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

IN THE MATTER OF:	SPECIAL EDUCATION CAUSE NO. 2010-SE-0110
ORTING SCHOOL DISTRICT	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Michelle C. Mentzer in Orting, Washington, on March 3, 4, 8, 9, 10 and 11, 2011. The Adult Student (Student) whose education is at issue appeared on the first day of hearing, and was represented throughout the hearing by his Mother.[1] The Orting School District (District or School District) was represented by Shannon McMinimee, attorney at law. The following is hereby entered:

STATEMENT OF THE CASE

The Parents filed a due process hearing request (complaint) on December 28, 2010. The Student turned 18 years old shortly thereafter and stated in writing that he wished to proceed with the case and have his Parents represent him. Prehearing orders were entered on January 20, February 23, and February 28, 2011. An Order Granting District's Motion for Partial Summary Judgment was entered on February 18, 2011.

As stated in the First Prehearing Order of January 20, 2011, the due date for the written decision was continued to 30 days after the close of the record at the District's request. The record closed on April 1, 2011, with the filing of post-hearing briefs. Thirty days thereafter is May 1, 2011. Since May 1, 2011 falls on a Sunday, the decision is due **Friday, April 29, 2011**.

EVIDENCE RELIED UPON

Exhibits

Court Exhibits: C-1 and C-2.

Parent Exhibits: P-1; P-4; P-7; P-9, page 1 only; P-10; P-13, pages 4 - 5 only; P-14; P-15; P-16, pages 1 - 19 only; P-17; P-19; and P-20, pages 1 - 7 only.

District Exhibits: D-1 through D-24.[2]

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[1] In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student."

[2] Exhibit D-24 was submitted at the request of the ALJ after the hearing. The parties stipulated to its admission.

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Witnesses

The following witnesses testified under oath: The Student; Andria Strong (Catholic Community Service); Karen Dolan (Catholic Community Service); Jonathan Bell (District Director of Special Services); John Holcomb (District Special Education Interventionist); Rica Rostad (District School Psychologist); Tracy Dorr (District Special Education Teacher); Nancy Harris (District Special Education Teacher); the Mother; Leonard Aron (Director of Special Services, Educational Tutoring & Consulting Preparatory Academy); Phyllis Nunnally (District Job Coach); and Cynthia Noser (District Special Education Teacher and Case Manager).

ISSUES

As set forth in the Second Prehearing Order of February 23, 2011, the issues for hearing are as follows:

1. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free, appropriate public education (FAPE) during the two-year period before the complaint was filed by:

   a. Failing to provide the Parents the opportunity to participate in all individualized education program (IEP) meetings and all meetings at which changes were made in the Student's IEP;

   b. Failing to give appropriate consideration to the Parents' input in the development, review and revision of the Student's IEPs;

   c. Failing to provide special education and related services that were reasonably calculated to lead to meaningful educational benefit for the Student;

   d. Failing to provide appropriate accommodations for the Student;

   e. Failing to provide appropriate transition plans and transition services for the Student;

2. Whether the Student is entitled to the following requested remedies, or other equitable relief as appropriate:

   a. Adoption of an appropriate transition plan for the Student;

   b. Prospective placement at the Educational Tutoring & Consulting Preparatory Academy on Mercer Island; and

   c. Compensatory education in the form of individual tutoring for 10 hours per week, for a period of one year, to help the Student be better prepared for life after high school.[3]

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[3] Issue statement (2)(c) in the Second Prehearing Order of February 23, 2011, stated that the Parents were requesting Sylvan Learning Center provide the Student's tutoring. The Parents clarified at the due process hearing that they had consulted Sylvan Learning Center regarding the amount of tutoring that would be appropriate, but were not restricting their desired provider to Sylvan Learning Center. Also, the Parents stated

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FINDINGS OF FACT

Background

1. The Adult Student (Student) is 18 years old and attending the 12th grade at Orting High School (OHS). He has attended school in the Orting School District at all times relevant to this case. The Student lives with his stepmother (referred to herein as Mother), Father, and seven year old brother. He also has an adult brother who lives away from home.

2. The Student came into the Parents' care at age four-and-a-half. At that time he was removed from the care of his biological mother by Child Protective Services. The Student has been diagnosed with mild mental retardation (IQ consistently in the mid-60's) and several mental health diagnoses. His eligibility category for special education at all relevant times has been Health Impaired.

3. The Student's placement was primarily in a Life Skills program in middle school and through the first two years of high school. Life Skills is a self-contained class for the most severely disabled students in the District. Beginning in 11th grade the Student has progressively taken more classes outside the Life Skills program, and in 12th grade he is taking none there.

Behavior

4. The Student has had behavioral challenges at home and at school in recent years, but the ones at home have been far more severe. He has been physically aggressive toward his Mother and young brother, and has expressed suicidal wishes. The Parents have twice placed the Student in a residential behavioral school, the University of Texas Charter School at the Meridell campus (Meridell). The Student attended Meridell for part of 2006 and again from late May through early October, 2009 (end of 10th through beginning of 11th grades).

