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Chief Administrative  
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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS

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January 5, 2001

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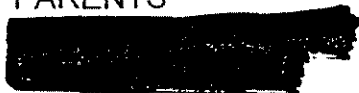
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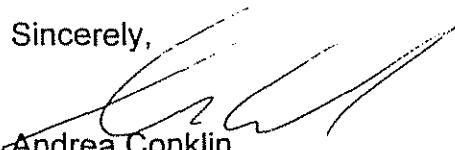
In re: Seattle School District - Special Education Cause No. 00-70

Dear Parties:

I am enclosing 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(e) (Individuals with Disabilities Education Act) or RCW 34.05.510-598 (State Administrative Procedure 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 the Legal Services office at OSPI at (360) 753-2298.

Sincerely,

  
Andrea Conklin  
Administrative Law Judge

cc: Legal Services, OSPI  
Deputy Chief ALJ, Jan Grant  
Mary Radcliffe, OAH/OSPI Coordinator



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

MAILED  
SHS-SEATTLE

JAN 05 2001

OFFICE OF  
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:  
  
SEATTLE SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. 00-70

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

Andrea Conklin, Administrative Law Judge (ALJ), held a hearing on October 25, 26 and 27 and November 7, 8, 9, and November 14 and 15, 2000. The Seattle School District (School District), was represented by its attorney, Lawrence Ransom, Attorney at Law. The Parents of the Student (hereinafter referred to as Student) appeared in person and were represented by their attorney, Howard Powers, Attorney at Law. School District Exhibits 1 through 51 were admitted.<sup>1</sup> SSD-52 was offered but not admitted. Parent Exhibits 100 through 113, 115, 117 through 140 were admitted.<sup>2</sup> Exhibits P-114 and 116 were offered but not admitted.

**STATEMENT OF THE CASE**

The School District requested a hearing on June 2, 2000 to address the Student's proposed placement at [REDACTED] School [REDACTED] and Individualized Education Program (IEP) for the [REDACTED] school year. A prehearing conference was scheduled for June 16, 2000 and a hearing was scheduled for June 26, 2000. Pursuant to the request of the parties, the prehearing conference was continued to June 20, 2000.

<sup>1</sup> School District's Exhibits will be referred to as SSD.

<sup>2</sup> The Parents' Exhibits will be referred to as P.

An Objection was filed to the June 21, 2000 Prehearing Order. A hearing was held on August 4, 2000 on the Objection. An Order was entered on August 10, 2000 revising the June 21, 2000 Prehearing Order. The August 10, 2000 Order also granted the Parents' request to include two additional issues for the hearing.

Based on the unavailability of the Parents' expert to be deposed, a Prehearing Order was entered on September 8, 2000 continuing the hearing to October 25, 2000.

On September 29, 2000, the Parents moved to allow additional observations at [REDACTED] by teachers from the Student's current School, [REDACTED] School [REDACTED]. The Parents also moved to amend to include new issues for hearing. On October 10, 2000, an Order was entered denying the request by the Parents to allow Marla Veliz to observe [REDACTED] as she had already observed [REDACTED] in the Spring of 2000. The October 10, 2000 order allowed Donna Baxter to observe the [REDACTED] program. The October 10, 2000 Order also amended the request for hearing to allow the Parents to add two new issues.

Just prior to the hearing, the Parents moved to add two additional issues for hearing. As explained further in this Decision, the Parents' motion to amend on the day of the hearing was denied.

In addition, on the day of the hearing, the School District's moved to bifurcate the hearing. As explained further in this decision, the motion was denied.

On November 29, 2000 the Parents moved to reopen the record to introduce the testimony of a parent, ([REDACTED]), whose child was attending [REDACTED], to establish that the proposed placement for the Student is not appropriate. As explained further in this Decision, the motion was denied.

The record closed on December 26, 2000. Good cause was established to extend the 45-day due date to January 12, 2001.

## ISSUES

As set forth in the prehearing orders entered in this case, the issues for the hearing are:

1. Should the Student's current placement be changed from [REDACTED] to [REDACTED]?
2. Should the School District be required to reimburse the Parents for the cost of the March 2000 evaluation prepared by Dr. Wendy Marlowe, Ph.D.?
3. Should the Student continue to receive occupational therapy services through [REDACTED] and [REDACTED]?
4. Shall the School District be ordered to immediately pay all amounts due and owing to Ms. White of [REDACTED] and [REDACTED] for occupation therapy services provided to the Student, and to Ms. Kramer for an evaluation of the Student?
5. Shall the School District be ordered to pay all future invoices to [REDACTED] and [REDACTED] and to Ms. Kramer within 30 days of receipt?

## FINDINGS OF FACT

### Background

1. The Student was born on [REDACTED] and is a resident of the District. At birth the Student was diagnosed with [REDACTED]. At age [REDACTED] she contracted [REDACTED] and developed [REDACTED]. It was also discovered at this time that she had a variety of developmental structural [REDACTED] — particularly enlargement of her [REDACTED] of the [REDACTED] and [REDACTED] or [REDACTED] of other [REDACTED] including a [REDACTED] of her [REDACTED]. The student's [REDACTED] has been controlled by medication. However, she has had a number of developmental delays and disorders associated with her [REDACTED] development.

2. The School District first evaluated the Student in February 1993 and determined that the Student qualified for special education services. The Student attended [REDACTED] School [REDACTED] during the 19[REDACTED]/19[REDACTED] school year. The Student attended [REDACTED] School for the 19[REDACTED] school year. P-100.

3. The Student returned to [REDACTED] in the fall of 19[REDACTED] for [REDACTED] and was placed in a regular education program with special education services. The Student attended [REDACTED] and [REDACTED] grade (Fall 1995 through Spring 1997) at [REDACTED] School [REDACTED] P-100. The Student was placed by the Parents at the beginning of the [REDACTED] school year at [REDACTED] a private school. P-100.

4. On November 13, 1998 the Parents requested reimbursement for the Student's attendance at [REDACTED]. The School District requested a due-process hearing. An order was entered on July 17, 1998 by ALJ Robert Kingsley requiring the School District to reimburse the Parents for the cost of [REDACTED] and to continue to pay for [REDACTED] in the future. P-100.

Education at [REDACTED]

5. [REDACTED] is a private school for students with [REDACTED] and [REDACTED] P-121. At the time of the hearing, [REDACTED] had 72 students in [REDACTED] through [REDACTED] grade. Of those students, approximately five are students without any type of disability. Of the students without disabilities, three are in the middle school. One typically developing student is in the Student's classroom. Of the eleven teachers at [REDACTED], only two teachers have special-education endorsements. Ms. Norine, the Student's teacher for the [REDACTED] school year and summer school in 2000, does not have a special education endorsement.

6. Approximately 20 out of 72 students, on the average, are students whose education is paid for by the public school system. In the five years [REDACTED] has been open, there have been only four or five students that [REDACTED] has suggested be returned to the public school setting. All of these students were returned

to public school because the students had behavioral problems and [REDACTED] could not adequately assist the child. [REDACTED] has never recommended that a child return to public school because the child could now be educated in the public school system.

7. [REDACTED] utilizes a direct instruction method entitled SRA. This method requires each teacher to instruct the same way. Sometimes, even the same language is used by the different teachers. SRA is a very structured method.

8. [REDACTED] groups students in class by skill levels. Although it is possible the Student in this case could be placed with substantially younger students based on her academic ability, [REDACTED] makes a conscious effort not to place students with peers who are too young.

9. In general, the Student has made academic, emotional and social gains while attending [REDACTED]. She has also improved her coping skills. Although the Student had difficulty transitioning to [REDACTED] in the beginning, she has benefitted greatly from her education. The Student has friends at [REDACTED] and has been able to participate in after school activities such as [REDACTED]. Testimony of Veliz, Baxter and Norine. The [REDACTED] occurs once a month.

10. The Student is a highly motivated learner and wants to be successful in her education. Testimony of Norine and Baxter. She is selective about what she wants to learn, but when she is interested in learning she can be successful. The Student becomes excited when she performs a task correctly and also cheers her co-students when they are working on tasks. Testimony of Norine.

