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Chie Administrative
Judge



STATE OF WASHINGTON
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JUN 20 2000

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Superintendent of Public Instruction
Legal Services

June 20, 2000

PARENT

[REDACTED]

SHORELINE SCHOOL DISTRICT
SUE WALKER, INTERIM CHIEF STUDENT OFFICER
18560-1ST AVENUE NE
SHORELINE WA 98155-2148

JAMES DIONNE
999 THIRD AVENUE, SUITE 2550
SEATTLE WA 98104

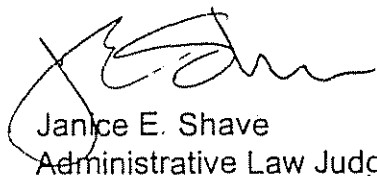
RE: School District, Special Education Cause No. 00-47

Dear Parties:

Enclosed please find a copy of the Findings of Fact, Conclusion of Law and Order in the above referenced matter. This Order does not preclude either party from requesting a new due process hearing should further disputes arise.

The entry of this Order completes this matter. The file will be returned to the Office of Superintendent of Public Instruction (OSPI). If you have any questions please contact Ben Gravely in Legal Services at OSPI at (360) 753-2298.

Sincerely,


Janice E. Shave
Administrative Law Judge

c: Ben Gravely, OSPI
Mary Radcliffe, OAH ALJ Hearing Coordinator

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

MAILED
SHS-SEATTLE

JUN 20 2000

OFFICE OF
ADMINISTRATIVE HEARING

IN THE MATTER OF:

SHORELINE SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. SPI 00-47

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

A hearing was held before Administrative Law Judge (ALJ) JANICE E. SHAVE at Shoreline, Washington on May 23, 2000. The parent of the student whose education is at issue (hereinafter the Parent and the Student) appeared at the hearing and represented himself. The Student attended a portion of the hearing and testified. The Shoreline School District (hereinafter the School District) was represented by James J. Dionne, Attorney at Law. Appearing and testifying on behalf of the School District were Joe Peterson, Sue Walker, Robert Gose, Jim Schaffner, and Cindy Gies.

Following conclusion of the hearing May 23, 2000, the parties requested the opportunity to submit Proposed Findings of Fact and Conclusions of Law. The record was left open for that purpose. Based upon the request of the parties to allow time to submit post-hearing proposed Findings of Fact and Conclusions of Law, the 45-day due date for the Decision is June 20, 2000.

BACKGROUND

The Parent alleges various failures of the School District in its delivery of educational services to the Student, who was found eligible for Special Education services at the beginning of the [REDACTED] school year, which was the Student's [REDACTED] grade year. The Parent and the School District filed a total of three requests for special education due process hearings, all of which were dismissed with prejudice March 16, 2000 following the signing of an agreed settlement.

In April, 2000, just one month and two days after the Order of Dismissal was entered, the Parent filed a new request for due process hearing, which was assigned cause number 00-47. That request for hearing sets forth ten bases for which relief is requested.

As of the date the new request for this hearing was filed, and as of the date the hearing was held on this matter, the School District has been and is engaged in a reevaluation of the Student pursuant to the agreed settlement signed by the parties. The reevaluation will include (but is not necessarily limited to) a psychiatric evaluation of the Student by a psychiatrist chosen by the Parent and a different psychiatrist chosen by the School District.

The School District filed a motion to dismiss the due process hearing request, claiming each of the ten causes of action claimed was either brought prematurely, as they related to the reevaluation which has not yet been completed, or was barred by the doctrine of issue preclusion because they were addressed in the underlying three due process proceedings which were dismissed with prejudice. The Parent conceded each of the issues he sought to raise, except two, either involved the reevaluation process or was a claim he had previously asserted. The Parent asserted the claim of a failure of the School District to engage in appropriate child find activities was a new issue which he had not raised previously. The Parent also alleged a failure of the School District to provide a free, appropriate public education (FAPE) after the date the Order of Dismissal was entered, and identified two disciplinary incidents in April 2000. The Student was required to stay in for one recess in each of those incidents.