5. The Student left Meridell because he stopped cooperating with the school program when a nearby swimming pool closed for the season. It was hot in Texas and swimming was no longer available as a reward activity. The Parents did not feel it was safe to have him return home, so he was admitted to the psychiatric program at Seattle Children's Hospital from October 7 to October 19, 2009. He returned to OHS thereafter.

6. Although the Student did not have serious behavior problems at school, when he returned to OHS from Children's Hospital the District agreed to assign a one-on-one safety aide for him. This was based on a request from the Parents. The aide was not intended for academic assistance. The plan was to fade out the safety aide's services over time, and that is what occurred. The Parents opposed the fading of the aide.

7. For the protection of the Mother and the younger child at home, and to help manage the Student's behavior, Catholic Community Services (CCS) has placed workers in the home for

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in a letter of February 9, 2011 that if the Student was placed at ETC pursuant to Issue (2)(b), they would not want the individual tutoring described in Issue (2)(c) in addition to that.

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numerous hours a week. This began when the Student returned from his residential placements in October 2009 and continues to the present time.

8. At school, the Student generally gets along well with others. He has many acquaintances, but does not have the kind of friends who make social dates with him outside of school. In the last six months he has acquired a close friend from another school whom he sees socially twice a week.

9. During 11th grade the Student expressed to school staff many times that when he turned 18, he would leave school, leave his family, and live on his own. Also during 11th grade, the Student ran off campus three or four times, and once was not found until after the school day had ended. He did not go far from campus on these occasions. He once sustained a cut on his hand while away from school.

10. The Student would sometimes have "melt-downs" at school where he would curl up in a ball and not do his school work. To address this and other non-productive behavior, his 11th grade IEP introduced a social/emotional "productivity" goal. The annual goal was to reduce the number of prompts to remain on-task with school work. D-9, p. 16; D-13, p. 16.

11. The Student's behavior intervention plan (BIP) contained a number of positive intervention strategies. The Student was usually easy to redirect. When teachers needed assistance in doing this, Special Education Interventionist John Holcomb worked with the Student. Mr. Holcomb could usually redirect the Student in two to ten minutes to a more positive frame of mind.

12. An Aversive Intervention Plan (AIP) was also put in place when the Student returned from his residential placements, but the AIP was never used.

13. The Mother alleges that school staff allowed the Student to sleep at school. School staff deny this. Because neither the Parents nor any of their advocates or private providers have observed the Student in class, the testimony of District witnesses on this point is adopted.

14. The Student has fared better in 12th grade. Early in the year he changed his prior plans and now intends to stay in school through age 21. He has had no incidents of running off campus this year. His behavior interferes with his learning much less frequently. This behavioral improvement is also seen in the evolution of the Student's IEP "productivity" goal. In 11th grade, the goal was to reduce prompts to remain on-task from 12+ to 6 per day. In 12th grade, the goal was to reduce prompts from 2 to zero per day. D-9, p. 16; D-13, p. 16.

Academics

15. In middle school and the first two years of high school, the Student received his reading, writing, and math instruction in Life Skills classrooms. The Parents felt the Student functioned at a higher level than his Life Skills classmates. The Parents advocated that he receive more academic challenge by taking his reading, writing, and math instruction in Resource Rooms (also known as Skills Labs) instead of in the Life Skills class. Resource Rooms are for special education students who are less severely disabled than those who take their academic subjects in the Life Skills class.

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16. The IEP team agreed to the Parents' suggestion. In 11th and 12th grades, the Student has had two periods a day in Resource Rooms, where he receives instruction in academics. He also attended two periods a day of Life Skills classes in the first semester of 11th grade, where he received some academic instruction as well. Second semester he had one period a day of Life Skills, and substituted a cooking elective for the other period. In 12th grade, he has not attended any Life Skills classes, and instead has taken more work-experience and elective classes.

17. The Student has experienced considerable anxiety in his Resource Room language arts classes. The classes have been small, with a paraeducator assisting the special education teacher. Nevertheless, the Student frequently feels he does not understand the class and is confused about the homework. In 11th grade, the Student experienced similar anxiety in his general education history class. In 12th grade, the Student is not taking any general education academic classes, but continues to experience anxiety in his Resource Room language arts class. He does not experience the same anxiety in his Resource Room math class.

18. The anxiety the Student experiences in classes causes behavioral problems at home, where he vents his frustration. During the summer, when he is not attending school, the Student's behavior at home improves and CCS does not assign workers to the home.

19. Three IEPs have governed the Student's education during the two-year period at issue here. They were adopted in November 2008, November 2009, and October 2010. D-8; D-9; D-13.