11. The [REDACTED] Staff believes it has provided the best education for the Student and that [REDACTED] is the most appropriate placement for the Student. Testimony of Veliz, Baxter and Norine.

12. Change is difficult for the Student but transition is possible. In order to transition from the [REDACTED] grade to the [REDACTED] grade, [REDACTED] had the Student meet her new teacher who was new to the school, meet the other students in the classroom and

view her new classroom. Every year it takes the Student several months to become completely comfortable with her new teacher. The Student has had two new teachers to [REDACTED] in two consecutive years. The Student has been able to make academic and social progress despite the newness of her teachers. However, her classmates are generally the same children and her surroundings have not changed much, except for new areas of a familiar building.

13. The Student does obtain social skills by observing regularly-developing peers, but she needs to have one-on-one aid to assist her in order to develop those skills. Testimony of Veliz.

14. During school assemblies at [REDACTED], the Student becomes uncomfortable because of the large number of people and the noise. However, the Student is able to participate and pay attention when a teacher sits next to her. Testimony of Veliz.

15. Beginning in January of 2001, the Student would be able to enroll in [REDACTED] as a class at [REDACTED]. [REDACTED] is an activity the Student has been looking forward to for an extended period of time. The Student would be working toward [REDACTED] and other similar activities. [REDACTED] believes that, despite the Student's difficulty [REDACTED] if given constant repetition, the Student could master these tasks and [REDACTED]. Testimony of Veliz.

16. The Student has had a [REDACTED] in which she performed in front of a number of parents, [REDACTED] students and Ms. Norine, the Student's classroom teacher. Testimony of Norine. During the [REDACTED] school year, the Student, after school, took [REDACTED] twice a week, OT/PT twice a week and [REDACTED] once a week.

17. At the time of the hearing, the Student is in the [REDACTED] grade and there are, on an average, six children in each class taught by one teacher. Her teacher is Ms. Baxter. Ms. Baxter spoke so quickly at the hearing the ALJ had difficulty

understanding her. Ms. Baxter's argument that she speaks slower to her class is not credible. Even if she did speak slower, she would still be difficult to understand. The Student has been able to make academic progress in Ms. Baxter's class.

18. In the [REDACTED] grade the Student is taking a math course with several students in the class at different levels of ability. In the beginning of the class, the teacher provides group instruction. Then, for 20 minutes of the class, the teacher works individually with each student while the other students are working on their workbooks. Testimony of Norine. The Student has been able to learn using this procedure. When the teacher is working with the other students, the Student is not distracted and is able to continue working. Testimony of Norine.

19. The Student went to the Puyallup Fair with the entire [REDACTED] student body in the fall of 1999 and 2000. The Student did not appear overwhelmed at the fair. The Parents took the Student to the Puyallup Fair in 2000 as well. The Student was unable to answer questions regarding what she wanted to eat at the fair. When she attended with her parents, the Student seemed overwhelmed by the fair.

20. The Student also becomes overwhelmed in large crowds at [REDACTED]. She attends [REDACTED] once a week. However, every week she sits next to her father and buries her head in his neck, kissing him all the time.

21. The Student attended summer school in 2000. She participated in several field trips. The Student went to Discovery Park where instructions were given to her by an employee of the park. There were 11 students on the field trip. The Student did not become overwhelmed and appeared to understand the instructions.

22. The students also went to Woodland Park Zoo during summer school. There were 15 students and five adults who went to the park. There were a number of other customers at the park. The Student did not become overwhelmed or shut down.

23. The Student attended the Pacific Science Center where she went to the Planetarium. The Student also went to the Museum of Flight, and a local park. The Student was able to participate in all the activities.

1998/1999, 1999/2000 School Year IEP

24. An IEP for the Student was prepared and discussed by the IEP team in September of 1998. The IEP was signed by all the members of the IEP team except the Parents. P-103 at p. 33. The School District disputes that P-103 is the last agreed-upon IEP because the Parent did not sign the document. However, P-103 is the IEP under which the parties operated for the 1998/1999 school year.

25. The September 1998 IEP provides that the Student will receive Occupational Therapy (OT) and Physical Therapy (PT) for two hours by Rosemary White. P-103 at p. 31. Ms. White is the owner of Pediatric Physical and Occupational Therapy Services. Ms. White agrees that it is unusual that her specific name, rather than just the generic term "OT/PT," was written in the September 1998 IEP in the section regarding who would provide the OT services to the Student.

26. The parties disagree as to whether the September 1998 IEP provides that Ms. White was to provide an additional hour of consultation a month or if the consultation was included in the two hours of OT/PT a week. P-103 at p. 31 versus P-103 at p. 3.

27. Pursuant to an April 19, 1999 Notice of Action letter, an IEP meeting was held on April 22, 1999 to discuss the 1999/2000 IEP and placement of the Student. P-111. The IEP team worked on the goals and objectives for the 1999/2000 IEP. At the end of the meeting the School District proposed placement at [REDACTED] Elementary [REDACTED] a public school within the School District. The Father stood up at the meeting and stated that his child would never return to the School District. The meeting terminated. After that meeting, the Parents' attorney attended all IEP meetings.

28. Soon after the April 22, 1999 meeting, the Mother contacted Dr. Wendy Marlowe, the Student's neuropsychologist. The Mother requested that Dr. Marlowe observe [REDACTED]. Dr. Marlowe observed [REDACTED] in May 1999. After the observation, Dr. Marlowe informed the Mother that the Student should be reevaluated by Dr. Marlowe in the Spring of 2000. Therefore, the Mother made a mental note to contact Dr. Marlowe's office in January of 2000 to schedule the evaluation.

29. On June 16, 1999, Brenda Little, Deputy General Counsel for the School District, wrote a letter to the Parents' attorney indicating that two additional members would be added to the IEP team, Dr. Lawrence Majovski and Dr. Molly Warner. Therefore, the IEP meeting scheduled for June 17, 1999 was continued to allow the participation of the two new members.

30. There was never an IEP agreed upon for the 1999/2000 year. The School District decided not to file a hearing request to establish that the [REDACTED] placement was appropriate. Therefore, the Student attended [REDACTED] for the year [REDACTED] at School District expense.

31. On October 28, 1999, the School District forwarded a letter to the Parents' counsel which states that it was in the process of developing a [REDACTED] transition plan for the Student. P-118. To develop the transition plan, the School District retained Dr. Stephen Sulzbacher to provide a recommendation. P-118. Dr. Sulzbacher visited [REDACTED] on November 19, 1999 and Whitman on December 16, 1999. SSD-12.

32. Sometime in January 2000, the Mother contacted Dr. Marlowe's office to make an appointment for the reevaluation the parties discussed in the Spring of 1999.

33. On January 27, 2000, a meeting was scheduled to discuss the report prepared by Dr. Sulzbacher. SSD-24 and 25. On February 26, 2000 a meeting was scheduled for March 6, 2000 to review current information regarding the Student.

34. Dr. Majovski performed a neuropsychological assessment of the Student on March 2, 2000. SSD-15. An IEP meeting was held on March 6, 2000.

35. Dr. Marlowe's evaluations took place on March 14, 15, and 16, 2000. P-127. On March 22, 2000, the Parents informed the School District they were requesting an independent educational evaluation be performed by Dr. Marlowe at School District expense. P-126. Dr. Majovski issued his report on March 22, 2000. The School District received Dr. Majovski's report on March 23, 2000. SSD-15. The School District forwarded the report to the Parents upon receipt. Dr. Marlowe reported her results to the Parents on March 29, 2000.

36. On April 26, 2000, an IEP meeting was held. At that time, a draft IEP had been prepared. The School District was prepared to provide a copy of the proposed IEP to the Parents. However, at the suggestion of the Parents' counsel, it was determined that a reevaluation summary should be prepared to analyze the new reports received. The Mother asked, for the first time on April 26, 2000, that Dr. Marlowe be part of the IEP team.

37. A reevaluation summary was prepared on May 16, 2000. SSD-6. IEP meetings were held on May 25 and May 31, 2000. At or before the May 25, 2000 meeting the School District presented a draft IEP. See SSD-1. The IEP proposes placement at [REDACTED] for the [REDACTED] school year.