FINDINGS OF FACT

1. The Parent and the School District have previously been parties to three due process hearings assigned Special Education Cause Numbers 00-05, 00-11 and 00-20. Cause Number 00-05 was the School District's request for a hearing following the Parent's request for an Independent Educational Evaluation (IEE) at public expense. Cause Number 00-11 was the Parent's challenge to the adequacy of the School District's Individualized Education Plan (IEP) for the Student. Cause Number 00-20 was

the School District's request to override the Parent's refusal to consent to the District's reevaluation of the Student.

2. On January 12, 2000, the day after the Parent signed the current IEP, the Parent made a written request for an IEE, claiming the Student's

present IEP has no bearing or merit and ignores the parental concerns I have expressed to the Shoreline School District administration. These concerns encompass [the Student]'s educational needs and the undue mental stress inflicted upon him by the Shoreline District Personnel at [REDACTED] School.

Request for IEE, Special Education Cause Number 00-05.

3. On February 2, 2000, the Superintendent of Public Instruction received a request for due process hearing from the Parent and assigned it Special Education Cause 00-11. The request for hearing alleges as follows:

The Present I.E.P[.] has no Bearing or Merit and Ignores the Parential concerns. My Son [the Student] was Inflicted with extreme Mental & Physical Stress by employee's of the Shoreline Public School District. Please Review this Packet of information of the Events inflicted on [the Student] at [REDACTED] School. [Sic.]

The Parent again requested an IEE, and requested Post Traumatic Stress Disorder (PTSD) therapy as well as authorization for after-school learning at a center to "retrieve 2 years lost Academic Studies" and requested compensation for pain and suffering. The Parent included a packet of information consisting of 97 pages to support his claim. That packet included allegations of inappropriate treatment of the Student by the School District dating back to September 1997.

4. In the matter assigned Special Education Cause Number 00-20, on February 18, 2000 the School District requested a hearing to override the Parent's refusal to consent to reevaluation of the Student, 2000. That request was received by the Superintendent of Public Instruction February 22, 2000 and was assigned Special Education Cause Number 00-20

5. The parties entered into a settlement agreement which was signed March 15, 2000, at the time set for the first day of hearing on the three due process hearings, which were consolidated for hearing and decision.

6. On March 16, 2000, an Order of Dismissal was entered dismissing Special Education Cause Numbers 00-05, 00-11 and 00-20 with prejudice. That Order noted the parties had signed a settlement agreement and had verbally withdrawn their requests for hearing on the record for all three cause numbers. The Order also noted the parties had requested their due process hearing requests be dismissed with prejudice. Therefore, the Order of Dismissal was entered with prejudice. The Order noted the parties were not precluded by entry of the Order of Dismissal from requesting a new due process hearing should further disputes arise.

7. The parties agreed to conduct a reevaluation of the Student by utilizing the services of a psychiatrist chosen by the School District and the services of a psychiatrist chosen by the Parent. As of the time the hearing assigned Cause number 00-47 was requested, the School District had begun the reevaluation of the Student at School District expense, and one or both of the psychiatrists had begun their evaluations. Neither of the evaluations being conducted by those individuals was completed as of the date the administrative due process hearing was conducted on the present case.

8. The IEP which was in effect at the time of the hearing on the three underlying matters was proposed at an IEP meeting conducted October 14, 1999, signed by the School District October 15, 1999, but not signed off on (agreed to) by the Parent until January 11, 2000. School District (SD) Exhibits 38 and 51.

9. The IEP placed the Student's program at [REDACTED] for [REDACTED] grade. He was placed in a general education class with in-class special education/specially designed instruction as the option appropriate to meet his needs. SD Exhibit 38, page 3, and SD Exhibit 51, IEP, dated January 11, 2000.