20. Most of the annual goals in these three IEPs are expressed in terms of improvements in the Student's performance on the Measures of Academic Progress (MAP), published by the Northwest Evaluation Association and widely used in a number of states. MAP is administered to most Orting students twice a year. The Student's MAP testing has been in reading, math, and language use.[4]

November 2008 IEP (10th Grade)

21. Under the November 2008 IEP, the Student was in Life Skills class four periods of the day, where he received his reading, writing and math instruction. He also attended general education classes in science and physical education. D-2; D-8. Speech-language therapy was given twice a week for 20 minutes per session. The Student received B's and C's in his graded classes, and Passes in his two non-graded classes. D-2.

22. The annual goals in the Students' November 2008 IEP were as follows. In reading comprehension, he would move from a MAP score range of 174-190 to a score range of 180-196. D-8, p. 15. In word recognition, he would move from a MAP score range of 169 - 189 to a score range of 175 - 192. D-8, p. 17.

23. The Student did not achieve these goals. There was no MAP testing in Fall 2009, but given even more time to advance, he still did not achieve the goals when next MAP-tested in Winter 2010. The MAP results in the record are not broken down between comprehension and word recognition,

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[4] MAP provides separate sub-skill scores within reading, math, and language use. However, the Student's scores on these sub-skills were not offered in evidence except in math, and only for the four most recent tests in math. D-20.

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but his combined reading score showed no progress, and in fact had a small decrease, from 188 in Fall 2008 to 184 in Winter 2010. D-20, p. 5.

24. In math, the Student's annual goal was to move from a MAP score range of 181 - 195 to a score range of 187-201. As mentioned above, there was no MAP testing in Fall 2009, but the Student still did not achieve the goal when next MAP-tested in Winter 2010. There was no progress, and in fact there was regression from 196 in Fall 2008 to 187 in Winter 2010. D-20, p. 5.

25. All three of the IEPs had communication goals that are not at issue, and a vocational goal that will be discussed in the section on "Transition Plan and Work Experience," below.

November 2009 IEP (11th Grade)

26. Under the November 2009 IEP, the Student continued to receive his reading instruction in a Life Skills class, but moved to Resource Rooms for math and written language. D-9, p. 21. He now had one period a day of work experience, and continued with the same amount of speech therapy as previously. His grades during 11th grade were mostly Bs and As, with one C each semester, and a Pass in his non-graded classes.

27. The annual goals in the Students' November 2009 IEP were as follows. In reading comprehension, he would move from a MAP score range of 197 - 214 in Spring 2009 to a score range of 214 - 224 in Fall 2010. D-9, p. 14. In word recognition, he would move from a MAP score range of 190 - 205 in Spring 2009 to a score range of 205 - 220 in Fall 2010. *Id.*

28. As mentioned above, the MAP results in the record are not broken down between comprehension and word recognition. The Student's combined reading score showed no progress, and in fact regressed from 195 in Spring 2009 to 190 in Fall 2010. D-20, p. 5.

29. In math, the Student had two annual goals. One was to construct and interpret data in tables, graphs and plots. He was to move from a 4.0 grade level to a 5.5 grade level as measured by class work, teacher observations, and MAP testing. His second math goal was to solve single-step equations for one unknown variable. He was to move from 4.0 grade level to 5.5 grade level as measured by classroom assessments, computer-based assessments and daily work. D-9, pp. 12 - 13.

30. The Student's MAP testing in math showed no progress, and in fact showed regression. There was no MAP testing in Fall 2009, when this IEP was adopted, and none in Fall 2010, when it expired. However, MAP testing shortly thereafter, in Winter 2009, showed the Student was at a middle-3rd grad level in math. A year later in Winter 2010, the Student had made no progress and in fact regressed by a full grade level from middle-3rd grade to middle 2nd grade level. D-20, p. 5; D-21, p. 2. His IEP progress reports in math are blank. D-16, pp. 1 - 3. They say to check his report cards for comments by his math teacher, but the report cards are not in evidence.

31. In writing, the Student's annual goal was as follows: Given a writing prompt, the Student will effectively write to the appropriate audience, improving fluency, mechanics and conventions from a 1 on a writing rubric to a 2, as measured by his writing portfolio. D-9, p. 16. The teachers' assessments of the Student's class work is discussed below. The MAP test in language use can shed some light on the Student's progress in writing. As mentioned above, there was no MAP

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testing in Fall 2009, when this IEP was adopted, and none in Fall 2010, when it expired. However, MAP testing from Winter 2009 to Winter 2010 shows no progress in language use, and in fact shows regression from a score of 194 to a score of 188. D-20, p. 5.

October 2010 IEP (12th Grade)

32. In this IEP, the Student's reading, math and writing instruction were condensed from three periods to two periods a day, which he received in Resource Rooms. He had no other academic classes. He had two periods of work experience, and two of electives. D-2; D-13, p. 22. He continued with the same amount of speech therapy. His grades in first semester of 12th grade were As, Bs, and Passes in his non-graded classes.