[REDACTED]

38. [REDACTED] is a public school for students in [REDACTED] and [REDACTED] grades. There are approximately 1200 students who attend [REDACTED]. The special education classroom the Student would attend is located in [REDACTED] the [REDACTED]. The [REDACTED] classroom is almost twice the size of the Student's current [REDACTED] grade classroom at [REDACTED]. The [REDACTED] classroom is equipped with computers.

39. The special education classroom at [REDACTED] has eleven students. The classroom teacher for the [REDACTED] school year is Mr. Lukes. There are two full-time aides in the class. All of the eleven students attend general education classes at one time or another during the day. Therefore, most of the classes taught in the special education classroom at [REDACTED] contain seven or fewer children. Sometime the aides are present with Mr. Lukes to assist with special education class and sometimes the aides are out with the other children in the general education population.

40. [REDACTED] does offer after-school activities for the Student. However, some of the activities are offered for only six weeks. Some of the activities are offered for more than one six-week period. The Student could participate in drama, ceramics club and weight-training.

41. There have been instances at [REDACTED] in which special education students are mocked and treated inappropriately by general education students. Mr. Lukes has located the general education students and made them apologize. He has also counseled the special education students to help them cope with the inappropriate behavior of general education students.

Proposed IEP for [REDACTED] School Year

42. The proposed IEP for the [REDACTED] school year (May 2000 IEP) indicates that the self-contained special education classroom with contact into regular education was not appropriate. SSD 1 at p. 17. Therefore, there was no appropriate placement for the Student. However, Ms. McLeod, the School District employee who drafted the IEP, established that this was merely a scrivener's error. The Parents do not dispute that the May 2000 IEP proposes that the placement for the Student for the [REDACTED] school year be in a self-contained special education classroom at [REDACTED] with contact into regular education as appropriate. See SSD-1, page 17.

43. The May 2000 IEP contains the following transition strategies for the Student to move from [REDACTED] to the public school setting:

- (1) Parents and [the Student] meet with public, [redacted] School staff for orientation.
- (2) [redacted] staff meeting with [redacted] staff.
- (3) Parents and [Student] attend [redacted] orientation at school. [redacted] School is having an orientation barbeque on the evening of Thursday, May 18.
- (4) Student visits the classes while in session.
- (5) Student attends class picture in June.
- (6) Class visit prior to school opening for parents with Student to meet with receiving staff.
- (7) Parents attend open house at [redacted] in September. This will provide an opportunity to meet other parents of other students in the program.
- (8) A written description of the anticipated schedule and planned routine for the start of the school year.

SSD-1 p. 18.

44. The Parents and the Student did not attend orientation or participate in any of the transition strategies as outlined above because the Parents did not want the Student to believe she was being punished. Previously, the Student had gotten in trouble at [redacted]. The Mother told the Student that if things did not improve, she may have to find a different school for her. The Student became very upset. The Mother did not intend to use this as a punishment but merely inform her what could result. Therefore, the Mother was concerned that if the Student was taken to [redacted] to look around at the school, the Student would think she had done something wrong and would become upset.

45. Present levels of performance in an IEP are used to guide teachers on how to instruct students. The May 2000 IEP present levels of performance provide:

[The Student] benefits from teaching strategies that include visual plus tactile modes rather than purely auditory/verbal approaches. She is able to work better when information is concrete, distributed with a lot of structure and practice, and a resource/aide guides her along a multiple sequence process of learning rather than trying to grasp concepts that are over her head and too overwhelming.

SSD-1, p. 2. This language defines direct instruction. SRA is a methodology of direct instruction. The May 2000 IEP does not specify that the Student will be given instruction using the SRA method. The School District could train Mr. Lukes in SRA. Mr. Lukes has not been trained in SRA.

46. During the IEP meetings, there was never an indication by the Parents, their lawyer, or by the [REDACTED] staff that the Student was required to have SRA instructional methodology for the Student to learn. However, the School District was aware the Student had been receiving direct instruction through the use of SRA at [REDACTED]

47. Page 2 of the May 2000 IEP under the present levels of performance also provides:

[The Student] is able to participate in P.E. provided that it is adapted for her in an appropriate manner.

The IEP does not provide how P.E. will be adapted for the Student.

48. The Student would attend regular education P.E. in the gym with approximately ninety children. The gym is very large and echos. The Student has extreme difficulty with noisy places filled with a number of people. The Student becomes overwhelmed and shuts down or tunes out the world. P.E. at [REDACTED] in the gym will be extremely difficult, if not impossible, for the Student.

49. The School District proposes trying the Student in the gym for P.E. If it does not work, the Student can be removed from gym and alternative P.E. activities could be found. The School District, in the IEP, did not specify what alternative activities could be explored.

50. Page 2 of the IEP under the present levels of performance also provides:

[The Student] could benefit from using computers and instructional software to support her learning. Specific assistive technology needs should be further explored in her education setting.

The School District has an assistive technology team which could evaluate the Student's needs regarding assistive technology. If assistive technology was needed, the Student could receive assistive instruction.

51. The May 2000 IEP provides that an instructional assistant would be available as necessary five days a week for the Student. SSD-1, page 19. The location of the services is in the regular education setting. The Student will have a one-on-one aide assigned to her in the beginning. If it is determined that the Student did not need the aide full-time, the aide would be assigned to other tasks. In May of 2000, the School District had instructional aides which would be available for the Student.

52. The IEP provides that the Student would not receive extended school year (ESY) during the summer. The School District requested that [REDACTED] provide evidence to establish that the Student regressed during the summers to justify ESY. The Student has always attended summer school so [REDACTED] could not provide evidence that the Student regressed during the summers.

53. The May 2000 IEP provides that the Student is to receive two hours of OT/PT. SSD-1 at p. 19. The staff responsible for the OT/PT is listed in the IEP as "Ot/pt." The services are to be provided "class/pullout." The OT/PT person will decide which location for providing the service is appropriate. The two hours of OT/PT service is in addition to the regular school day. SSD-49.

54. The School District will not guarantee that Ms. White's organization will provide the OT/PT services for the [REDACTED] school year, but it has no intent of changing OT/PT providers. The IEP does not require that the provider of the OT/PT services have sensory integration training. However, there is no dispute that the

individual providing services to the Student would be an occupational therapist competent in sensory integration.

55. The Staff from [REDACTED] believes that the Student would receive some educational benefit from the proposed IEP by the School District and the placement at [REDACTED]. However, the Staff from [REDACTED] believes the best placement for the Student would be at [REDACTED]. Testimony of Veliz.

56. At the hearing, the Parents and the [REDACTED] staff raised for the first time their concerns regarding the Student's ability to be aware of safety issues. The subject was not discussed at IEP meetings.

57. The School District requested a hearing on June 2, 2000 to determine the appropriateness of its proposed placement and the May 2000 IEP.

#### EXPERTS

##### Lois Kramer

58. Ms. Lois Kramer is an occupational therapist employed by the Center for Therapeutics Intervention. Ms. Kramer performed an evaluation on the Student in March of 1998 at the request of the Parents. P-102 and 104. At that time, Ms. Kramer performed a sensory integration and Praxis test, a Bruininks-Osteretsky test of motor proficiency and a developmental test of visual perception. In addition, Ms. Kramer made clinical observations and performed a parent questionnaire, sensory profile and an interview. See P-102. Ms. Kramer performed these examinations at the request of the Parents.

59. In the Spring of 2000 Ms. Kramer was asked by the School District to perform an occupational reevaluation. Ms. Kramer performed the evaluation on June 14, 2000. See P-136. At that time, Ms. Kramer performed the Bruininks-Osteretsky test of motor proficiency, sensory profile, a developmental test of visual perception-second edition. In comparing her two reports, Ms. Kramer believes that the

Student may have improved on the raw scores, but decreased in her comparison to normally developing peers.

60. The IEP goals proposed by the School District in the May 2000 IEP regarding OT and PT services would be appropriate for the Student if performed by an occupational therapist who is trained or well-versed in the sensory integration theory.