10. As part of the January 11, 2000 IEP, there was a form describing the Student's present levels of performance. SD Exhibit 38, page 5. It noted following the problematic behaviors had not been present since the beginning of the [redacted] grade school year ([redacted]): a rapid escalation of behavior, frequent running out of the classroom, pushing desks and tables over, overemotional behavior, including overreacting to minor occurrences, making threats and physically injuring others. However, the IEP noted the Student continued to make frequent inappropriate and distracting noises at inappropriate times, displayed silly antics and/or annoying behaviors which distract other students, and occasionally paced around his desk when his energy level is high. The form report also noted the Student was having difficulty getting started on classroom tasks, especially independent tasks involving writing. The Student's disabling conditions were listed as [redacted] and [redacted]. The IEP called for the Student to participate with his general education peers for all educational services, except for times specifically identified on his IEP, and required the Student to participate in all state and/or district-wide testing. In answer to the question,

State or District-wide Assessment of Student Achievement

Describe any individual modifications (accommodations) in the administration of state or district-wide assessments of student achievement that are needed for the child to participate:

the IEP provided "if allowable, a mark may be used to focus [the Student]'s attention. He may also be evaluated in a smaller group setting, if allowable."

11. In response to the question,

Describe how the child's parents will be regularly informed of their child's progress toward annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

the IEP provided, "parent contact will be made at trimesters through a progress report." Regarding the Student's behavior, the IEP noted that in the case of behavior which impedes the Student's learning or that of others, certain strategies and supports, including positive behavioral intervention, were to be utilized where appropriate. It stated "behavior interventions, strategies, and supports are specified in [the Student]'s behavior plan and IEP."

12. The Behavior Support Plan (BSP) was included in the IEP. The BSP stated that it is a working document that reflects an ongoing problem-solving process and it would be reviewed monthly and modified as necessary due to changes in the Student's needs or progress. The Parent was to receive copies of the BSP that reflect any changes. The BSP set forth specific strategies for the teacher to deal with the Student. The primary focus of the BSP was to assist the Student to get and stay on task with his classroom assignments. The behavior support plan provided in pertinent part:

D. Behavior Management Plan

Every effort will be made for [the Student] to be successful in class.
The above pro-active strategies will be used, whenever possible.

If [the Student] begins to appear agitated, talk out, or break classroom rules and does not respond to the above proactive strategies:

- 1 Teachers will give him 3 reminders to behave appropriately or to get back on task.
- 2 [The Student] is given the choice to redirect and focus in a quiet area (within the classroom)
- 3 If [the Student] is unable to follow directions in the quiet area and needs more reminders, he will be sent to the office to complete task. The office staff will determine if [the Student] is ready to return to class. If possible, [the Student] will return to class during a natural transition time.
- 4 A phone call may be made from the teacher and/or principal to [the Student]'s father.
- 5 Any behaviors that are not typical and/or age appropriate, will be noted on a weekly data sheet by classroom teachers.

The following are the classroom rules/expectations for [the Student] and his peers:

- Stay on task
- Treat others with kindness
- Use appropriate language
- Respect other's property

The following is the classroom schedule in which the above plan will take place:

8:35-9:00	AR/Attendance
9:00-10:05	Skill group (Reading, Math, Sci/SS)
10:05-10:15	Snack
10:15-10:40	Recess
10:40-1:45	Skill group (Reading, Math, Sci/SS)
11:45-12:25	Lunch
12:25-1:30	Skill group (Reading, Math, Sci/SS)
1:30-2:15	Music/PE, Library
2:15-2:35	Spelling, Grammar
2:35-2:55	Math Drill, Handwriting, Calendar

SD Exhibit 39, at page 12, January 11, 2000 IEP BSP.

13. The BSP also contained a provision in the event the Student was disruptive and not responsive to redirection and classroom management strategies. Exhibit 39, at page 12. If the Student is extremely disruptive (defined as a behavior that is ongoing or is significant enough to interfere with classroom instruction or activities, and the Student is not responsive to direction) and/or the Student becomes verbally or physically unsafe the Student is to be removed to the school office to ensure the Student's safety and the safety of others. If the Student is not responding to verbal directions it was noted office staff may have to intervene with a physical prompt/escort or physical intervention.