33. The Student's reading goal in word recognition was eliminated, leaving a reading goal in comprehension. That goal was to move from a MAP score range of 190 - 205 in Fall 2010 to a score range of 195 - 209 in Fall 2011. D-13, p. 12. The Student is not on track to achieve this goal. His Fall 2010 MAP reading score was below the baseline indicated here: It was in the range of 187 - 193, with his specific score being 190. When next tested in Winter 2011, the Student's score had dropped to a range of 185 - 191, with a specific score of 188.

Other Measures of Student's Academic Progress

34. MAP scores are discussed above in reference to particular IEP goals that referenced MAP scores. The full picture of the Student's MAP achievement results over the relevant years are as follows.[5]

READING

Assessment Date	RIT Score[6]	Grade Equivalence
Fall 2008	188	middle 2nd grade
Winter 2009	202	middle 4th grade
Spring 2009	195	middle 2nd grade
Winter 2010	184	early-to-middle 2nd grade
Spring 2010	191	beginning 3rd grade
Fall 2010	190	end of 2nd grade
Winter 2011	188	late 2nd grade

D-20, p. 5; D-21, p. 2.

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[5] Fall 2008 is slightly before the two-year period that began in late-December 2008. However, Fall 2008 scores are provided as a baseline from which to measure progress during the two-year period that followed. Reading and math scores are in the record for Fall 2008, but the language use test may not have been given at that time. There is no score for language use in Fall 2008. D-20, p. 5.

[6] The scores are called "RIT" scores. There was no evidence at the hearing what RIT stands for.

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35. Over the two-year period at issue in this case, the Student's reading score made no progress. He started and ended at the same point. He had some improvement in the middle but it was not sustained.

36. MAP publishes "Typical Growth" scores for children similarly situated to this Student: in his same grade at school and at a similar achievement level at the beginning of the growth comparison period. "Typical Growth" in reading for students similarly situated to the Student was a five point increase. (This figure is given for the year immediately preceding the two-year period at issue. There are no more recent "Typical Growth" figures provided in the MAP report.) Thus the Student fell seriously behind even students in his same grade who were at his same very low level of reading. They would have increased by 5 points per year. His increase was zero in two years. D-20, p. 5.

37. The Student's scores in math were as follows:

MATH

Assessment Date	RIT Score	Grade Equivalence
Fall 2008	196	early-to-middle 3rd grade
Winter 2009	197	middle 3rd grade
Spring 2009	199	middle 3rd grade
Winter 2010	187	middle 2nd grade
Spring 2010	200	middle-to-late 3rd grade
Fall 2010	191	end of 2nd grade
Winter 2011	201	late 3rd grade

D-20, p. 5; D-21, p. 2.

38. Over the two-year period at issue here, the Student's math score fluctuated between a 3rd and 2nd grade level, but on the whole increased by 5 points in two years. However, this was only 31% of the "Typical Growth" experienced by similarly-situated students. Their scores increased by 8 points in a single year, which would be 16 points in two years. (Typical growth data is listed only for the year immediately preceding the two-year period at issue). Thus, the Student fell significantly behind other very low-performing students in his same grade in school. This is particularly of note because math is the Student's strongest subject, according to witnesses.

39. The Student's scores in language use were as follows (there is no Fall 2008 score):

LANGUAGE USE

Assessment Date	RIT Score	Grade Equivalence
Winter 2009	194	beginning 3rd grade
Spring 2009	193	beginning 3rd grade
Winter 2010	188	middle 2nd grade
spring 2010	189	middle 2nd grade
Fall 2010	196	early-to-middle 3rd grade
Winter 2011	188	middle 2nd grade

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Id.

40. Over the two-year period at issue here, the Student's language use score fluctuated between 3rd and 2nd grade, but on the whole regressed by 6 points. No "Typical Growth" data is given for language use. Regarding the IEP goal that the Student move from a score of 1 on writing rubric to a score of 2, his IEP progress reports do not give any scores. They repeatedly state he was making "sufficient progress" on the goal without reporting scores. D-16, pp. 7 - 8; D-17, pp. 1 - 2. They say his report card contains teacher comments, but this report cards are not in evidence.

41. Other standardized assessments of academic achievement have been administered to the Student over the years. One was given in early-June 2008 by school psychologist Rica Rostad. This was seven months before the beginning of the two-year period at issue here.

42. Ms. Rostad used the Woodcock Johnson Tests of Achievement III (WJ-III) for her June 2008 assessment. Ms. Rostad wrote that the Student appeared to do his best on the test, and the setting was quiet and conducive to concentration. She wrote that the scores are valid and represent the Student's best efforts. The Student's scores on the June 2008 WJ-III were as follows:

Assessment	Standard Score	Grade Equivalent[7]
BRIEF READING	70	4.1
Letter-Word Identification	69	3.9
Passage Comprehension	80	4.8
BRIEF MATH	64	4.1
Calculation	83	5.9
Applied Problems	63	3.0
BRIEF WRITING	58	3.3
Spelling	61	2.9
Writing Samples	76	4.2
BRIEF ACHIEVEMENT[8]	55	3.4
ACADEMIC SKILLS[9]	63	4.1
ACADEMIC APPLICATIONS[10]	66	3.6

[7] The number after the decimal point in the "Grade Equivalent" column indicates a *month*, not a tenth of a year.

