that a second threatening note was found by the same neighbor that day. The officer told the Mother that he was referring the second threatening note to the detective who was handling the case involving the first threatening note, and that the neighbor was planning to pursue a no-contact order. P74 (Email August 2, 2018 at 12:56 p.m.), P88p2.

121. Later on August 2, 2018, the Mother sent an email to Ms. Harper stating, "We are very concerned with [the Student's] written threats to the neighbor. The note which the officer shared said something like 'why don't you kill yourself or I'll do it for you.'" P75p1.

122. On August 3, 2018, the Parents and the Student were served with a no-contact order at their home. The Student became very distressed, said she was "going to kill the neighbors," and threatened to kill herself. The Mother called Dr. Plawner, who suggested the Parents take the Student to the emergency room at Seattle Children's Hospital. Mother T192-T193; P13.

Student's Admission to Seattle Children's Hospital

123. The Parents took the Student to Seattle Children's Hospital (SCH), where the Student was initially assessed in the emergency department. P13. The Mother and the Student reported that the Student's "current escalation" began two weeks ago when she started a fire in a park.

124. The Student reported recent suicidal ideation, but no current suicide plan. She reported an attempt to commit suicide within the past four months by using heroin. P13p3, P15pp1-2. The Student also reported using marijuana 1-2 times per week. P15p2.

125. The Parents were unaware of the Student's reported suicide attempt using heroin. The Mother is unsure if she believes the Student's report. Mother T194. However, the Parents were concerned about the Student using marijuana when she was at Eastlake High School, and that she may have had more access to drugs while at OSS. *Id.* at T195. Ms. Harper was also concerned with the risk of the Student using "more aggressive" drugs beyond marijuana. Harper T328, Mother T328.

126. During a Disposition Assessment at SCH, the Parents asked about getting more information about residential treatment centers and placements for the Student. P12p2.

127. The Student was admitted to SCH's Psychiatric Behavioral Medical Unit (PBMU) directly from the emergency department on August 3, 2018. The Student remained in the PBMU until her discharge on August 15, 2018. Mother T193; P13p1, P16p1, P14, D41p1. The emergency department Clinical Discharge Summary noted that the Student was "referred by her family and private practice therapist for evaluation of increasing homicidal threats to her neighbor...Mental health evaluation completed and patient will be admitted to the behavioral unit for further evaluation." P14p1.

128. During an interview in the PBMU on August 4, 2018, the Student confirmed she was there because she began having suicidal thoughts after getting in trouble for making threats toward her neighbor. The Student's anger, frustration, and fear further escalated when the neighbor got a restraining order against her. P16pp1-2. The attending psychiatrist who conducted the interview, Dr. Aditi Sharma, identified the "precipitant to this hospitalization" as a "conflict with a neighbor that led to [the Student] making homicidal threats." *Id.* at pp4-5.

129. Dr. Sharma's principal diagnosis for the Student was "Unspecified disruptive, impulse control, and conduct disorder, r/o Conduct disorder." *Id.* at p3.

130. In an email to OSS staff, Ms. Harper, and Ms. McAllister on August 5, 2018, the Mother stated that the Student was evaluated at SCH and admitted to the PBMU. D36p3, D37p5, D38p9, P57p4, P59p4.

131. During a phone call with the Mother on August 5, 2018, Ms. Harper "[r]ecommended that [the Student] be moved into a long-term residential environment in order to keep herself safe and keep herself out of trouble." P27p1.²⁰

132. On August 6, 2018, Ms. Harper spoke with another LMHCA at SCH. P27p2. Ms. Harper recommended that the Student be sent to a long-term residential therapeutic boarding school. In Ms. Harper's opinion, the Student's behavior was getting worse despite receiving DBT for several

²⁰ Although Dr. Harper's Counseling Client Progress Note is dated "8/5/2018," Dr. Harper confirmed that she actually wrote the Progress Note on October 10, 2018, based upon her notes from her August 5, 2018 telephone call with the Mother. Harper T382-T383.

months. Ms. Harper believed the Student was “not safe to herself or her community” at that time, and she ran “the risk of trouble with the law” if she remained in her current condition. *Id.*

133. On or about August 8, 2018, the Student agreed to participate in residential treatment for “depression and anxiety.” P20p1.

134. In an email to District staff on August 9, 2018, the Mother stated that the recommendation “from the clinical team is direct transfer to residential placement.” D37p2, D38pp5-6, P57p1, P59p2. The Mother recalls a subsequent email from Ms. McCrath-Smith, confirming the District was open to conducting a reevaluation regarding a more restrictive placement for the Student. Mother T202.

135. In a PBMU Daily Progress Note from August 13, 2018, a social worker noted that the Parents “shared their concern about discharging before having outpatient services in place. Clinician validated their emotions and explained that we are postponing discharge to hear back from outpatient programs.” P22.

136. While the Parents were meeting with the social worker, they received a message from Heritage, a residential treatment center (RTC), in Provo, Utah, that it had accepted the Student for admission.²¹ *Id.*

137. An Inpatient Psychiatry Progress Note also dated August 13, 2018 noted that Heritage RTC had accepted the Student, and the Parents were requesting a letter from the PBMU team recommending that “treatment.” P18p1.

138. In an email to Ms. McCrath-Smith and others on August 13, 2018, the Mother stated:

[The Student] remains at PBMU as they are still working on stabilization and want to ensure that there is an immediate plan for transfer to residential placement...Heritage...notified us this afternoon that they have accepted her with placement in their PEERS Academy, which is specialized for students with Autism.

D37pp1-2, D38p5, P59p1.

139. Ms. McCrath-Smith replied via email the same day, asking the Mother for a copy of the psychiatric evaluation of the Student completed at SCH, and stating, “[a]s I shared in our phone conversation we would need to discuss opening a re-evaluation to consider a more restrictive placement. I look forward to seeing you at the meeting tomorrow.” D37p1, D38p4. Ms. McCrath-Smith does not recall ever receiving a copy of any evaluation of the Student at SCH. McCrath-Smith T707.

140. In an email to Ms. McAllister on August 13, 2018, Casy Atchinson, a high school teacher at OSS, reported that:

Overall, [the Student] has been doing very well while at school. She has generally accepted staff feedback and completes all academic tasks. She does have some social

²¹ The Father confirmed the Parents had applied to Heritage sometime during August 2018, although the exact date is unclear from the record. Father T652.

deficits that we are working with her on. Her parents have been actively engaged in parent support, and have openly communicated with us regarding concerns.