14. The BSP also provided for notification of the parents as follows:

F. Parent Notification Plan

Communication will be made by data sheets filled out by classroom teachers. This data will be either sent home or discussed via telephone calls to [Parent]. Any behavior management forms or Incident Report Forms will also be sent home.

SD Exhibit 39, page 14.

15. During late April 2000, the School District was administering the Washington Assessment of Student Learning (WASL) testing series to the Student and all other School District [REDACTED] graders. In order to maximize participation and performance, the test was not administered on Mondays or Fridays and was only administered during the mornings, prior to lunch, to all students, except for those making

up for a missed test session. On a Monday, when the test was not being administered, the Student had been bothering a female student in the class for a period of approximately two weeks prior to the incident in question. The Student had been spoken to and redirected by the teacher repeatedly, on at least three or more occasions, regarding his interaction with the other student. The Student had been specifically warned that if he persisted in his inappropriate behavior he would be sent to the principal's office. As the Student was lining up for lunch on a Monday, there was an ongoing verbal disagreement described by the teacher as "hassling" about place in the lunch line. The Student jerked or flicked his hand up in front of the female classmate's face as if to get her to flinch. When the Student's teacher, Joe Peterson, saw the Student trying to get the female classmate to flinch, the teacher told the Student that after lunch the Student and the teacher would go to speak to the Principal, Mr. Schaffner. The teacher had provided at least three, and possibly as many as five, verbal warnings to the Student in the few days prior to the lunch-line incident. The Student was sent to the Principal.

16. The teacher noticed the female student appeared uncomfortable and had complained the Student was bothering her. The female student had complained several times prior to the lunch-line incident, but Mr. Peterson was not certain whether any of those complaints had come on the day of the incident itself. The Student had targeted that particular female classmate for inappropriate attention, bothering her for a week or two.

17. The Parent works geographically close to the school the Student attends. The Parent stops by the school at least once a day, on average. He often brings the Student lunch at or about lunch time. The Parent also stops by on other occasions. The Parent speaks to the Student's teacher virtually daily, and sometimes more than once. If either the teacher or the Parent noted problems or has concerns, these were discussed informally on a daily basis.

18. Cindy Gies is the Special Education teacher for the [REDACTED] grade at [REDACTED] School, the school the Student attends. She participated in drafting the Student's IEP. According to Ms. Gies, the Behavior Support Plan was designed to assist with controlling the Student's behavior in the classroom, only, and was not designed to address the Student's behavior during lunch, in the hallways, at recess or before or after school.

19. Prior to April 2000, Cindy Gies was collecting student data sheets completed by School District Personnel and sending them to the Parent, one month at a time. The purpose of the student data sheets was to record the Student's behavior. In or about March or April 2000, Ms. Gies stopped sending the month's accumulation of student data sheets to the Parent. Ms. Gies knew the Parent and the teacher were speaking daily, and believed the School District was keeping current on communication with the Parent in person. She felt there was nothing of import in the student data sheets that had not been discussed on a daily basis. The School District did not receive any request, either orally or in writing, from the Parent to resume sending the student data sheets until mid-May 2000, when the Parent submitted a request in the course of preparing for this due process hearing. The School District then sent two or three months' worth of student data sheets to the Parent.

20. During the 1999-2000 school year, the Student made dramatic improvement in his behavior. The level of classroom disruption and general commotion has decreased significantly. The Student is sent to the office and sent out to the hallway for time-out significantly less frequently than in previous years. The Student is making educational and academic progress during the [REDACTED] grade. He has improved his ability to start on task and stay on task during the 1999-2000 school year.