61. Ms. Kramer did view [REDACTED] on September 16, 2000. Ms. Kramer also viewed [REDACTED] on October 20, 2000. At the time of her observation at [REDACTED] Ms. Kramer observed the special education students in the classroom setting, in the hallway and in a general education class. Ms. Kramer did not see any special education student being ridiculed, shunned, or harassed. She did see the special education students sitting by themselves at the lunchroom table, and interacting generally among themselves. There was interaction in the lunchroom with a regular education student, but, in general, the students kept to themselves.

62. Ms. Kramer also witnessed students in a general education art class. The special education students were seated in the back of the classroom. The special education students were behaving appropriately. Ms. Kramer did not see the students overwhelmed during passing in the hallways.

63. At [REDACTED] School, Ms. Kramer did see the students in the second week of class attempting to perform a math task. Several of the special education students were off task and looking around. There were seven students in the classroom at the time.

64. Ms. Kramer also viewed [REDACTED]. She observed a math class that was on "free day." The students had, because of appropriate behavior, the right to have less structured teaching. She observed the students in a group math activity. The noise level in the classroom was very high. However, the Student was able to continue to engage in her activity and work in a group.

65. The Student was able, at [REDACTED] to socially interact with other students and to recognize them in the hallway. She made spontaneous comments about a school election that was taking place that week. The Student engaged socially with another female student and was late to class. However, she was able to find her way to class.

Rosemary White

66. Rosemary White is the owner of Pediatric, Physical and Occupational Therapy Services. She is a qualified occupational therapist who specializes in sensory integration. Pediatric, Physical and Occupational Therapy Services has several offices. One office is located in Lake Forest Park, at which Ms. White provides most of the services. Another office is located in Kent, at which Ms. Margaret Metzger and Ms. Pauline Cabay are located. The Student currently has occupational therapy twice a week in Kent with Ms. Metzger and Ms. Cabay. Ms. White is the supervisor for these two individuals and is aware of the services provided to the Student.

67. The Student is a pleasant social child with a quality of movements reflective of a younger child. In early 1997 or 1998, the Student was receiving two one-hour sessions a week of OT/PT and approximately once a month or once every six weeks, the occupational therapist or physical therapist was going to [REDACTED] to consult. The School District requested that the consulting decrease. Therefore, for the last year to year and a half, the Student has been receiving two one-hour sessions a week and then some consultation over time, but substantially decreased. The Student has still received meaningful benefit from the OT/PT services provided over the last year to year and a half.

68. The Student requires OT/PT from a therapist well trained in the area of sensory integration occupational therapy. There are several people within the School District who provide sensory integration occupational therapy. A number of those individuals are at [REDACTED] [REDACTED] has a place at which OT services can be

provided for the Student. Ms. White believes that it would be more beneficial for the Student to continue receiving services through Ms. Cabay and Ms. Metzger as the Student has difficulty transitioning from one individual to another.

69. Based on Ms. White's expert opinion, the Student is distractable and does have difficulty concentrating when there are sudden noises and other stimuli in the room. In addition, the Student has balance problems and she used to be hypersensitive to injury. The result is that if the Student felt uncomfortable in her balance she would say something hurt, ask for a band-aid and would be intently concentrating on the injury. However, the Student's hypersensitivity has improved.

70. The Student has made progress in *motor plans*, *significant improvement* in self-help skills, and she is also *independent in her dressing*, although she does need visual reinforcement. The Student's balance has improved, and she has been successful with a number of skills. She can come into the occupational therapy room, map the room on the board, obtain the equipment she wants and set up the equipment while referring to the visual map.

71. Ms. White believes that the occupational therapy goals in the May 2000 IEP can be performed by a capable occupational therapist with sensory integration training. Given this restriction, she would be comfortable with those goals.

72. Ms. White observed [REDACTED] in September of 2000. She believes that [REDACTED] is well-organized visually, with not a lot of distractions. She found [REDACTED] to be large such that a person must know the map of the school to locate the rooms. Ms. White had a [REDACTED] grader take her to the special education [REDACTED] and even the [REDACTED] grader, who had been at the school for two years, became lost.

73. Ms. White found the gym to be very large and therefore by nature has echoing and a potential for ambient or uncontrollable stimuli. The Student's sensitivity to ambient sound could create difficulty with a large gym.

74. Ms. White observed Mr. Lukes in the self-contained classroom. She found Mr. Lukes to be very caring, attentive and positive with each individual student.

75. Ms. White viewed the lunchroom. The lunchroom was a nice room with natural light and very well organized. The special education students sat at one table off to the corner, surrounded by adults. The special education students after lunch went to the area outside the portable and waited for the teacher to return.

76. Ms. White had not been paid for an extended period of time by the School District. However, a few weeks before the hearing Ms. White's office was paid in full. Ms. White had not considered terminating services to the Student because of the lack of payment.

Dr. Stephen Sulzbacher

77. Dr. Stephen Sulzbacher was retained by the School District in the Fall of 1999 to assess the adjustment by the Student to her current placement and to review the appropriate placement for the Student. Dr. Sulzbacher is a licensed psychologist. Dr. Sulzbacher is an attending psychologist at Children's Hospital currently, and has been for the last 14 years. In addition, he is an Associate Professor of the Department of Psychiatry and Behavioral Science and Pediatric School of Medicine at the University of Washington and has been for the last 22 years. Dr. Sulzbacher has been an Adjunct Professor of Special Education at the University of Washington for 22 years.

78. Dr. Sulzbacher has also been a Consulting Psychologist at the EEU for many years. He has observed students with similar disabilities as the Student. Dr. Sulzbacher has also published articles regarding appropriate social behavior for students with similar disabilities as those of the Student.

79. Dr. Sulzbacher observed [REDACTED] School on November 19, 1999. In addition, he observed [REDACTED] on December 16, 1999. Dr. Sulzbacher was not directed by the School District to determine whether the placement at [REDACTED] was

appropriate. Dr. Sulzbacher was asked to assess the appropriateness of [REDACTED] for the Student.

80. In his observation of the students at [REDACTED] Dr. Sulzbacher observed nine or ten students in a cramped [REDACTED] classroom. Dr. Sulzbacher observed the students in a physical education class composed of students from the third to the sixth grade. Dr. Sulzbacher was impressed that all the students, identified with attention problems, were attentive and cooperative throughout the physical education program. In addition, Dr. Sulzbacher observed the Student watching a videotape which was a reward for appropriate behavior.

81. At the observation at [REDACTED] Dr. Sulzbacher observed a classroom with 11 students with dyspraxia and other disabilities of memory, communication and organization similar to the students observed at [REDACTED]. The classroom at [REDACTED] is almost twice the size of the classroom at [REDACTED]. [REDACTED] has three to four teachers for 11 students, compared to one teacher for nine or ten students at [REDACTED]. [REDACTED] had three computer work stations and access to more modern computer labs in another building. [REDACTED] had less computer availability. Dr. Sulzbacher observed students mainstreaming at [REDACTED] or being sent to general education classes with typically developing peers.

82. Dr. Sulzbacher notes that the Student has done well during her years at [REDACTED]. However, he has concerns whether [REDACTED] can meet her full educational potential within the very restrictive environment. It is Dr. Sulzbacher's opinion that the Student will profit from increased mainstream experiences.

83. Dr. Sulzbacher believes that the Student will receive educational benefits by attending [REDACTED]. He believes that the Student has clearly profited from [REDACTED] school programming at [REDACTED] and as a result of the positive experiences is ready to make a successful transition to a normalized [REDACTED] school.

setting. SSD-12. Dr. Sulzbacher believes that the Student could benefit from a wider range of activity options, technological aid, and computers available at [REDACTED]

Dr. Lawrence Majovski

84. Dr. Majovski is a clinical neuropsychologist and a clinical psychologist. SSD-49. He has been practicing clinical neuropsychology and psychology for more than 20 years. Dr. Majovski is licensed in California and Washington. For a majority of his practice, Dr. Majovski has specialized in child and adolescent neuropsychology and psychology. Dr. Majovski was an Associate Clinical Professor at UCLA for 17 years and is currently an Associate Clinical Professor at the University of Washington School of Medicine. Dr. Majovski has had extensive experience with children with problems similar to those possessed by the Student.