[8] "Brief Achievement" is a measure of academic skills in the combined areas of reading, writing, and math. P-15, p. 4.

[9] "Academic Skills" is a combined measure of letter and word reading, math calculation, and spelling skills. P-15, p. 5.

[10] "Academic Applications" is a measure of the ability to apply skills to solve academic problems. P-15, p. 5.

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P-15, pp. 1 -2, 7.

43. Six months later, in early December 2008, the Student was evaluated by a private psychologist, Audrey Don, Ph.D. Dr. Don administered the Wechsler Individual Achievement Test II (WIAT-II). Regarding testing conditions and the validity of the results, she wrote:

> [The Student] was consistently eager to please. However, he was easily distracted and frequently tangential. When tangential, he was easily re-directed but had difficulty maintaining focus. Multiple objects around the room distracted him and multiple noises outside the office distracted him. Responses were often fast and impulsive. Difficulties with precision of fine motor control affected writing and performance on paper and pencil tasks. He sometimes recognized his errors and fixed them but did not slow down to increase accuracy. Despite impulsivity, effort on tasks appeared good.

P-1, p. 2.

44. The scores Dr. Don obtained on the WIAT-II were on the whole much lower than those obtained by school psychologist Ms. Rostad six months earlier. Because the Student was distracted and impulsive during Dr. Don's testing, and concentrated well during Ms. Rostad's testing, Ms. Rostad's results are found to have greater validity. Particularly in light of the fact that Dr. Don did not testify and was not available for cross-examination, her WIAT-II test scores are disregarded.

45. In November 2009, Ms. Rostad re-assessed the Student using the Kaufman Test of Educational Achievement II (KTEA-II). The Student's scores were as follows:

Assessment	Standard Score	Grade Equivalent
Reading	79	4.6
Math	70	3.7
Writing	80	3.7

D-24.[11]

46. The Student's KTEA-II scores are higher than his WJ-III scores from 17 months earlier. However, two different instruments were used and are difficult to compare. Ms. Rostad explained that the KTEA is more colorful and engaging for students, whereas she views the WJ-III as outdated and biased against students from Orting. There are references in the WJ-III that are less likely to be known by Orting students than by students from other geographic areas. Also, seven of the 17 months between the two tests occurred before the two-year period at issue here. For both of these

[11] The printout of the Student's KTEA-II scores gives slightly different Standard Scores when they are paired with Grade Equivalents as opposed to Age Equivalents. D-24. Since the WJ-III results are given only as Standard Scores plus Grade Equivalents (P-15), the KTEA-II scores are presented here in the same way. The fact that there are two different sets of KTEA-II Standard Scores is irrelevant, however, since it is found that a meaningful assessment of progress cannot be made using the WJ-III scores and the later KTEA-II scores.

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reasons, a comparison between the Student's June 2008 WJ-III and November 2009 KTEA-II scores does not yield useful information on whether the Student made academic progress during the two years in question.

47. There is a significant difference between the Student's MAP scores -- which show no progress over the two years at issue here, and in fact show some regression -- and reports from the Student's teachers. All three of the teachers who testified at the hearing alleged the Student increased his academic skills during the two years at issue. They wrote the same on his IEP progress reports. D-15; D-16; D-17. They testified that he advanced in computerized learning programs such as Read Naturally and Novanet, which do not allow students to advance unless they demonstrate sufficient knowledge of prior segments.

48. It would unduly abridge the Student's opportunity to confront witnesses and rebut evidence to base findings of fact exclusively on the teachers' hearsay testimony about the Student's performance on the computerized programs Read Naturally and Novanet. No actual print-outs showing the Student's scores or progression were offered in evidence, so the teachers could not be effectively cross-examined on these points. The Student's IEP progress reports state his percentage of accurate answers in Read Naturally, but do not state how this relates to his annual goal. D-15, pp. 3 - 4; D-16, p. 4; D-17, p. 6. It would be impermissible to base a finding of fact concerning the Student's performance on Read Naturally and Novanet exclusively on hearsay evidence, as it would unduly abridge the Student's right to confront witnesses and rebut evidence.[12]

Transition Plan and Work Experience

49. Because the Student so frequently expressed his plan to leave school at age 18, staff emphasized vocational pursuits sooner than they would have if he planned to stay in school longer. Recently, the Student changed his plans and intends to remain in school through age 21.