21. On or about May 26, 2000 (a Friday), the Student was observed by a lunchroom monitor to be tapping or hitting a classmate on the head with an empty pizza box during the lunch period. The Student was then directed to move to a different table,

so the Student and the classmate he had hit would be separated. The Student refused. The lunchroom monitor told the Student he was required to speak with the principal about his refusal. The lunchroom monitor then reported the incident to the principal. The Student was told he was required to stay in the office and not go to recess that day for his behavior in the lunchroom. Just after the Student was told this, the Parent appeared at school and was told by the Student that he was being made to stay inside and miss recess. The Parent told the Student to go ahead and go to recess. The Parent then went to the office to find out what had happened. The Principal sent someone out to the playground to bring the Student back in to the office from recess. The Student was made to stay in during recess that day.

22. Parent's Position. In the request for due process hearing assigned Cause Number 00-47 the Parent raises ten (10) issues. They are:

- (1) Falsification of official school documents (defined during prehearing proceedings to include allegations School District personnel included false or incorrect information as part of the Student's reevaluation process);
- (2) Omission of pertinent information pertaining to the reassessment (defined during prehearing proceedings to include allegations School District personnel did not include all relevant information as part of the reevaluation process);
- (3) School district refusal to implement the present IEP;
- (4) Refusal of the District to conduct an IEP following request made by Parent during late March or April, 2000;
- (5) Attempted sabotage of an [REDACTED] disabled student's education;
- (6) Discrimination against Parent by School District refusal to follow parental requests;
- (7) Denial of equal access to a free, appropriate public education (FAPE) (no facts offered in the request for hearing to support this allegation);
- (8) Tampering with medical documentation in the reevaluation process (specifically, some school and personal information relating to the Parent and the Student allegedly provided to a psychiatrist involved in the reevaluation process);
- (9) Conspiracy to defraud the federal government (specifically, the School District is alleged to have accepted federal funding for the Student as a Special Education student but did not provide Special Education services to the Student); and
- (10) Teaching of hate crimes and white supremacy

23. During prehearing proceedings the Parent alleged that item #7, "Denying Student equal access to a free, appropriate public education," involved testing the Student in a hallway and a failure of the School District in its child find obligation, but on the day of hearing the Parent did not address testing in a hallway, and only argued the failure of the School District to satisfy its child find obligation. The Parent alleged the School District had disciplined the Student during the administration of the WASL, and had upset the Student and possibly affected his achievement.

24. During the hearing the Parent also alleged in item #6, ("Falsification of official school documents)," the School District had engaged in a breach of contract. The Parent noted his concerns that the School District had engaged in a conspiracy because a multidisciplinary team meeting allegedly took place at some undisclosed time when the Parent was not invited or advised about the meeting. The Parent also stated he was concerned with the code of professional responsibility, but it is not entirely clear to which code of professional responsibility he was referring. It was explained to the Parent that if he wished to complain about the conduct of the School District's attorney, a due-process hearing and an allegation of violation of the code of professional responsibility was not the appropriate forum for that complaint.

25. The Parent alleges the BSP was not followed with respect to the provision which requires three reminders be provided to the Student to behave appropriately or to get back on task. The Parent also alleges the Student was harmed by the School District's failure to provide timely batches of student data sheets. The Parent asserts these actions of the School District resulted in a denial of FAPE to the Student. The Parent asserts the failure of the School District to mail a monthly accumulation of student data sheets resulted in the denial of FAPE because the Parent did not receive sufficient information to follow the Student's activities.

26. At the start of the initial pre-hearing conference in the matter assigned Cause Number 00-47 (conducted April 28, 2000) the Parent conceded the Student is

doing fine during the [REDACTED] school year, his assignments are completed and he is not involved with any fighting at school.

27. School District's Position. The School District asserts the Parent's claim should be dismissed on the following bases:

- (a) The Administrative Law Judge (ALJ) lacks jurisdiction to enforce the parties' settlement agreement;
- (b) The Parent presents claims which are barred under the release provisions of the settlement agreement or under the doctrine of issue preclusion, or under the doctrine of *res judicata*; and
- (c) The remaining issues are not ripe for adjudication because the School District has not completed the re-evaluation of the Student at public expense which both the School District and the Parent have agreed to do.