D36p1.

August 14, 2018 Meeting at OSS

141. The Mother, Ms. McCrath-Smith, Ms. McAllister, Ms. Atchinson, and Mr. Hibbeln all participated in a meeting at OSS on August 14, 2018. D40. This was a regularly scheduled, quarterly meeting to review the Student's progress at OSS. McAllister T786. All District students placed at OSS have quarterly meetings to review IEP data, grades, strengths of the student, and parental concerns. *Id.* at T809. This was the first such quarterly meeting for the Student. *Id.* at T794.

142. The Mother reported the Student had been accepted by Heritage RTC. D40p1. She also shared her concerns about issues in the community with the Student, including threats against neighbors, the no-contact order, and pending charges for reckless burning in the neighborhood. McCrath-Smith T708-T709. The Parents were generally concerned for the safety of the Student at home and in the community. McAllister T786.

143. The OSS staff reported the Student was successful during her time at OSS. D40p2. OSS staff did not report any concerns for the Student's safety while at OSS, or any concerns regarding the Student's academic performance. McAllister T787, T790. Baseline data on the Student's IEP goals were shared at the meeting, as well as the Student's academic transcript at OSS. *Id.* at T794; D47. The data showed the Student was making progress academically, behaviorally, and socially during her time at OSS. *Id.* at T809-T810.

144. As of the grading period ending in June 2018, the Student had the following grades at OSS:²² Biology B-; English B+; Algebra 1 A; Recreation Therapy A; American Government A; Vocational Skills A. D47.

145. As of the grading period ending in August 2018, the Student had the following grades at OSS: Lab Science B-; English B-; Algebra 1 B+; Recreation Therapy B; Civics B-. *Id.* It is unclear from the record what, if any, effect the Student's absence from OSS while she was an inpatient at the PMBU (August 3 – August 15) had on her grades for this grading period.

146. Ms. McCrath-Smith was already aware before the meeting that Heritage RTC had accepted the Student for admission. However, it was not until the meeting that she learned the Parents were definitely going to place the Student at Heritage RTC. McCrath-Smith T89.

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²² The classes the Student attended and the grades she earned at OSS are identified on her District high school transcript using the prefix "TR." Mother T239, McAllister T790.

147. The Parents' counsel sent an email to Ms. McCrath-Smith later the same day, informing the District that the Parents intended to seek reimbursement from the District for the cost of placing the Student at Heritage RTC. McCrath-Smith T757.²³

148. On August 14, 2018, an admissions officer at Heritage RTC wrote a letter "To Whom It May Concern." D39, P64p2. The letter confirmed acceptance of the Student to attend Heritage. It also stated that although the Student's "behavior has been difficult at home, she has shown a pattern of stable behavior in highly structured environments such as Over Lake (sic) and Seattle Children's." *Id.*

149. A PMBU Inpatient Psychiatry Progress Note dated August 14, 2018 stated in part that:

MEDICAL NECESSITY: Patient continues to meet medical necessity for acute inpatient psychiatric admission due to: imminent risk to self including suicidal ideation and planning. Imminent risk to others including homicidal ideation and/or aggression. Self-injury or uncontrolled risk taking behaviors or uncontrollable destructive behavior creating immediate risk to self or others.

P17p3.

150. The Student was discharged from the PMBU on August 15, 2018. D41, P77. The Discharge Summary states in part that:

Risk for harm to others remains elevated given repeated episodes of threatening behavior, without remorse or empathy for effected parties...[The Student] remains at an elevated risk for harm to others given repeated pattern of hostile attribution bias and subsequent threatening behavior towards others.

D41p2.

151. The Student last attended OSS on August 16, 2018. McAllister T790; D42pp1-2, D43p47.

Heritage Residential Treatment Center

152. The Student arrived at Heritage RTC on August 17, 2018. D46p1, P82p6. She would not return home to Washington State until February 20, 2019 for a short visit. Father T842.

153. During a "Biopsychosocial Assessment" soon after arriving at Heritage RTC, the Student reported using cocaine (first use at age 12, last use July 2018), marijuana (first use at age 12, last use August 2018), and heroin by injection four or five times (first use age 14, last use April 2018). She reported that the more drugs she used, the more depressed she became. P31p2.

154. Lynette Martindale is an employee of Heritage RTC and a Licensed Marriage and Family Therapist in Utah. P29p5. She conducted part of the Student's Biopsychosocial Assessment and identified herself as the Student's "therapist" at Heritage RTC. P31p1, P92p1. Ms. Martindale

²³ While the actual email is not of record, counsel for the parties stipulated this email was sent on August 14, 2018. See T720, T757.

appeared by telephone as a witness at the due process hearing. She also signed a declaration under penalty of perjury prepared by the Parents' counsel. P92; Martindale T533-T534. Ms. Martindale has no education, training, or experience as a teacher or professional educator. See P29p5.

155. When questioned about the Student's report of drug use, Ms. Martindale at first declined to fully answer based upon an assertion of client-therapist confidentiality. Martindale T503. Later, after it was brought to the attention of Parents' counsel that a refusal to answer questions regarding her discussions with the Student might cause all her testimony to be stricken from the record (See colloquy between Parent counsel and the ALJ, T505), Ms. Martindale revised her earlier testimony, asserting that the entire contents of her discussion with the Student about drug use was reflected in P31. *Id.* at T522, T526.

156. In her sworn declaration, Ms. Martindale stated she provided the Student with "specially designed instruction in the areas of her emotional/behavioral disabilities." P92¶2. In fact, Ms. Martindale's sworn declaration uses the term "specially designed instruction" at least four times. P92¶¶2, 3, 10, 25. When questioned at the due process hearing, Ms. Martindale was unaware that the term "specially designed instruction" is uniquely defined in the Individuals with Disabilities Education Act (IDEA), and is a term of art in special education, nor is she familiar with the IDEA "in detail." Martindale T545. Ms. Martindale understands specially designed instruction to be "social coaching," "crisis intervention plans or behavior plans, or any area of need we're able to design" for students at Heritage RTC. *Id.* at T544. The use of the term "specially designed instruction" in her sworn declaration is not a reference to specially designed instruction as that term is defined in the IDEA. *Id.* at T546.