85. Dr. Majovski has participated in due-process hearings at the request of Parents in the past. However, since moving to Washington in 1993 an overwhelming majority of his participation in due-process hearings and special education issues has been at the request of school districts.

86. The School District requested that Dr. Majovski evaluate the Student to address her current level of cognitive functioning and to address her school placement. Dr. Majovski interviewed the Mother and the Student on March 2, 2000 at [REDACTED]. In the three-hour visit on March 2, 2000, Dr. Majovski interviewed the Student for approximately one and one-half hours. Dr. Majovski also did an extensive record review. SSD-15.

87. On March 2, 2000 Dr. Majovski administered the Wide Range Assessment of Memory and Learning, Rey Auditory Verbal Learning Test, Children's Category Test, Level 2, Beery-Burktenica Development Test of Visual-Motor Integration, Grooved Pegboard Test, Stroop Color-Word Interference Test and the Trail Making Test. SSD-15 p. 5.

88. The Student was highly motivated to complete the testing so she could watch a Pokemon cartoon on television. The Student's eye contact was poor, but improved as the testing proceeded. The Mother was present in the room during the testing. There were noises from the hallway outside and interruptions during the testing. The Student required redirection to task and was fidgety, but completed the testing and was persistent.

89. The test results establish that the Student has major problems with verbal-based memory skills and learning abilities using memory. The Student has a relative strength when using visual-based content as opposed to verbal-based stimuli. The more challenging and demanding the task becomes for the Student in using sequencing and problem-solving, the more difficulty she has with the task. SSD-15.

90. Dr. Majovski formed the following opinions about the Student:

- A. She has made considerable gains in many areas while attending [REDACTED]. However, she shows continued needs regarding her psychological adjustment to social situations.
- B. The Student learns best using visual plus tactile mode of teaching. She is able to learn better when information is concrete and distributed with a lot of structure.
- C. The Student should receive occupational therapy and speech and language based services.
- D. The Student will need a major proportion of her curriculum in a self-contained classroom.
- E. The Student would benefit greatly from intensive social modeling with access to someone behaviorally trained to deal with social skills training.
- F. The Student would also benefit from assistive technology.
- G. The Student needs Uniform order and structure regarding her program, small classroom size, a teacher aide to assist her with cognitive and academic areas, social skills training.

91. Dr. Majovski believes the Student has the capabilities to make a transition to [REDACTED]. If she does transition to a new school, Dr. Majovski expects the Student would be less engaged and reticent in social situations. However, over time, the

Student will be able to engage in social skill training to develop competency in dealing with new situations.

92. Dr. Majovski also believes the Student can make progress in advancing her language/semantic skills, academic skills, and social and emotional skill development if she were to engage in a mainstream experience. However, she would still need a comprehensive and structured program with professionals able to work within a predominately structured self-contained classroom.

93. Dr. Majovski, as a member of the IEP team, attended the IEP meetings regarding the Student which were held on March 6, 2000, April 26, 2000 and May 10, 2000. SSD-23, 40 and 41.

Dr. Wendy Marlowe

94. Dr. Wendy Marlowe is a neuropsychologist who also has a degree in language pathology and learning disabilities. She has been practicing in the areas of Clinical Neuropsychology and Language Pathology for in excess of 30 years. Dr. Marlowe is a Reviewer for the State Psychology Board and is a Diplomate in Clinical Neuropsychology. She has treated children with disabilities similar to those of the Student. Dr. Marlowe has testified in several other due-process hearings, almost always at the request of parents.

95. Dr. Marlowe prepared a neurological evaluation for the Student in 1998 which was used in the previous hearing. P-101. Since 1998, Dr. Marlowe has discussed issues with the Parent relating to the Student and her education.

96. As discussed earlier, Dr. Marlowe instructed the Mother that it would be appropriate to reevaluate the Student in the Spring of 2000. Pursuant to this instruction, the Mother contacted Dr. Marlowe's office in January of 2000 and arranged for an evaluation in March of 2000. Dr. Marlowe conducted an evaluation on March 14, 15 and 16, 2000. She spoke with the Parents on March 29, 2000 regarding her results.

97. Dr. Marlowe administered the Wechsler Intelligence Scale for Children - III, NEPSY, Elementary Test of Problem Solving, Children's Version of California Verbal Learning Test, Comprehensive Assessment of Spoken Language, Kaufman Test of Educational Achievement, Picture/Story Language Test, and the Vineland Adaptive Behavior Skills. P-127, at page 5.

98. Based on the test results, Dr. Marlowe noted that the Student's general intelligence was *unchanged from testing in 1998*. The Student's verbal comprehensive index of 69 placed her in the *mentally retarded range*. The score is *not significantly different from those the Student earned in 1998*.

99. The Student's perceptual organizational index placed her within *average range*. This constituted an increase in her perceptual organizational quotient of *greater than one standard deviation from the test in 1998*. Therefore, the difference between the earlier results on the perceptual organization index and the present one appears to represent *new learning for the Student*. P-127, at page 5. The scores were significantly higher on two of the subtests which reflect organizational and sequential abilities. *Id.* However, the Student's freedom from distractability and processing speed indices were *unchanged from 1998 but significantly higher than those achieved in 1997*.

100. Dr. Marlowe notes that the Student *has learned to establish focused attention*. The Student knows how to get ready to listen, exhibit her own thoughts in speech and to avoid distracting herself by her own verbalization. *Id.*, at page 6. However, the Student remains *distractable and continues to be highly hypersensitive and hyperactive to environmental sounds*.

101. Dr. Marlowe also notes that the Student's approach to tasks has *changed dramatically*. She no longer starts a task without any understanding of it and she asks many questions in an attempt to build a conceptual framework prior to initiating a task. *Id.*, at page 6. However, Dr. Marlowe notes that the Student is still *unable to*

learn a task in one setting and generalize it to another. The Student is also unable to plan, strategize, or solve problems on the basis of rules.

102. The Student was better able to transition from one task to the next and to shift behaviors within a task than she had been in the past. However, she still needed to be reminded at the end of the page to go to the next page. When she came to the end of a page she just simply stopped. The Student did try to correct obvious errors which she had not done in the past. In addition, the Student had begun to learn to work for speed as well as accuracy.

103. The Student has acquired an understanding of sequential processing which was a difficulty for her in the past. However, she did not use sequential progression consistently. See P-127, page 7.

104. The Student continues to demonstrate significant impairment in auditory processing. *Id.* However, the Student has learned to listen to and segment words, as well as to re-blend them auditorily with much greater accuracy. The Student has made gains in language comprehension. *Id.* However, she continues to have significant difficulty in language comprehension. The Student has demonstrated a new ability to listen to verbal instructions in simple paragraphs in the absence of pictures which is an improvement from her performance in the past.

105. The Student's comprehension and use of language is very concrete. In a one-to-one setting, she demonstrates that she knows how to listen and is able to maintain topic attention but has difficulty adapting to comprehension clues such as inflection.

106. The Student demonstrates impairment in all aspects of language. However, her greatest difficulty was in lexical semantic language, which is basic knowledge of word meaning and the ability to use a word singly and in context. *Id.*, at page 8.

107. The Student's expressive language was concrete and immature. At times her language is highly inappropriate, particularly regarding pragmatics or social use of language.

108. The Student continues to learn only what she is taught directly. *Id.*, at page 8. The Student has sensory perception and motor problems.

109. The Student has made significant gains in all areas of academic skills. *Id.* Her reading and spelling demonstrated that she has gained an understanding of decoding strategies and is no longer solely dependent upon her sight vocabulary. Her reading comprehension has improved somewhat. However, she is resistant to reading long paragraphs and continues to demonstrate difficulty with vocabulary. *Id.*

110. The Student's written language is much more coherent and well-organized. The Student's mathematical skills were markedly improved.