50. The Student's supported job experiences have been a highlight of his high school career. He gravitates to them and has performed very well in them. He enjoys his off-campus work experience so much that it is used as a motivator to improve his performance in other aspects of his high school experience.

51. The Student completed OHS's Career Choices class and has taken a number of vocational assessments to determine his areas of interest and aptitudes. Each of his IEPs in the last three years has included annual vocational goals and a transition plan. The Student began his work experience on campus, doing office work such as shredding, and janitorial work such as stacking chairs and moving them on a hand cart. He also sold food at a school concession stand, working on customer relations and money-math skills. D-8, pp. 10 - 11; D-9, pp. 9 - 11.

52. The Student then went on to have a number of job experiences in the community. He first worked at a McDonald's restaurant, where he did stocking, refilling napkin holders, and replenishing condiments. He next worked at the CISO cafe, where he set tables, bussed tables, washed dishes, took orders, made sales, and did food preparation. He currently works at the [redacted]

[12] This Finding of Fact is made pursuant to Revised Code of Washington (RCW) 34.05.458(4) of the Administrative Procedure Act.

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where he does a variety of tasks around food service. At each off-campus job assignment he has been assisted by an OHS job coach. After an initial orientation period at each job site, the Student has worked without the coach's presence. D-8, pp. 10 - 12, 21-22; D-9, pp. 8 - 13; D-13, pp. 6 - 9, 16 - 18.

53. The Parents fault the Student's transition plan because it includes their applying on his behalf for services from Department of Developmental Disabilities (DDD) and Division of Vocational Rehabilitation (DVR). Both of these agencies have declined services to the Student. However, DVR states the Student can re-apply when he is closer to graduation, at age 20. P-4.

54. The Parents also fault the Student's transition plan because it includes teaching him to use an agenda to keep on-task with personal responsibilities. They argue that writing in an agenda will not help him wake up to an alarm clock and get ready for school or work. The Parents also fault the transition plan because the veterinary technician program at Pierce Skills Center has been a placement under consideration, but it appears that program may be above the Student's intellectual level. Other programs at Pierce Skills Center might be appropriate for the Student, as might programs at Bates Technical College and Clover Park Technical College. The IEP team will be exploring those placement options for Fall 2011.

Accommodations

55. The Mother acknowledged in her testimony that all accommodations in the Student's IEPs have been appropriate. *See* D-8, pp. 6 - 7; D-9, pp. 18 - 19; D-13, p. 20. She knows of none that the school has failed to implement.

56. The Mother does allege there are additional accommodations recommended by the Student's private providers that the District declined to adopt. These are discussed in the section on "Participation of Parents and Their Private Providers in Educational Decision-Making", below.

57. The accommodation of a one-on-one safety aide, requested by the Parents, was adopted by the IEP team after the Student returned from his private residential placements in October 2009. The team has gradually lessened the number of periods per day the aide is present, both because they do not believe the aide is needed and to promote the Student's independence. The Parents have not agreed with the fading of the safety aide.

Participation of Parents and Their Private Providers in Educational Decision-Making

58. The Parents (or one of the Parents) has attended every IEP and evaluation meeting during the two years at issue here. They were usually accompanied by advocates from CCS, and were once accompanied by an attorney who was pursuing the Student's DDD and DVR appeals. The Student generally attends the first 15 minutes of IEP meetings, then leaves because the meetings cause him agitation.

59. The Parents and the Student have not been passive at these meetings, but have made presentations and suggestions to the team. The Mother sometimes came with a typed agenda, took notes, and sent these notes to the District afterward to confirm her understanding of the discussions. *See* P-19.

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60. The IEP team reviewed and considered the recommendations from the Student's private providers, Dr. Audrey Don and Seattle Children's Hospital. P-1; P-2. Most were either adopted or already in place. (The Mother disputed that visual aids were used in the classroom, but she did not observe in any of the Student's classes and school staff testified to the contrary.) The team did not adopt Dr. Don's recommendation to use the Lindamood Bell reading curriculum. P-1, p. 5.

61. Regarding the Seattle Children's Hospital recommendations, they are in accord with the provisions of the Student's BIPs and with school staff's testimony regarding behavioral methods they use in interacting with the Student. (*See* testimony of John Holcomb and Nancy Harris.)

62. The Mother testified that there was one recommendation from Children's that the District said it could not adopt: Limiting the amount of words and talking when staff work through a problem situation with the Student. P-2, p. 3. However, District Interventionist John Holcomb -- who has worked with the Student for 3.5 years and who the Student stops by and visits three to four times a week -- testified that he redirects the Student quickly, because the more time spent talking about an upsetting event, the less easily the Student is redirected. Mr. Holcomb is generally very successful at redirecting the Student when the Student becomes agitated, usually accomplishing this in two to ten minutes. This minimizes the amount of talking when working through a problem.

63. The team also considered the intake evaluation done at Meridell and the IEP developed there. D-5; D-19. The District wanted to review later records from Meridell, but the Parents did not allow the District access to those records.