157. The attempted rehabilitation of her testimony, along with what can only be construed as a disingenuous and misleading use of the term "specially designed instruction" in a sworn declaration offered in the context of a special education due process hearing, compels the undersigned ALJ to have little to no confidence in the credibility of Ms. Martindale's opinion testimony and her declaration. Accordingly, while findings of fact based upon what the Student reported to Ms. Martindale have been made, no weight will be given to any of Ms. Martindale's opinion testimony or any opinion in her declaration. Additionally, statements by Ms. Martindale that are reasonably construed as adverse to the interests of the Parents/Student may be used as a basis for a finding of fact.

158. The Initial Treatment Plan prepared for the Student at Heritage RTC includes no educational goals for the Student. P34.

159. During a "Psychiatric Evaluation/History and Physical" at Heritage RTC by a nurse practitioner on August 24, 2018, the Student reported using cocaine, marijuana, and heroin. P36p1. When asked why she was at Heritage RTC, the Student first replied she was there for "mental health," then later stated she was there "in order to have arson charges dropped." *Id.*

August 27, 2018 Meeting to Consider Reevaluation and Change in Placement

160. On August 27, 2018, a team met to consider a reevaluation of the Student and the Parents' request for a change in placement so the Student could attend Heritage RTC. See generally D46, P82. With the Student's triennial evaluation due in November 2018, the team proposed conducting an early triennial reevaluation. P82p6, D46p1; McCrath-Smith T713.

161. Ms. McCrath-Smith and the Mother both attended the team meeting. McCrath-Smith T712, T734. The Parents and the District both had legal counsel at the meeting. *Id.* at T735. The District did not attempt to coordinate the Student's triennial reevaluation with Heritage RTC because it was not an NPA approved by OSPI and because the District wanted to conduct its own reevaluation of the Student. *Id.* at T105. The Mother signed consent for the reevaluation on September 13, 2018. P61p8, P82p8, D46p3. The District received the signed consent on September 14, 2018. P82p1.

162. The Mother completed a Reevaluation Health History and Parent Input Form as part of the Student's reevaluation. P61p3, P82p3, D46p4. The Mother wrote in part:

We were optimistic that placement in the late Spring (sic) at OSS (Overlake Specialty School) would be sufficient to meet her needs. Initially it offered some positive needed structure, but over time it did not provide the level of support that a more restrictive environment like residential placement can offer...As a result, [the Student's] disabilities continued to progress into the Summer (sic) term and manifested in negative ways that impeded her ability to attend school or to achieve any meaningful educational benefit.

Id.

163. In an email to District counsel on September 4, 2018, Parents' counsel stated that Heritage RTC "does not conduct any evaluations" and "does not administer any academic assessments." D44p1.

164. Staff at Heritage RTC developed a Master Treatment Plan for the Student between September 12, 2018, and October 2, 2018. P35pp1, 2. The plan stated that the justification for continued treatment was that:

[The Student] is in need of 24/7 supervision due to her behaviors of significant verbal and physical aggression towards others when she feels she has been wronged or a perceived threat she will lash out. She has had homicidal ideation towards others of threatening to kill them and blames others for her behaviors. She has had self harming (sic) behaviors and suicidal ideation since admission.

Id. at p2.

165. The Master Treatment Plan includes "goals" and "objectives" for the Student. *Id.* at p3-5. Only one objective directly addresses an academic area: that when given a graphic organizer the Student will compose a paragraph that met certain criteria. *Id.* at pp3, 4. However, there is no baseline or present level of performance by which to determine the Student's then-current paragraph-writing level or ability. Nebeker T591.

166. The goals in a Master Treatment Plan can be reviewed and updated, but typically the goals are long-term goals that would not be updated before a student leaves Heritage. Martindale T486.

167. As of September 26, 2018, the District was still moving forward with a reevaluation of the Student. See P83pp1, 3 (District Outside Evaluation Form dated September 26, 2018); McCrath-Smith T744-T745.

168. On October 23, 2018, District counsel sent an email to Parents' counsel. D48p1. In the email, District counsel explained that the District wanted to use its own psychologist, Dr. Delton Young, to conduct the Student's reevaluation, but the District had learned Utah does not allow out-of-state psychologists to practice in Utah. *Id.* The District also wanted to use its own SLP out of concern that an SLP in Utah would not be familiar with the qualifying criteria under Washington State regulations. McCrath-Smith T716. Additionally, Heritage had informed the District that it did not have staff capable of completing Student's planned cognitive assessment. D48p1; McCrath-Smith T748. Accordingly, the District would "need to delay completion of the reevaluation until such time as [the] Student is available to return home, i.e., for a home visit, to complete the remaining assessment items with the District staff and Dr. Young." D48p1.

169. On November 11, 2018, the Parents filed their request for a due process hearing under the IDEA.

170. As late as November 14, 2018, the District was still planning to conduct the Student's triennial evaluation when she was present and available in Washington State. P87; McCrath-Smith T754.

171. The Student returned home from Heritage for a short visit on February 20, 2019. Father T842. The Father did not inform the District that the Student was returning for a visit, and does not know if the Mother informed the District. *Id.* at T843.

172. The Father asserted in his testimony that making the Student available for the District's proposed reevaluation "would have been inconsistent with her (Heritage) therapist's recommendations," but later confirmed that he did not ask the Student's therapist at Heritage about making the Student available for the District's reevaluation. Father T843-T844.

173. Matthew "Matty" Bryant is the academic principal for Heritage RTC's Spark Academy. Bryant T420. He began his employment with Heritage in October 2018. *Id.* at T433. Spark Academy is one of the "tracks" or schools at Heritage. *Id.* at T444. The Student attended Spark Academy. Mr. Bryant appeared by telephone as a witness at the due process hearing. Bryant T419-T443. Mr. Bryant also signed a declaration under oath. P90.

174. Mr. Bryant's one-to-one contact with the Student at Heritage has been limited to "just visiting with her in passing." Bryant T440. He has not reviewed any of the Student's "intake files" at Heritage. *Id.* at T441. Mr. Bryant is unaware of any diagnoses for the Student other than autism. *Id.* at T446. Mr. Bryant prepared his declaration with the assistance of "others." *Id.* at T441.