111. Dr. Marlowe notes that the Student has made good progress during her years at [REDACTED] *Id.* However, she continues to have all of the same learning needs that she demonstrated in 1998. She still needs a highly structured learning situation.

112. Dr. Marlowe believes that the Student would not benefit from mainstreaming. Given the [REDACTED] and [REDACTED] of the Student, Dr. Marlowe believes regular education students would either shun or tease her. *Id.*, at page 11. It is also Dr. Marlowe's opinion that the Student is unable to benefit from peer modeling, as she only learns what is taught directly.

113. It is Dr. Marlowe's opinion that placement at [REDACTED] is inappropriate for the Student. Dr. Marlowe believes the Student is unable to tolerate the noise and confusion of the classroom. It is also Dr. Marlowe's opinion that a transition to [REDACTED] would result in a significant regression and "there is nothing in the neurological tests or data or [the Student's] educational experience to suggest that this regression would be temporary." P-127 at p.11.

114. It is Dr. Marlowe's opinion, based on her experience, that is highly likely that the Student's regression will include a permanent skill loss. However, Dr. Marlowe, when asked, could not show an example in which the Student had permanent skill loss and regression when she transitioned from one situation to another.

115. Dr. Marlowe visited [REDACTED] on March 1, 2000. When she viewed the gym it was very loud and there were lots of children in the gym. The special education students were present and were off to the side. The special education students were not actively involved in activities in the gym. Dr. Marlowe believes the Student would be unable to participate in gym because the noise would bother her and she would shut down.

116. It is Dr. Marlowe's opinion that the Student would have difficulty navigating the school because of its large structure and may have difficulty getting from the [REDACTED] to the bathroom. She believes the Student would avoid the bathroom because it is too large for her.

117. Dr. Marlowe also noted that the teacher in the room spoke too fast and it would be very difficult for the Student to understand. When it was noted that Ms. Baxter (the Student's current teacher) spoke incredibly fast, Dr. Marlowe agreed. However, Ms. Baxter assured Dr. Marlowe that she slows down in the classroom.

118. Dr. Marlowe observed the other special education students in the [REDACTED] class being off task and not being redirected. Dr. Marlowe also noticed that the teacher and the aide were talking to each other and the aide was not paying attention. Therefore, Dr. Marlowe concluded that if the Student had a one-on-one aide, that one-on-one aide would not pay sufficient attention to the Student.

119. It is Dr. Marlowe's opinion that it is unlikely that the Student will live independently. She will probably live in a group home and receive services from the Division of Developmental Disabilities (DDD) and receive Social Security. She will need to be in a protective environment.

120. Dr. Marlowe believes that the Student will receive some academic benefit if she attends [REDACTED]. However, she will not make meaningful progress in communication skills, language comprehension, social skills, self-care skills or daily living skills.

121. Dr. Marlowe is concerned that if a one-on-one aide is provided to the Student, she will become too dependent on the aide. It is the goal to make the Student as independent as possible.

122. Dr. Marlowe also had a concern for the safety of the Student. She believes the Student is not able to protect herself from others who are likely to take advantage of her.

123. Dr. Marlowe charged approximately \$3,500.00 for the assessment of the Student she performed in March of 2000. She charges \$360.00 a 60-minute hour to testify.

## CONCLUSIONS OF LAW

### Jurisdiction

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and the subject matter of this action for the Office of the Superintendent of Public Instruction (OSPI) as authorized by 20 United States Code (USC) § 1401 *et seq.*, (Individuals with Disability 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) 300 *et seq.* and Chapter 392-172 of the Washington Administrative Code (WAC).

### Preliminary Matters

#### Motion to Amend Issues for Hearing

2. Shortly before the hearing, the Parents moved to amend the issues for hearing to include two additional matters regarding observations at [REDACTED] by

School District Personnel. The parties agreed that the motion to amend would be heard on the date of hearing.

3. The issues presented by the Parents do not relate to the issues previously raised. It would be prejudicial to the School District to be required to respond to these new issues. The School District would not have sufficient time to prepare an appropriate defense. Therefore, the Parents' motion to amend is denied.

Motion to Bifurcate

4. The School District moved to bifurcate the issues for hearing. As the matter had been ruled upon previously, the motion was denied.

Motion to Reopen the Record

5. After the close of the record, the Parents moved to reopen the record to allow the testimony of another parent, [REDACTED], whose child is currently a student at [REDACTED]. [REDACTED] would allegedly testify about the following problems at [REDACTED]

- A. Bullying and physical attacks against his child,
- B. Lack of meaningful instruction,
- C. Lack of meaningful interaction between special education students and nondisabled students,
- D. Difficulties he and other parents have had securing services,
- E. High noise level in the school and the gym,
- F. Lack of communication between school staff and parents, and
- G. The decision by parents to enroll their children in [REDACTED]

6. The purpose of [REDACTED] testimony is to establish the School District cannot or will not perform the services outlined in the Student's May 2000 IEP. Evidence of the School District's prior bad acts is not admissible to establish it will act inappropriately in this case. ER 404. The evidence is irrelevant.

7. Even if the evidence was relevant, [REDACTED] testimony would not be sufficient to establish the School District could not provide the services it proposes in the

May 2000 IEP or could not keep the Student safe. ██████████ would provide mostly hearsay statements about occurrences, since he did not view the events in question.

8. Even if he could provide admissible testimony, it would open the door to a large amount of collateral evidence. ██████████ child's IEP would have to be examined to determine the services which were appropriate and if the child received those services. In essence, a mini-due-process hearing would be required.

## ISSUES

### Placement of the Student for the ██████████ School Year

9. A School District has the duty of proving compliance with the IDEA at the administrative hearing, including the appropriateness of its evaluation (34 Code of Federal Regulations (CFR) § 300.503(B)) and its proposed placement for the child. *Clyde K v. Puyallup School District*, 35 F.3d 1396, 1398 (9th Circuit, 1994).

10. The IDEA assures all disabled children receive a "free, appropriate education." 20 United States Code (USC) § 1400(c) and § 1412(1). It provides federal money to assist states in educating disabled children and conditions such funding upon the states' compliance with extensive goals and procedures. *B.S.*, 82 F.3d at 1500. See also *Rowley*, 458 U.S. at 179, 102 S.Ct. at 3037.

An 'appropriate' public education does not mean the absolute best or 'potentially maximizing' education for the individual child. . . . The states are obliged to provide a basic floor of opportunity through a program individually designed to provide educational benefit to the handicapped child.

*B.S.* 82, F.3d at 1500, quoting from *Union School District v. Smith*, 15 F.3d 1519, 1524 (9th Circuit, 1994). "[T]he basic floor of opportunity provided by the Act consists of access to specialized instruction and related services. . . ." *B.S.* 82, F.3d at 1500; *Rowley*, 458 U.S. at 201, 102 S.Ct. at 3048.

11. Disabled children, to the maximum extent appropriate, should be educated with children who are not disabled, *i.e.*, they should be mainstreamed.

20 USC § 1412(5)(B). The education of a disabled child should take place in the least restrictive environment. 34 .CFR § 300.552(d).

12. In determining the least restrictive environment for a student, consideration is given to (1) the educational value of placement in a regular class; (2) the nonacademic benefit of such; (3) the effect the child has on the class; and (4) the cost of mainstreaming. *B.S.* 82 F.3d at 1500.

13. There are both a procedural and a substantive test to evaluate compliance with the IDEA. The Court must inquire:

First, has the district complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

*Seattle School District v. B.S.*, 82 F.3d, 1493, 1498-1499 (9th Circuit, 1996). See also, *Board of Education v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 3051, 73 L.Ed.2d 690 (1982).

#### Procedural Violations

14. The Parents argue there were several procedural violations. First, the Parents contend the School District always wanted the Student to return to public school and never considered the Parents' proposal that [REDACTED] was the appropriate placement for the Student. Although it is logical that the School District would want all students within the district to be educated at public school, there was not sufficient evidence presented to establish that the School District had decided, prior to the IEP meetings, that the placement for the Student would not be [REDACTED]. Although Dr. Sulzbacher's December 16, 1999 report states the School District intends to offer a placement at [REDACTED], Dr. Sulzbacher credibly testified that he did not mean the School District had told him they made up their minds that the Student would be attending [REDACTED].