64. At the beginning of 11th grade, when the Student returned from Meridell, the IEP team adopted a change desired by the Parents that was mentioned in the section on "Academics," above: The Student was moved out of the Life Skills class for two periods a day, and assigned instead to Resource Rooms, where he received most of his academic instruction. He has continued in the Resource Rooms in 12th grade.

65. The IEP team also adopted suggestions from the Parents' CCS case manager, Ms. Strong, in developing the Student's BIP. Ms. Strong recommended what to do when the Student runs from campus. The police are to be contacted, but contrary to prior practice they are instructed not to pick the Student up for the first two hours he is missing. If the police spot him during those two hours they are to inform the school. After two hours, police are to pick up the Student. The reason for these changes in the BIP was that the Student enjoyed the hide-and-seek game with police and the attention it brought. Ms. Strong felt, and the team agreed, that this created a reward for running off.

66. The team did not adopt other suggestions made by one or both of the CCS case managers: (1) Searching the Student's belongings upon arrival and departure from school for sharps and other harmful objects such as lighters; (2) Restricting the Student from checking out library books beyond his level of understanding, because he becomes agitated when he cannot understand them; and (3) Not allowing the Student to sit at a table with others in class due to his quick aggression. The validity of the District's rejection of these suggestions is discussed in the Conclusions of Law, below.

67. The IEP team adopted a change requested by the Student himself: That the transportation provisions of his IEP be changed to general education transportation instead of special education. D-12.

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68. The Parents and their CCS advocates (Ms. Strong and later Karen Dolan) requested a one-on-one academic aide for the Student, stating he is often lost and anxious in his academic classes. The IEP team declined this suggestion. In the District's view, the Student's academic classes are small, taught by special education teachers, and staffed with an aide in each class to assist students as needed. The District believes a one-on-one academic aide is unnecessary and would decrease the Student's independence. The Parents believe such an aide would reduce his anxiety and help him progress academically.

69. The Mother and Ms. Strong allege that District representatives stated the District could not adopt some recommendations because they were too costly. Special Education Director Jonathan Bell denies that any District staff stated this, and denies that it is true. He and District Interventionist John Holcomb noted that the District has funded private placements for students with needs that were not being met in District schools. They testified, however, that the Student is not such a student. It is found that the Mother and Ms. Strong either misunderstood or misinterpreted District comments about the cost of program changes.

Educational Tutoring & Consulting Preparatory Academy (ETC)

70. ETC is a private school on Mercer Island. The student body is comprised of disabled students on IEPs, and general education students who come for tutoring, credit replacement, or to take individual classes outside of their public schools. All instruction at ETC is provided one-on-one with a teacher in a study carrel. The exception is a one-hour social skills session during lunch that occurs twice a week. If students have physical education as part of their schedule, they do this with other students at a nearby community center.

71. The Student has never visited ETC, nor tried a day of one-on-one tutoring in any context. The Parents intentionally did not take him to ETC because he is a concrete thinker and would believe that is where he is going. There was too much of a risk that he would give up on his District program if he thought this.

72. The Student's current commute to OHS is under 30 minutes, on a school bus with his general education peers. The drive from Orting to Mercer Island is 1.5 hours each way. The Parents are requesting that the District provide this transportation.

73. If this occurred, the Student would spend three hours a day in a vehicle with no students or educational staff, only a driver. The Mother states the Student likes car rides, and she believes the time commuting would be worth the educational benefit gained. District witnesses believe ETC is inappropriate because the Student thrives on inter-personal contact and social interactions. He has done well in a Leadership class, in job settings where he serves others, and in classes where he has the opportunity to help other students. The District also believes ETC is inappropriate because the Student's reaction to a full day of one-on-one tutoring is unknown, and because the commute would be so long and isolating. A decision on the appropriateness of ETC as a placement for the Student is found in the Conclusions of Law, below.

Individual Tutoring

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74. The Parents consulted with Sylvan Learning Center regarding how much tutoring would be beneficial for the Student. Sylvan did not meet the Student or review any documentation about him, though the Mother did describe the Student's problems to the Sylvan representative.

75. The Mother testified that the Sylvan representative said most students take five hours a week of tutoring: two or three in English, and two or three in math. No one from Sylvan testified at the hearing. Special Education Director Mr. Bell believes, based on his knowledge of the Student, that the maximum amount of individual tutoring the Student could tolerate and benefit from is one hour per day. A decision on the appropriateness of tutoring for the Student is found in the Conclusions of Law, below.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 USC §1401 *et.seq.* (Individuals with Disabilities Education Improvement Act (IDEA, sometimes referred to as IDEIA), formerly Education for All Handicapped Children Act), 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 392-172A Washington Administrative Code (WAC).

2. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Hendrick Hudson District Board of Education vs. Rowley*, 458 U.S. 176, 102 S. Ct. 3034, 553 IDELR 656 (1982), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

Rowley, supra, 458 U.S. at 207;102 S. Ct. at 3051.