175. It is clear from the record that Mr. Bryant has very, very limited first-hand knowledge regarding the Student, and relied upon what he was told by others, including the Student's therapist and her academic advisor, as the basis for much of his testimony and declaration. *Id.* at T441-T443. It is found as fact that Mr. Bryant does not have sufficient first-hand knowledge of the Student or her disabilities to offer any opinion regarding the Student or her educational needs. Accordingly, no weight is given to any of Mr. Bryant's opinions offered through his testimony or his declaration.

176. Conrad Nebeker is the Student's "academic advisor" at Spark Academy. He began his employment with Heritage in May or June 2018. P29p3; Nebeker T555. Mr. Nebeker is not

credentialed to teach general education. *Id.* at T580. The majority of his teaching experience has been as an art teacher. *Id.* at T556; P29p3. Mr. Nebeker has no degree or professional certification as a counselor. *Id.* at T581. He has not taught any of the Student's classes at Spark Academy. *Id.* at T585. Ms. Nebeker was unaware that the District had determined the Student was eligible for specially designed instruction in math, although he had "read over" the Student's last District IEP. *Id.* at T594. At hearing, Mr. Nebeker's responses were generally poorly articulated and imprecise. It is found as fact that Mr. Nebeker's opinions in his testimony and his sworn declaration (P91) regarding the Student, her educational needs, or ability to learn outside of Heritage RTC are due no weight.

Opinions of Dr. Enns and Ms. Harper

177. The record is clear that during the period at issue Dr. Enns and Ms. Harper were the Student's primary mental health providers. In light of that, their opinions of the Student, her disabilities, and the impact of her disabilities on her receipt of an education merit detailed consideration.

178. Although he opined that the Student's fecal-smearing at school would, on its own, be enough to support a diagnosis of a conduct disorder for the Student, Dr. Enns never diagnosed the Student with a conduct disorder despite treating the Student until June 2018. Enns T259, T262, T299. Nor is there any reference to a conduct disorder in any of Dr. Enns's records. See P2-P10

179. While Dr. Enns opined the Student exhibited "delusional thinking," Ms. Harper did not see any indication of the Student exhibiting "delusional behavior." Enns T259, T317; P10; Harper T397.

180. Dr. Enns's experience working with the District led him to conclude the District was "very positive, and they were really trying hard to figure out how to best help [the Student]." Enns T275. Dr. Enns believed that the District was "really trying their best" to help the Student. *Id.*

181. Dr. Enns opined that OSS would be a good place for the Student's "medical stabilization," where the Student's maladaptive behaviors could be better controlled within a "medical environment." *Id.* at T283, T276-T277. Dr. Enns had other patients placed at OSS. *Id.* at T288. While Dr. Enns opined that residential treatment for the Student is appropriate, he believes that OSS staff would probably have a "clearer view" about the appropriateness of residential treatment. *Id.* at T291.

182. Ms. Harper did not diagnose the Student with a conduct disorder. Harper T387-T388. Ms. Harper opined that the Student's social-emotional skills were not improving during the time she was at OSS, and that, in fact, her risky behaviors were escalating. Harper T381. However, other than one phone call with Mr. Hibbeln, Ms. Harper had no contact with anyone on staff at OSS. *Id.* at T399-T400. Nor did Ms. Harper seek out any relationship with OSS staff. *Id.* at T400-T401. It appeared to Ms. Harper that "OSS was not the appropriate school to keep [the Student] safe and teach her effectively." This opinion was based on Ms. Harper's belief the Student was "not safe" due to the reports of her behavior from the Parents. *Id.* at T401-T402; P93¶11.

183. Based upon what she knows about Heritage RTC, Ms. Harper opined Heritage RTC provides education, therapy, and more supervision in "more of a wraparound and provides [the

Student] with more safety.” Ms. Harper opined that the Student needed these services to be safe. *Id.* at T384. However, all of Ms. Harper’s knowledge about Heritage RTC comes from what the Mother told her about Heritage and from her review of the Heritage website. *Id.* at T402, T410. Ms. Harper has spoken only once with the Student’s therapist at Heritage, and that one contact was about confirming the Student agreed with a release of information (ROI) so Ms. Harper could release her treatment records for the Student. *Id.* at T404.

184. Dr. Enns had a concern that “often when you try to control behaviors within an environment...[like OSS] these children then come home and they’re showing these big explosive behaviors.” Enns T284. Ms. McCrath-Smith opined that:

When a structure is placed on a student to address a behavior...it’s understandable that in one setting, perhaps school, that a student does very well and responds...but you might see a temporary increase in behavior in another setting. Over time the goal would be behaviorally to obtain stability in all settings.

McCrath-Smith T761. Ms. Harper identified what is known as an “extinction burst,” where there is an increase in a targeted behavior right before the behavior ends.” Harper T402-T403.

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).
2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the Parents. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).
3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state’s compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state’s compliance with the Act, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

*Whether the District Violated its Child-Find Duty When it Failed to Identify a Social-Emotional Disability and Later a Conduct Disorder.*²⁴

²⁴ The Parents' Post Hearing Memorandum (Memorandum) also asserts the District failed to identify a developmental disability despite early signs of Autism Spectrum Disorder. Memorandum at p13. Arguably, this issue is beyond the scope of the issues raised in the Parents' request for a due process hearing. However, as the District's Post-Hearing Brief also addresses the issue of whether it failed to identify and evaluate autism as a disability for the Student, the Parents' argument will be considered.

Whether the District Violated the IDEA by Failing to reevaluate the Student in December 2017, May 2018, and August 2018.