15. The Parents also argue a procedural violation because the School District proposed a placement at [REDACTED] without an evaluation recommending the change. Even if this is a violation there must also be a resulting loss of educational opportunity or serious infringement of the Parents' opportunity to participate in the IEP formulation process. *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir.1992). The School District never pursued the [REDACTED] placement. Therefore, there is no loss of educational opportunity.

16. The Parents also argue that there was a procedural violation by failing to have Dr. Marlowe, the person most knowledgeable concerning the child's disabilities on the IEP team. The Parents first made the request to have Dr. Marlowe on the IEP team on April 26, 2000.

17. WAC 392-172-153(6) provides that:

The school district or other public agency shall ensure that the IEP team for each special education student includes:

(6) At the discretion of the parent or the school district or other public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate[.]

(Emphasis added.) The regulation does not require that included in the IEP team is the person who has the most knowledge regarding the student, just someone with knowledge. The School District had Dr. Majovski, who was also neuropsychologist with similar educational qualifications as Dr. Marlowe, on the IEP team. P-113, SSD-23, 40 and 41. Dr. Majovski has expertise in all of the Student's impairments. Dr. Majovski could assess the Student's neurological needs and could review and understand the Student's education needs. Therefore, there was no procedural violation for failing to have Dr. Marlowe as a member of the IEP team, as the School District's evaluation team included persons with knowledge and expertise in the Student's disabilities.

18. The Parents argue there was a procedural violation because the School District did not appropriately identify and evaluate all of the Student's disabilities to formulate the May 2000 IEP. The Reevaluation Summary identifies 13 reports from two neuropsychologists, a psychologist, three occupational and physical therapists, a school psychologist, educators from the School District and several teachers from [REDACTED]. These are not all the reports considered by the IEP team, just those prepared since the last IEP. Based on the information provided, there is no question the School District had sufficient expert information to correctly identify and evaluate the Student's disabilities.

19. The Parents argue that the evaluation team violated WAC 392-172-10905(5) by not drafting a report. The Parents do not identify who failed to draft a report and it appears as though everyone drafted a report. Therefore, this argument is not supported by the facts.

20. The Parents' argument that there was a procedural violation because the team members incorrectly described the significance of the Student's disabilities as required by WAC 392-172-10905 is not supported by the evidence. The fact the Parents may not agree with the team members' conclusions does not mean the School District violated WAC 392-172-10905.

21. Next, the Parents argue that there is a procedural violation because the IEP team for May 2000 IEP did not include a general education teacher as required by WAC 392-172-153(2). The regulation provides:

The school district or other public agency shall ensure that the IEP team for each special education student includes:

- (2) At least one general education teacher (or preschool education provider) of the student if the student is, or may be participating, in the general education environment.

WAC 392-172-153(2).

22. The School District argues Ms. Norine, the Student's main teacher at [REDACTED] for the [REDACTED] school year and summer school teacher for 2000, was

the general education teacher at the IEP meetings. Ms. Norine has a teaching certificate, but is not a special education teacher as she does not have a special education endorsement.

23. Ms. Norine may be a general education teacher, but she is not one employed by the School District and working at [REDACTED] in the general education curriculum which the Student will be attending. WAC 392-172-153(2) was designed to have a teacher present from the general education population the Student would be attending.

24. Although failure to have a general education teacher on the IEP team is a procedural violation, it is not one which resulted in an inadequate IEP or loss of educational opportunity for the Student or serious infringement of the Parents' opportunity to participate in the IEP formulation process. *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir.1992). The Parents' attorney attended every IEP team meeting regarding the May 2000 IEP and never objected to failure to have a general education team member. Therefore, the Parents did not believe failure to have a general education teacher on the team was a serious infringement of their rights.

#### Substantive

25. Once it has been determined there has not been a procedural violation resulting in a denial of FAPE, the next issue to address is whether the IEP program developed through the Act's procedures is reasonably calculated to enable the child to receive educational benefits. *Seattle School District v. B.S.*, 82 F.3d, 1493, 1498-1499 (9th Circuit, 1996). *See also, Board of Education v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 3051, 73 L.Ed.2d 690 (1982).

26. The School District is not required to provide the absolutely best or "potential-maximizing" education for the individual child. However, the Student must derive meaningful, or more than minimal or trivial benefit from a placement, considering

the Student's unique characteristics. *Florence County Sch. Dist. Four v. Carter*, 950 F.2d 156,160 (4th Cir. 1991), *affd.* 510 U.S. 7, 114 S.Ct. 361,365,126 L.Ed.2d 284 (1993).

27. The Student will receive meaningful, or more than minimal, benefit from the proposed placement at [REDACTED]. The witnesses presented by the Parents and the School District established that the actual goals and objectives in the May 2000 IEP are appropriate for the Student.

28. The May 2000 IEP proposed by the School District provides that the Student will receive her instruction in a very structured concrete way. There was not sufficient evidence to establish that the SRA method was the only method by which the Student could learn. Although the SRA method is not specified in the IEP, the IEP does provide for the same or a very similar method of teaching. The School District has teachers at [REDACTED] who could provide training to the special education teacher, Mr. Lukes, if it is subsequently determined by the IEP team that SRA is the only direct instruction method which will work with the Student.

29. [REDACTED] has small special education classes as many of the Students are out in the general education school during different periods of the day. The Student in her math class at [REDACTED] was able to listen to a general instruction and then work independently in her workbook while the teacher, Ms. Norine, worked with other Students. Therefore, the Student should be able to perform in the same manner at [REDACTED]

30. There was not sufficient evidence presented to determine the Student needed ESY services for the 2001 summer. However, the IEP team could determine, once evidence is presented, that the Student requires ESY services.

31. Ms. White, from [REDACTED] noted that the OT/PT objectives, if delivered by a therapist experienced in sensory

integration, are appropriate. The School District currently intends to use the Student's current therapists to deliver services.

32. The School District has therapists on staff who have expertise in sensory integration who could provide services to the Student in the future. As the Student's current OT/PT providers are in Kent and the OT/PT providers trained in sensory integration are in [REDACTED] in Seattle, it is logical that the IEP team may decide the Student should receive services at [REDACTED]. But, in view of the fact that the Student has difficulty transitioning, the IEP team will have to decide for the [REDACTED] school year who would be the appropriate provider for OT/PT.

33. Disabled children, to the maximum extent appropriate, should be educated as children who are not disabled, *i.e.*, they should be mainstreamed. 20 USC, § 1412(5)(b). *B.S. 82 F.3rd 1493 at 1500*. Ms. Veliz, who has seen the Student for three years, believes the Student could model peers with training. Therefore, based on the evidence from the [REDACTED] staff, Dr. Majovski and Dr. Sulzbacher, the Student will receive educational benefit, which is more than trivial or minimal, from mainstreaming. Attending general education Art will provide meaningful educational benefit, which is more than trivial, for the Student.

34. Mainstreaming will be very difficult for the Student. [REDACTED] is a large school which can be complicated to navigate. However, the School District will provide a one-on-one aide to the Student as needed during regular education. In the beginning, the aide will need to be assigned to the Student full time. This aide will insure that the Student is safe and can navigate the hallways. The Parents' speculation that the one-on-one aide will not pay attention to the Student is not supported by the evidence.

35. It is a concern that the Student may lose the ability to be independent, which she has gained at [REDACTED] if she has a one-on-one aide. With practice and repetition, the Student has been able to learn how to navigate the halls at [REDACTED]. In addition, the [REDACTED] staff and the Parents are confident the Student, with

practice, will be able to participate in [REDACTED], which is a noisy activity with a number of distractions. The Student has been able to participate in field trips to the zoo and various parks in the area. She has been able to participate in a [REDACTED] with a number of other students and an audience. If the Student is able to master these tasks, she will be able to master the hallways at [REDACTED] without the aide next to her and she will continue to have the independence she has gained at [REDACTED]

36. The May 2000 IEP proposal to have the Student have 60 minutes of speech and language therapy services is appropriate. The Parents' argument that the services are not necessary at [REDACTED] and therefore not appropriate at [REDACTED] is not persuasive. The Student has communication difficulties. She will receive educational benefit from speech and language services. Therefore, the provision for speech and language services in the IEP is appropriate.