28. On May 12, 2000 the School District filed a motion to dismiss and supporting brief, asserting consideration of a number of the issues raised by the Parent must be precluded on various grounds, including issue preclusion and *res judicata*. The School District asserted all issues relating to the reevaluation process were not yet ripe for consideration, since the reevaluation had not yet been completed. The School District's motion was granted for all issues except the allegation that the School District had failed to provide a FAPE beginning March 17, 2000, the day after the Order of Dismissal was entered.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings 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) Section 1401 *et seq.* (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) 300 *et seq.*, and Chapter 392-172 Washington Administrative Code (WAC)

2. An Administrative Law Judge (ALJ), as the presiding officer at a due process hearing conducted pursuant to the IDEA, has jurisdiction to hear complaints related to the identification, evaluation, or educational placement of children with disabilities. 20 USC § 1415(b)(1)(E). The subject matter of such complaints is specifically limited by implementing regulations to: (1) disagreements between parents and school districts about a school district's proposal to initiate or change the identification, evaluation, or placement of a child, or about a school district's refusal to initiate or change the identification, evaluation or placement, and (2) requests by school districts to override a parent's refusal to consent to evaluation, reevaluation, or initial placement in a special education program. 34 CFR § 300.506(a); WAC 392-172-350. Issues 5, 6, 9 and 10 must be dismissed, as they do not relate to subject matters over which there is administrative due process jurisdiction.

3. Enforcement of Settlement Agreement. In Washington State, the Office of Superintendent of Public Instruction has delegated the authority to hear and decide special education due-process hearings to ALJs of the Office of Administrative Hearings (OAH). WAC 392-101-010. An ALJ conducting an SPI due-process hearing has no jurisdiction to hear a dispute unless provided for by statute or regulations, even if those claims may relate to the education of a child with a disability. *Sherwood Sch. Dist. 25 IDELR 1254* (Sea. Or. 1997). An ALJ has no inherent power to enforce settlement agreements between parties. Enforcement of a contract, which is the nature of a settlement agreement, is not an enforcement remedy available in the special education due-process hearing context. Accordingly, to the extent the Parent raises issues in his request for hearing seeking enforcement of the Settlement Agreement, or alleging he should not be bound by the terms of the Settlement Agreement, those matters are not properly brought in this tribunal. The oral withdrawal of hearing requests made on the record in Special Education Cause Number 00-05, 00-11 and 00-20 and the subsequent Order of Dismissal with prejudice, are properly the subject of this proceeding, however.

4. Res Judicata/Issue Preclusion. The doctrine of *res judicata*, sometimes called issue preclusion, provides that when a final judgment has been issued on the merits of a case, it is a finality as to the claim or demand in controversy. It precludes parties from raising every issue or matter which was offered in the underlying matter as well as any other admissible matter which might have been offered for that purpose. The final judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever. *United States v. Skokomish Indian Tribe*, 764 F.2d 670, 672 (9th Cir. 1985.) The doctrine provides that a valid and final determination of a necessary factual or legal issue in one proceeding may not be relitigated in a subsequent proceeding involving a party to the prior action. *Dodd v. Hood River County*, 36 F.3d 1019 (9th Cir. 1998).

5. Three conditions must be met if the principle of *res judicata* is to apply. The two proceedings must have involved the same parties, the previous action must have concluded in a valid final judgment on the merits, and the matters presented in the second proceeding were or might have been litigated in the previous action. *Hooker v. Klein*, 573 F.2d 1360 (9th Cir.), *cert. denied* 439 U.S. 932 (1978.)

6. The School District asserts the Parent is barred in 00-47 from raising, any issue relating to the Student's education on or prior to March 16, 2000, the date the Order of Dismissal was entered in the three underlying matters, based upon the doctrine of issue preclusion, or *res judicata*.