7. A recent decision from the U.S. District Court, Central District of California, sets out quite succinctly the current state of the law regarding a school district's child-find duty in the Ninth Circuit:

"Child-find requires school districts to develop a method to identify, locate, and evaluate students with disabilities who are in need of special education services." *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1221 (9th Cir. 2016). "[C]laims based on a local educational agency's failure to meet the 'child find' requirement are cognizable under the IDEA." *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1185 (9th Cir. 2010). The Ninth Circuit instructs that a duty to evaluate arises when a disability is deemed "suspected":

[A] disability is "suspected," and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. In *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir. 1996), for example, we held that the "informed suspicions of parents, who may have consulted outside experts," trigger the requirement to assess, even if the school district disagrees with the parent's suspicions because "[t]he identification [and assessment] of children who have disabilities should be a cooperative and consultative process." *Id.* at 802. Once either the school district or the parents suspect disability, we held, a test must be performed so that parents can "receive notification of, and have the opportunity to contest, conclusions regarding their children." *Id.*

Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 1119-20 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 1578, 197 L. Ed. 2d 704 (2017); see also *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App'x 666, 667 (9th Cir. 2018) ("The duty to evaluate a student arises when disability is 'suspected,' or 'when the district has notice that the child has displayed symptoms of that disability.'" (quoting *Timothy O.*, 822 F.3d at 1119); *S.B. v. San Mateo Foster City Sch. Dist.*, 2017 U.S. Dist. LEXIS 217440, 2017 WL 4856868, (N.D. Cal. April 11, 2017) ("A school district's child find duty is triggered when it has reason to suspect a child has a disability, and reason to suspect the child may need special education services to address that disability.") (citing *Dep't of Educ. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1194 (P. Haw. 2001)). Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not "exclusively in hindsight." *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993)). However, some consideration of subsequent events may be permissible if the additional data "provide[s] significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1006 (9th Cir. 2011) (quoting *Adams*, 195 F.3d at 1149).

E.S. v. Conejo Valley Unified Sch. Dist., 2018 U.S. Dist. LEXIS 126251 (C.D. Cal. 2018); 72 IDELR 180.

8. This is not a case where the allegation is that a school district failed to ever evaluate a student suspected of having a disability. On the contrary, the District first evaluated the Student and determined she was eligible to receive special education as early as the 2009-2010 school

year when the Student was in first grade. The District subsequently conducted triennial reevaluations of the Student in 2012 and 2015 and determined she remained eligible based upon identified disabilities of mild neurodevelopmental dyspraxia, ADD, and ADHD. The Student was first diagnosed with autism by Dr. Orlich in March 2016, and the Mother shared Dr. Orlich's evaluation with the District sometime during fall 2016. The Student's IEP team met on October 20, 2016, and the Mother reported the Parents had received a report, apparently Dr. Orlich's evaluation, that indicated the Student had a new diagnosis of high-functioning autism. The team determined it would conduct a partial reevaluation of the Student, and received the Parents' consent on November 9, 2016. All this occurred prior to the two-year period at issue in this case: November 11, 2016, to November 11, 2018, the date the Parents filed their request for a due process hearing. The partial evaluation included consideration of Dr. Orlich's evaluation and, based at least in part on that, the team changed the Student's eligibility category from OHI to autism. Accordingly, it is concluded that the District did not fail to identify or timely evaluate the Student for a developmental disability or autism within the two-year statute of limitations in this case.²⁵

9. The Parents also assert the District failed to identify and evaluate whether the Student had a "social-emotional disability," and then later a "conduct disorder." As an initial matter, the IDEA does not recognize either a social-emotional disability or a conduct disorder as an eligibility category. See WAC 392-172A-01035. To the extent the Parents are asserting the Student had an emotional/behavioral disability, that eligibility category is defined as:

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

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

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

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

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

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

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

WAC 392-172A-01035(2)(e)(emphasis added).

²⁵ To the extent the Parents seem to conflate a "developmental disability" with "autism" as those two eligibility categories are defined in the IDEA, any difference is immaterial to the conclusion the District did not fail to identify and timely evaluate the Student during the period at issue.

10. The Parents assert the District failed to recognize an emotional/behavioral disability in February 2017 because it did not conduct an evaluation. Memorandum at p15. This is demonstrably false. After receiving the Parents' consent on November 9, 2016, the District completed a partial reevaluation of the Student and the team met on February 1, 2017, to consider the results. The team considered the results of Dr. Orlich's earlier evaluation. The Mother attended the evaluation team meeting as a member of the team. The Mother had reported during the October 20, 2016 IEP team meeting that the Parents had recently seen more defiant behavior by the Student at home than was being observed at school. However, the Mother confirmed that as of the evaluation meeting, the Student was not exhibiting behavioral issues in her classes or at school that required any intervention by District staff, and that the Student's behaviors at home were not severe. Despite this, the team still recommended the Student receive SDI to address her social-emotional functioning.

11. The evaluation team used the results from the BASC-3 to assess the behavior and self-perceptions of the Student. The Parents assert the results of the BASC-3 must be considered suspect (Memorandum pp16-18). However, they offered no evidence from any individual qualified by appropriate education, training, or experience to refute the credible testimony of Mr. DiPaul, the school psychologist who reviewed the results of the BASC-3, that the results were a valid and reliable assessment of the Student's social and emotional status. Nor have the Parents established by any credible evidence of record that any additional assessment of the Student's social and emotional status was necessary.

12. With respect to whether the District failed to identify that the Student had a conduct disorder, the Parents' Memorandum does not seem to assert this became an issue until sometime during the 2017-2018 school year. After careful review of the record, it is concluded that the Parents have not proven by a preponderance of evidence that the District violated the IDEA by failing to identify the Student had a conduct disorder during the 2016-2017 school year.

13. In summary, it is concluded that the Parents have failed to prove that the District violated the IDEA by failing to identify an emotional/behavioral disability or a conduct disorder during the 2016-2017 school year.

14. The Parents' Memorandum asserts the District was on notice that the Student had an unidentified emotional disability and conduct disorder during the 2017-2018 school year. See Memorandum pp18-28. Extensive Findings of Fact have been made with respect to the 2017-2018 school year and the circumstances and incidents involving the Student, finally leading to her inpatient hospitalization in the PMBU at Seattle Children's Hospital on August 3, 2018, and will not be repeated here in detail. See generally Findings of Fact 34 – 122. Some facts are particularly noteworthy. The Student moved from middle school to start ninth grade at the District's Eastlake High School. Without question, the transition from middle to high school places greater academic and social demands on all students, general education and special education alike, and some period of time is likely required for any student to adjust to those new demands. Despite this, the Student initially reported feeling happy. By October, it appears as though the Student was beginning to experience some stress interacting with other students. In November, the Student began to self-identify again as a female, but Dr. Enns noted her affect appeared much lighter. And although the Student's self-care began to show some degree of decline, it was not until February or March 2018 that it became sufficiently apparent to the District that staff reported this to the Parents. It was not until March or April 2018 that the Student stopped regularly showering and brushing her teeth, per the Mother.