37. Applicable law requires that "Physical education services, specially designed if necessary, must be made available to every special education student receiving FAPE." WAC 392-172-162(1); 34 CFR § 300.307(a). P.E. will be very difficult, if not impossible, for the Student at [REDACTED]. The loud noise and echos of 90 children in the gym will probably cause the Student to "shut down."

38. However, during assemblies at [REDACTED] in which the entire school of 72 students are in a large room, the Student has been able to participate or pay attention if a teacher sits next to her. Therefore, it is possible the Student will be able to function in P.E. if a one-on-one aide is next to her. If the Student simply cannot handle P.E., she can receive another form of P.E. which the IEP team deems appropriate. The difficulty with P.E., alone, is not sufficient to find the entire proposed May 2000 IEP inappropriate.

39. The IDEA requires that the placement decision for the Student include consideration of potential harmful effects on her. 34 CFR § 300.552(d); WAC 392-172-180(2)(d); and *Seattle School District*, 82 F.3d at 1501. Transitioning from [REDACTED]

to [REDACTED] is going to be extremely difficult for this Student. However, the harmful effect of transitioning can be overcome. The Student has been able to attend field trips to the zoo, Museum of Flight, Discovery Park and other Parks. She can go to new places, if given practice. The [REDACTED] staff and the Parents are confident the Student, with practice, can participate in [REDACTED] and perform in different [REDACTED]. It is acknowledged that the Student is highly motivated to participate in [REDACTED], but it does establish she can handle new situations if her Parents and the [REDACTED] staff work with her so she does not believe she is being punished. The Parents and the [REDACTED] staff can accomplish this task.

40. The Parents' argument that the Student will permanently lose skills if she transitions to [REDACTED] is not supported by the evidence. The Parents could not point to one incident in which the Student permanently lost a skill because of transitioning or other type of stressor. The Student transitioned from [REDACTED] in the public school system to [REDACTED] and did not lose skills permanently.

41. It will be extremely difficult for the Student to start [REDACTED] in the middle of the year after this decision is issued. However, the IEP was proposed in May of 2000 and it must be determined if the Student could transition to [REDACTED] at that time.

42. The transition strategies proposed by the School District in May of 2000 are appropriate for the Student to begin school at [REDACTED] in September of 2000. The proposed strategies generally are the same as those used by [REDACTED] to introduce the Student to each new school year. The Student is to meet her new instructors and meet the students in the class at a picnic. She was to attend various school events to familiarize herself with the school, the staff and the students.

43. [REDACTED] does not have the same [REDACTED] opportunity for the Student as does [REDACTED]. However, there are some after-school activities in which the Student can participate such as [REDACTED] and [REDACTED] which the Student has participated

in the past. Currently, between [REDACTED] OT/PT and [REDACTED] the Student does not have time to participate in after-school activities, but those activities are available at [REDACTED]

44. The Parents' concern that the Student may be mocked at [REDACTED] because of her disability is not sufficient to make the proposed placement inappropriate. Unfortunately, children can be cruel about those who are different from themselves. However, Mr. Lukes established that [REDACTED] does not tolerate harassment or mocking of disabled children.

#### Reimbursement for Evaluation by Dr. Marlowe

45. The Parents request reimbursement from the School District for the cost of the March 2000 evaluation prepared by Dr. Wendy Marlowe Ph.D. WAC 392-172-150(1) provides:

Parents of a special education student or a student referred for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's or other public agency's evaluation subject to subsections (4) through (11) of this section.

46. In the Spring of 1999 the Mother decided to have the child reevaluated by Dr. Marlowe in the Spring of 2000. The Parents did not ask Dr. Marlowe to evaluate the Student because they disagreed with Dr. Majovski or Dr. Sulzbacher's evaluation. Therefore, the Parents have not established a right to reimbursement for Dr. Marlowe's evaluation at public expense. WAC 392-172-140(1).

47. Contrary to the Parents' argument, Dr. Marlowe's report is not a related service under WAC 392-172-055(2)(f) for which the School District is required to pay. WAC 392-172-150 controls when Parents are entitled to be reimbursed for evaluations performed by experts.

OT services by [REDACTED]

48. The Parents request that the Student continue to receive occupational therapy services for the [REDACTED] school year through [REDACTED]

[REDACTED], the company operated by Ms. White. For the [REDACTED] school year, the School District indicates that it has no intention of having anyone other than [REDACTED] provide the services to the Student. SSD-48. Therefore, for the [REDACTED] school year, the Student shall continue to receive occupational therapy services through [REDACTED]

Payment to Ms. White

49. The Parents request that the School District be required to pay all outstanding debt to Ms. White for services rendered. At the time of the hearing, Ms. White testified that her services had been paid in full. Therefore, this issue is moot.

Payment to Ms. Kramer

50. The Parents request that the School District be required to pay all outstanding debt to Ms. Kramer for services rendered. Ms. Kramer appeared at the hearing and testified. There was no evidence presented as to whether or not she was paid or whether or not an outstanding debt was due. The Parents failed to meet their burden of proof to establish that Ms. Kramer was unpaid. The Parents' request that Ms. Kramer be paid is denied.

Payment of future invoices Ms. White and Ms. Kramer

51. The Parents request that the School District be ordered to pay all future invoices to Ms. White and Ms. Kramer in full within 30 days of receipt. There was no evidence presented that Ms. White or Ms. Kramer would refuse to provide services to the Student if they were not paid within 30 days. Therefore, there is no justification to order that all future invoices to those parties be paid within 30 days. The Parents' request is denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that

1. The School District's request for approval of the proposed program and placement at [REDACTED] which includes a one-on-one aide during times the Student is outside the special education class, as reflected in the May 2000 IEP, is hereby approved as offering to the Student a FAPE. The IEP team shall meet on or before March 1, 2001 to determine if the Student is unable to participate in general education P.E. and if an alternative P.E. should be provided.

2. The School District shall not be required to pay any costs for the Student associated with [REDACTED] incurred on or after the date of issuance of this Order.

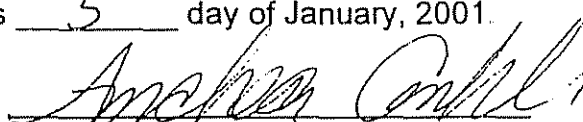
3. The School District shall be required to provide physical and occupational services to the Student through [REDACTED] until the end of the [REDACTED] school year. The School District shall provide transportation to the Student's OT/PT provider at no expense to the Parents.

4. The Parents' request that the School District be required to pay for the evaluation conducted by Dr. Marlowe in March of 2000 is denied.

5. The Parents' request for payment to Ms. White and Ms. Kramer and their respective organization is determined moot and therefore is denied.

6. The Parents' request for payment to Ms. White and Ms. Kramer and their respective organization within 30 days of invoice is denied.

Dated at Seattle, Washington this 5 day of January, 2001.



Andrea Conklin  
Administrative Law Judge  
Office of Administrative Hearings

## APPEAL RIGHTS

This is a final agency decision subject to a petition for reconsideration filed within ten days of service pursuant to RCW 34.05.470. Such a petition must be filed with the administrative law judge at his/her address at the Office of Administrative Hearings. The petition will be considered and disposed of by the administrative law judge. A copy of the petition must be served on each party to the proceeding and the Superintendent of Public Instruction. The filing of a petition for reconsideration is not required before seeking judicial review.

Pursuant to RCW 28A.225.230(3) and RCW 34.05.510 through 34.05.598 this matter may be further appealed to a court of law by filing a petition for review in superior court of either Thurston County or county of the petitioner's residence within thirty (30) calendar days of the date of mailing this decision.

Certificate of Mailing

This certifies that a copy of the above Findings of Fact, Conclusions of Law and Order was served upon the parties or their representatives on January 5, 2001 by depositing a copy of the same in the United States mail, postage prepaid, addressed to the following:

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