7. The doctrine serves to promote judicial efficiency by preventing multiple lawsuits. It also serves to enable the parties to rely on the finality of adjudications or settlement agreements. A settlement agreement that purports to be the final binding settlement of the dispute between the parties, and under which all claims are released, has preclusive effect. As stated in *Welsing v. Government of the District of Columbia*, 18 IDELR 1016 (D.D.C. 1992):

Once a party settles a case, that party cannot seek both the benefit of that settlement and the additional right to maintain an action that arose out of the same nucleus of operative facts. If such an action were to be permitted, the certainty and finality that accompany the settlement agreement would always be subject to question.

The doctrine of issue preclusion has been applied in special education due-process hearings. *Sherwood Sch. Dist.*, 25 IDELR 1254 (Sea. Or. 1997).

8. At issue in an analysis of whether the doctrine of *res judicata*/issue preclusion applies is whether the basis of the underlying agreement which resulted in the dismissal of the prior proceedings with prejudice, and the current request for hearing, arise out of a common nucleus of operative facts. The disputes contained within Cause Numbers 00-05, 00-11 and 00-20 are the same issues the Parent would now like to litigate, with the exception of (a) issues relating to the current reevaluation of the Student, and those issues are not yet ripe for hearing, and (b) the alleged denial of a free, appropriate public education beginning after March 16, 2000.

9. The Parent asserts Issue 7, the issue of the School District's alleged failure to engage in appropriate child find activities (pursuant to WAC 392-172-100), was not raised previously. This assertion lacks merit. It is not necessary for the Parent to have used the precise term "child find" or to have provided citation to WAC 392-172-100 to have raised the issue of the School District's obligation to locate, identify and begin providing services to the Student. In Special Education Cause Number 00-11 the Parent requested compensatory education for two years of lost education for the Student. The Parent, in some of the 97 pages of supporting documentation submitted in support of 00-11, asserted a failure of the School District to appropriately educate the Student dating back at least as early as [REDACTED], fully two years before the School District proposed the current IEP. The issue of the Student's past education, prior to the time the School District found him eligible for special education services, was clearly raised in the prior

request for hearing filed by the Parent, as evidenced by the request for relief. That issue may not be raised again.

10. The Order of Dismissal in Cause Numbers 00-05, 00-11 and 00-20 is a dismissal with prejudice. The dismissal specifically states it is with prejudice and states the parties have resolved the dispute and have entered into an agreed settlement. The fact that the parties were informed that they may file a request for due-process if further disputes arise does not mean the parties may return to relitigate issues already settled and dismissed, however. Based upon the foregoing, the doctrine of *res judicata*, referred to by the School District as issue preclusion, applies in this case. The identification, evaluation and placement of the Student are deemed to be appropriate in this matter due to the dismissal with prejudice of Cause No. 00-11. To the extent the Parent's request for hearing states issues raised and resolved in Special Education Cause Numbers 00-05, 00-11 and 00-20, it is dismissed.

11. Denial of FAPE for events occurring after March 16, 2000. Each school district is required to provide every special education student between the ages of three and twenty-one a free appropriate public education, including special education for students who have been suspended or expelled from school. WAC 392-172-030. Special safeguards exist to ensure special education students are not being improperly excluded from school for disciplinary reasons. Those safeguards for Washington State students may be found at WAC 392-172- 370 through -385. Those safeguards address removals of a student for ten days or more, including a series of removals that cumulate to more than ten days in a school year. School personnel may order the removal of a special education student from the student's current placement for ten school days or less for any violation of school rules, to the extent removal would be applied to students without disabilities. WAC 392-172-37500. The removals may not be so significant that they constitute a change of placement under WAC 392-172-373(2).

12. Issues 3 and 7 raised by the Parent claim a denial of FAPE in the two lunchroom discipline incidents and alleged testing in a hallway. As the Parent did not allege any fact or put forward any argument in support of the alleged hallway testing, that issue is deemed waived. The Parent did raise the issue of the School District administering discipline during WASL testing. However, the evidence supports the determination that the discipline was administered on a Monday and on a Friday, when the testing was not being administered.