15. In December 2017, the Student was first reported to have engaged in feces-smearing in the bathroom at school. At about the same time, the Parents were seeing increased physical aggression at home, along with threats of self-harm from the Student, and concerns for use and/or increasing use of illegal drugs, which were shared by Dr. Enns. The District reacted by closely monitoring the Student's use of the bathroom at school on the advice of Dr. Enns, which was generally successful in reducing the frequency of the Student's behavior. In February 2018, the Student's IEP team met and increased the Student's SDI minutes for social-emotional and social skills. In March, the Student falsely accused two students of having a knife and/or cocaine. On March 29, 2018, a meeting was held to consider a partial reevaluation of the Student, and in the interim Ms. McCrath-Smith arranged for increased paraeducator support in the Student's classroom. On March 30, 2018, the Mother signed consent for the partial reevaluation, which the District completed by May 15, 2018. The Student was expelled from Eastlake High School on March 30, 2018, for printing out threatening notes at school, and did not return to Eastlake. On April 16, 2018, on the recommendation of Dr. Enns and at the Parents' request, the District agreed to place the Student in a stricter educational environment - Overlake Specialty School. Due to a waiting list, the District arranged for the Student to attend another private placement - Ryther, along with providing in-home tutoring services and paying for the Student to participate in an all-girls social-skills group until space opened at Overlake Specialty School. When an opening unexpectedly became available at Overlake Specialty School, the District immediately placed the Student there with the Parents agreement and consent.

16. During her approximately three months at Overlake Specialty School, the Student earned much better than passing grades and the staff did not report any concerns regarding the Student. Data showed the Student was making progress academically, behaviorally, and socially at OSS. The same cannot be said about the Student's behavior outside of Overlake. From May into August the Student's maladaptive behavior outside OSS continued, culminating in the Student becoming so distraught when served with a no-contact order from the police after the Student left threatening notes directed at a neighbor's children that the Student was admitted to the PMBU at Seattle Children's Hospital. Despite all this, neither Dr. Enns nor Ms. Harper have ever diagnosed the Student with a conduct disorder.

17. The Parents assert that based upon everything that transpired during the Student's freshman year at Eastlake High School, the District should have suspected the Student had an emotional disability and a conduct disorder that went unidentified and unevaluated. The crux of these issues comes down principally to timing, notice to the District, where the Student's maladaptive behaviors were occurring, and how the District responded. Given what was known to the District, did the District wait too long to consider reevaluating the Student during the 2017-2018 school year, thereby violating both its child-find duty and its duty to evaluate the Student? With respect to any suspected emotional/behavioral disability, the identified characteristics must occur over a long period of time to a marked degree. WAC 392-172A-01035(3)(e), above. The IDEA does not offer further guidance about how much time constitutes a long period of time, or what constitutes a marked degree of symptomatology. At least one court has held that three months of behavior problems was not long enough to alert a school that a student could have a disability. *District of Columbia Pub. Charter Sch.*, 114 LRP 39057 (SEA DC 2014) (IHO found no evidence of a child-find violation after the student began yelling, throwing classroom materials and hitting teachers).

18. The Parents assert that the District should have suspected a disability and reevaluated the Student as early as December 2017, particularly given this was when the Student first

engaged in feces-smearing in the Health Room bathroom at Eastlake High School. When Dr. Enns was made aware of the feces-smearing by the Mother, he considered it suggestive of deeply rooted pathology. However, although Dr. Enns initiated contact with the District and suggested strategies to help the District address the problem, there is no evidence he suggested that the Student should be reevaluated. Nor is there any evidence Dr. Enns conducted anything in the way of a further or new evaluation of the Student, and he apparently never felt it necessary to diagnose the Student with the conduct disorder. At the same time, it was only a matter of perhaps two months since the Student's first significant behavioral incident during the school year, when she placed another student's phone number on Snapchat. At the same time, the District was proactively addressing the feces-smearing at school following Dr. Enns's suggestion of ensuring the Student was monitored when she used the bathroom. Finally, it is important to consider that the Student has multiple disabilities that have impacted her receipt of an educational benefit at school for many years, and required provision of SDI in multiple areas. It is reasonable that the District would, at least for some period of time, attribute any new behaviors by the Student to the typical adjustment associated with a new, more demanding school environment rather than immediately suspecting a new disability. *D.K. by Stephen K. and Lisa K. v. Abington Sch. Dist.*, 59 IDELR 271 (3rd Cir. 2012). Given all this, it is concluded that the District did not violate its child-find duty or violate its duty to evaluate a suspected disability when it did not evaluate the Student in December 2017.

19. The Parents next assert the District should have evaluated or did not complete an evaluation of the Student in May 2018. Memorandum at p48. The Student's IEP team determined it would conduct a partial reevaluation of the Student at the March 29, 2018, meeting, and the Mother signed consent on March 30, 2018. The team held a meeting on May 15, 2018, to consider the results of the partial evaluation. As one component of that partial reevaluation, the team decided to conduct an FBA of the Student. The crux of the Parents' argument is that this FBA was based on informal observations of the Student by her District teachers, rather than an evaluation of her emotional and behavioral disabilities, citing *Timothy O. v. Paso Robles Unified Sch. Dist.*, 116 LRP 21676 (9th Cir. 2016). The Parents misconstrue the holding in *Timothy O.* That decision stands for the proposition that a school district may not rely on casual observations by a staff person as the sole basis to conclude a student need not be evaluated for suspected disabilities, in that case autism. An FBA is intended to provide information about the antecedents, behaviors, and consequences (the so-called ABCs) demonstrated by a student at school to inform the development of a behavioral improvement plan (BIP). An FBA is not intended as an evaluation to determine if a student has a suspected disability or qualifies for special education. The Parents have not proven any violation of the District's child-find duty or the IDEA with respect to the partial evaluation completed in May 2018.