13. A parent must demonstrate a fundamental change in, or elimination of, a basic element of the educational program which amounts to a significant change in the IEP in order to prevail on a claim of a denial of FAPE. *Weil v. Bd. Of Elementary and Secondary Edu.*, 931 F.2d 193 (5th Cir. 1992.) The Parent has alleged the Student missed two recesses due to discipline. Even if all the allegations of the Parent were adopted, missing two recesses does not rise to the level of a denial of FAPE. It is simply not significant enough. Further, the failure of the School District to continue to provide the Parent with written copies of the student data sheets did not result in denial of FAPE, as communication continued on a daily basis. The administration of discipline during WASL testing week, but not on a day of WASL testing, did not result in denial of FAPE. No harm was demonstrated to have occurred.

14. The School District asserts the BSP was designed to address classroom behaviors, and only classroom behaviors, and notes the stated goal is to "increase compliance to teacher directions for independent work completion to age-appropriate level." The School District further notes the four targeted behaviors (begin a task within zero to two minutes, depending on the needs of the task; follow teacher directions; display appropriate behaviors in the classroom; and move to quiet place to complete task or alternate task, if needed) deal only with classroom behaviors encouraging the production of work. The School District asserts the two incidents alleged

by the Parent to have violated the BSP do not involve classroom work and are not covered by the language regarding the use of three reminders.

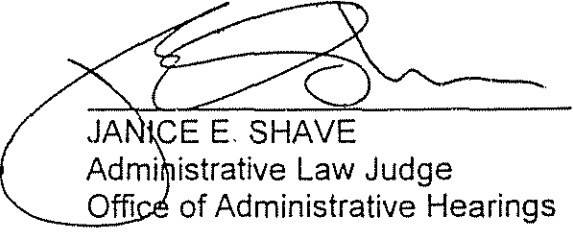
15. Based upon a reading of the plain language of the BSP it is concluded the provision of the three reminders within the BSP is not limited only to classroom work. The BSP specifically identifies the "classroom schedule in which the [behavior support] plan will take place" as including snack, recess and lunch. It does not make sense to eliminate other school activities, including lining up and walking through the halls on the way to snack or recess or lunch, from the BSP.

16. The School District did not violate the BSP with regard to the incident in the lunch line, as the Student was given sufficient warnings. The School District did not comply with the BSP when the Student was disciplined for the lunchroom incident. However, as discussed above, keeping the Student in for one recess does not rise to the level of a denial of a FAPE.

ORDER

1. All issues relating the education of the Student prior to March 17, 2000 are dismissed as barred by the doctrine of *res judicata*, or issue preclusion.
2. All issues relating to the reevaluation of the Student, which is currently in process, are dismissed as they are not ripe for adjudication.
3. The Parent has not demonstrated a failure by the School District to provide the Student with a FAPE from March 17, 2000 to the present.

Dated at Seattle, Washington this 20th day of June, 2000 .



JANICE E. SHAVE
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 20 USC Section 1415 (i) (Individuals with Disabilities Education Act) and Chapter 34.05.542 RCW, this matter may be further appealed to a court of law. The Petition for Judicial Review of this decision must be filed with the court and served on the Superintendent of Public Instruction, the Office of the Attorney General, all parties of record, and this office within thirty days after service of the final order. If a petition for reconsideration is filed, this thirty-day period will begin to run upon the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). Otherwise, the 30-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.

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 June 20, 2000, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

PARENT 	JAMES DIONNE DIONNE & RORICK 999 THIRD AVENUE SUITE 2550 SEATTLE, WA 98104
	SUE WALKER, CHIEF STUDENT OFFICER STUDENT SUPPORT SERVICES SHORELINE SCHOOL DISTRICT 18560 FIRST AVENUE NE SHORELINE, WA 98155-2148

cc. Ben Gravely, SPI
Mary Radcliffe, OAH ALJ Hearing Coordinator