20. The Parents next assert the District failed to conduct a review of existing data and did not complete a reevaluation which it agreed to do after the Student began enrollment at Heritage RTC. Memorandum at p49. The Student was admitted to the PMBU at Seattle Children's Hospital on August 3, 2018. On August 14, 2018, Parents' counsel sent the District an email, informing the District that the Parents intended to seek reimbursement for the Student's placement at Heritage RTC. The Student was discharged from the PMBU on August 15, 2018. She attended OSS for one day on August 16, 2018 before the Parents took her to Heritage RTC in Utah on August 17, 2018. The Student remained at Heritage RTC until February 20, 2018, when she returned home for a short visit. The Parents never informed the District that the Student would be returning home for a visit. On August 27, 2018, the Mother attended a team meeting along with Parents' counsel and District staff team members to consider a reevaluation of the Student

in light of the Parents' request that the District pay for a more restrictive placement at Heritage RTC. The team agreed to conduct a reevaluation of the Student, and received the Parents' signed consent for the reevaluation on September 14, 2018. The District eventually decided to use its own professionals to conduct the reevaluation rather than have staff at Heritage RTC or other professionals in Utah conduct the reevaluation. The District informed Parents' counsel of its decision on October 23, 2018, and that it stood ready to reevaluate the Student once she was available to return to Washington State.

21. As pointed out in its Post-Hearing Brief, the District is under no legal duty to use professionals other than those of its own choosing to evaluate the Student. WAC 392-172A-03020(2). Post-Hearing Brief at p22. Whether other professionals in other states might be qualified and available to conduct an evaluation is legally immaterial. Furthermore, when parents unilaterally place a student eligible for special education in a private school, the school district in which the private school is located is responsible for child-find and evaluation regardless of whether the student resides in the school district where the private school is located. WAC 392-172A-04005. The District was under no legal obligation to send professionals of its own choosing to Utah to evaluate the Student.

22. Finally, even were the undersigned to conclude the District was somehow responsible for failing to complete the Student's evaluation once she was enrolled at Heritage RTC, no remedy would be granted to the Parents. Any remedy of this sort would be an equitable remedy and when awarding an equitable remedy, the behavior and conduct of the parties may be considered. In this case, it is clear that the Parents' decision to unilaterally enroll the Student in an out-of-state residential placement was the direct and primary cause of the District not completing the evaluation. This causation includes the Parents' decision not to inform the District that the Student would be returning home for a visit in February 2019. Under these facts, it is concluded that it would be manifestly inequitable to the District to award the Parents any remedy.

23. It is concluded that the District did not violate the IDEA by not completing an evaluation of the Student once she was unilaterally placed at Heritage RTC.

Whether the District Denied the Student FAPE and Violated the IDEA by Reducing Services and SDI During the 2016-2017 School Year.

24. The District's Post-Hearing Brief correctly sets out the legal standard in the Ninth Circuit to determine the appropriateness of a student's IEP, including the SDI and related services offered in the IEP. Brief at p17. The crux of the Parents' argument is that by discontinuing SDI in organization and reducing SDI in reading comprehension, and then later reducing SDI in social/emotional and social skills, the District denied the Student FAPE.

25. The District completed a partial reevaluation of the Student in November 2016. The results of that partial reevaluation were considered and used by the Student's IEP team to update the Student's IEP, first in February 2017, and then later in May 2017 when the IEP team amended the Student's IEP in preparation for her transition to high school in the fall of 2017. The Student and/or the Mother attended the IEP meetings. The Mother had no concerns about the changes made to the Student's IEP in February 2017. The Mother was very concerned about the amendment in March 2017, but other than communicating her concern to Alan Linney, the District special education teacher who drafted the amendment, there is no evidence the Parents took any further action regarding the Mother's concern. The credible testimony of District staff regarding

the Student's IEPs and services during the 2016-2017 school year was consistent and does not support any conclusion the IEPs or services were inappropriate. In addition, the Student demonstrated progress across her goals from April 2017 through February 2018. The Parents offered no witness qualified by education, training, or experience to refute the opinions of the District staff. While the Parents offered their own opinion in good faith regarding the appropriateness of the Student's services during the 2016-2017 school year, their testimony does not warrant more weight than that of trained educators familiar with the Student and her performance at school. *N.B. and C.B. v. Hellgate Elementary Sch.*, 541 F.3d 1202, 50 IDELR 241 (9th Cir. 2008). It is concluded that the Parents have failed to carry their burden and prove that the Student was denied FAPE during the 2016-2017 school year.

Whether the District Violated the IDEA and Denied the Student FAPE by Failing to Provide the Student with Specially Designed Instruction, Related Services, and Accommodations to Address the Student's Autism Spectrum Disorder, Social-Emotional Disability, and Conduct Disorder.

26. The Parents' Memorandum makes clear this claim is related to the 2017-2018 school year when the Student attended first Eastlake High School, and then later OSS. Memorandum at pp32-35. The Parents principally rely on the recommendations for supports and services identified by Dr. Orlich in her March 2016 evaluation of the Student as the basis for their assertion that the District did not provide appropriate SDI, related services, and accommodations for the Student. However, the Parents have offered no evidence going to prove that recommendations made by Dr. Orlich *18 months earlier* were necessary to provide the Student FAPE when she entered high school in the fall of 2017. Dr. Orlich did not appear as a witness at the due process hearing. In light of the quite substantial period of time since her evaluation and no testimony to explain how her recommendations might be relevant or necessary to provide the Student FAPE in a high-school environment, it is concluded that Dr. Orlich's recommendations in her March 2016 evaluation do not prove the Student was denied FAPE during the 2017-2018 school year.

27. With respect to the approximately three-month period the Student was placed at OSS, the Parents principally argue that the Student's increasingly maladaptive behaviors over the course of the 2017-2018 school year evidence a denial of FAPE. *Id.* at pp33-35. However, the record is clear that once she began attending OSS, there is little evidence that the symptoms of the Student's disabilities interfered with her receipt of an educational benefit at OSS. The Student regularly attended OSS.²⁶ While at OSS, the Student earned much better than passing grades. The Student started forming positive relationships with peers and staff at OSS. She demonstrated the ability to communicate directly and assertively to have her needs met. When she received non-preferred information at OSS, the Student managed herself, and remained safe and engaged throughout the school day. She did not demonstrate any unsafe behaviors at OSS. Ms. McAllister's observations during her regular and frequent visits to OSS led her to conclude the Student was acclimating well to the school environment. Collectively, the evidence of record clearly supports a conclusion that when the Student attended OSS, she was receiving FAPE.

²⁶ There is apparently only one documented occasion when the Student did not attend OSS. That was on July 10, 2018, when the Student was left alone at home in the morning and rather than take the District-provided bus to OSS, the Student skipped school.

28. It is concluded that the Student was not denied FAPE during the 2017-2018 school year due to any failure to provide SDI, related services, or accommodations.

Whether the District Violated the IDEA and Denied the Student FAPE by Failing to Place Her in Her Least Restrictive Environment by Placing Her at Eastlake High School, Overlake Specialty School, and Then Failing to Place Her at Heritage RTC.

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

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

20 U.S.C. §1412(a)(5)(A). This is the so-called Least Restrictive Environment (LRE) mandate. In Washington State, the LRE mandate is codified at WAC 392-172A-02050. In the Ninth Circuit, the seminal case on LRE is *Sacramento Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994), *cert denied*, 114 S. Ct. 2679 (1994). *Rachel H.* adopted a four-part balancing test to determine a student's LRE:

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

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

31. With respect to the Student's placement at Eastlake High School to begin the 2017-2018 school year, the Parents' Memorandum reflects no meaningful analysis of the LRE issue. Memorandum at p36. In any event, there is no significant evidence in this case that as of the start of the 2017-2018 school year, the Student required a restrictive, therapeutic day school like OSS in order to obtain an educational benefit. The Student had been educated in predominately mainstream or general education classes with appropriate services and supports throughout her educational history with the District. It is concluded that the District did not violate the LRE mandate by placing the Student at Eastlake High School to start the 2017-2018 school year.

32. With respect to the decision to place the Student at OSS in May 2018, it was the Parents' clearly expressed desire to immediately place the Student at OSS rather than returning her to Eastlake High School after the emergency expulsion was set aside by the manifestation determination team. The Parents requested immediate placement at OSS at the District's expense as an IAES until a full reevaluation of the Student could be completed. The Parents

cited Dr. Enns as support for an immediate interim placement at OSS. Dr. Enns strongly believed OSS was an appropriate placement for the Student at that time. The District agreed to an interim placement at OSS until a reevaluation of the Student could be completed. It is manifestly disingenuous for the Parents to now assert the District violated the IDEA by agreeing to an interim placement at OSS in May 2018.

33. The Parents' Memorandum goes on at length reiterating the Student's behavioral incidents during the 2017-2018 school year after she was placed at OSS in an attempt to show that the placement at OSS "failed," which apparently translates as "inappropriate" to the Parents. Memorandum at pp36-41. The Parents, however, fall into the trap of "Monday-morning quarterbacking" that is not permitted under *Baquerizo* and *Adams, supra*. The appropriateness of a placement is not determined based upon events *after* the placement decision is made. In the alternative, if this is an attempt by the Parents to show that by August 2018 OSS was no longer the Student's LRE, that argument also fails.

34. The evidence is clear that virtually all of the Student's maladaptive behaviors were occurring outside of OSS in the Student's home and community. The Parents argue it is immaterial that these maladaptive behaviors occurred outside of OSS. The undersigned respectfully disagrees with this proposition. School districts are not responsible for a student or a student's behaviors that occur outside of school unless those behaviors interfere with a student's receipt of an educational benefit when the student is in school. Nor is a school district required to ensure that skills learned in school generalize to situations outside of the school. A student with behavioral problems who makes adequate behavioral gains in school but does not generalize those behavioral gains to other settings is still considered to be receiving an educational benefit. *See J. S. K. v. Hendry County Sch. Bd.*, 941 F.2d 1563, 1573, 18 IDELR 143 (11th Cir. 1991). "Although a child may have severe behavior problems at home which make it difficult for his parents to control, the educational agency is not necessarily responsible to remedy this problem." *Gonzalez v. Puerto Rico Dept. of Educ.*, 254 F.3d 350, 352, 34 IDELR 291 (1st Cir. 2001)(internal citations omitted); *See also Devine v. Indian River County Sch. Bd.*, 249 F.3d 1289, 1292-1293, 34 IDELR 203 (11th Cir. 2001), *cert. denied* 537 U.S. 815, 123 S. Ct. 82 (2002). Only when a student's inability to generalize skills across environments prevents him from making any educational progress will a lack of generalization amount to a denial of FAPE. *Thompson R2-J Sch. Dist. v. Luke P. by Jeff and Julie P.*, 50 IDELR 212 (10th Cir 2008).

35. As already set forth in Conclusion of Law 27, above, while the Student attended OSS, the evidence clearly establishes the Student was doing well and receiving an educational benefit in terms of both academics and social functioning. Based upon a careful review and consideration of all the evidence of record, it is concluded that as of August 16, 2018, the last day the Student attended OSS, the Student was receiving FAPE in her LRE.

36. The Parents have requested as a remedy a prospective placement at Heritage RTC at the District's expense. In order for parents to prevail on a request for a private placement at a school district's expense, the parents must first establish that the district denied the student FAPE and second, that the parents' proposed placement is proper. This is the so-called Burlington-Carter analysis. *School Committee of Burlington v. Department of Education of Massachusetts*, 471 U.S. 359 (1985); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

37. Having concluded that as of her last day attending OSS the Student was receiving FAPE in her LRE, there is no need to consider whether the Parents' placement of the Student at Heritage RTC was a proper educational placement. The Parents' request for reimbursement and prospective placement of the Student at Heritage is denied.

Whether the District Violated the IDEA and Denied the Student FAPE by Committing Both Procedural and Substantive Violations of the IDEA When it Predetermined that the Student's Placement at Heritage RTC was Primarily Medical in Nature, Thereby Concluding that the District was Not Financially Responsible for Her Placement at Heritage School, Prior to Completing any Review of Existing Data or Finishing an Evaluation.

38. Predetermination occurs when an IEP team determines a student's educational placement in advance of an IEP meeting without the parents' participation or input. The evidence does not support a conclusion that the District in any manner predetermined the Student's placement at Heritage RTC, or at any other educational placement. In fact, as late as November 2018, the District stood ready to complete a reevaluation of the Student were she to return to Washington State. It is concluded that the District did not violate the IDEA by predetermining the Student's placement.

39. In summary, the Parents have not carried their burden to prove the District denied the Student FAPE or violated the IDEA on any of the issues raised in the Parents' request for a due process hearing. Accordingly, the Parents are not entitled to any of their requested remedies, or any other remedies under the IDEA.

40. 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 Lake Washington School District has not violated the Individuals with Disabilities Education Act or denied the Student a free appropriate public education. The Parents' requested remedies are denied.

Signed at Seattle, Washington on July 26, 2019.



MATTHEW D. WACKER
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

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. *MOW*

Parents

[REDACTED]

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