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

> According to the definitions contained in the (Education for All Handicapped Children Act) a 'free appropriate public education' consists of education instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the state's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to

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> benefit from the instruction, and the other items of the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act.

Id., 458 U.S. at 188-189;102 S. Ct. at 3041-3042.

4. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but instead a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.,* 458 U.S. at 200 - 201; 102 S. Ct. at 3048; *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1037, 52 IDELR 241 (9th Cir. 2009). The educational benefit must be a "meaningful" one. *N.B. v. Hellgate Elementary School Dist.*, 541 F.3d 1202, 1213, 50 IDELR 241 (9th Cir. 2008); The "educational benefit" standard of *Rowley* is the same as the "some educational benefit" and "meaningful educational benefit" standards used in subsequent Ninth Circuit cases. *J.L. v. Mercer Island School Dist., supra*, 575 F.3d at 1038, n. 10.

5. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *See Schaffer v. Weast*, 546 US 49, 126 S. Ct. 528, 163 L. Ed. 2d 387, 44 IDELR 150 (2005). The Adult Student is the party seeking relief in this case and therefore he bears the burden of proof.

<u>Did the District Violate the Parents' and Adult Student's Procedural Rights to Participate in Educational Decision-Making</u>?

6. Procedural safeguards are essential under the IDEA:

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

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882, 103 LRP 53170 (9th Cir. 2001).

7. Procedural violations of the IDEA amount to a denial of FAPE:

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

20 USC §1415(f)(3)(E)(ii). *See, W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484, 18 IDELR 1019 (9th Cir. 1992); *accord R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 938, 48 IDELR 60 (9th Cir. 2007).

8. The Parents attended every IEP meeting during the two years at issue. There was no evidence that changes were made to the Student's IEP at meetings other than these IEP meetings.

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9. The District considered the Parents' and the Student's input at IEP meetings. The IEP team adopted a number of suggestions from the Parents, the Student, and the Parents' advocates, as set forth in the Findings of Fact.

10. The IEP team did not accept all of the Parents' or their advocates' suggestions, nor were they required to. Although a Student's IEP is ideally to be agreed upon by consensus among the IEP team members, sometimes agreement is not possible. If consensus is not achieved, the school district has the duty to formulate a plan to the best of its ability in accordance with information developed at meetings. A school district has no obligation to grant parents a veto over an IEP. Instead, it must inform them of their right to challenge the IEP in a due process hearing. *See Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 - 1132, 39 IDELR 154 (9th Cir. 2003), *cert. denied*, 544 U.S. 928, 125 S. Ct. 1662 (2005).

11. The Student has not established that the District predetermined the contents of his IEPs or that it failed to give consideration to his input and that of the Parents. Regarding the Parents' requests for a one-on-one academic aide and for the Lindamood Bell reading program, there was no *procedural* violation in failing to adopt particular parental suggestions as long as the IEP team considers them without predetermination, as it did. Whether these measures were necessary in order for the Student to make educational progress is addressed below, in the section on *substantive* rights.

12. For the reasons set forth above, the Student has not carried his burden of proof that his (or the Parents') IDEA procedural rights were violated.

<u>Did the District Violate the Parents' and Adult Student's Substantive Rights to Services Reasonably Calculated to Provide Meaningful Educational Benefit</u>?

13. As a preliminary matter, it should be noted that a student with behavioral problems who makes adequate behavioral gains in school but does not generalize those behaviors to other settings is still considered to be receiving an educational benefit. *See J.S.K. v. Hendry County Sch. Bd.*, 941 F.2d 1563, 1573, 18 IDELR 143 (11th Cir. 1991). "'Although a child may have severe behavior problems at home which make it difficult for his parents to control, the educational agency is not necessarily responsible to remedy this problem.'" *Gonzalez v. Puerto Rico Dept. Of Educ.*, 254 F.3d 350, 352, 34 IDELR 291 (1st Cir. 2001) (internal citation to district court opinion omitted). *See Devine v. Indian River County Sch. Bd.*, 249 F.3d 1289, 1292-1293, 34 IDELR 203 (11th Cir. 2001), *cert. denied* 537 U.S. 815, 123 S. Ct. 82 (2002).

14. The Student's IEPs were reasonably calculated to lead to meaningful benefit in the Student's behavior, and his behavior at school made progress over the two years in question. The same is true for progress in vocational goals, as discussed below in the section on "Transition Services and Work Experience."

15. However, the same cannot be said for the Student's academic progress. The teachers' subjective assessments that the Student made academic progress over the two years in question cannot be accepted in light of repeated objective evidence from his MAP testing that he made no academic progress, and in fact regressed.

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16. The IEP team found MAP testing so accurate in determining the Student's progress that most of his annual goals are measured by his MAP scores. If this is the measure of progress the District adopted, then this is how progress will be assessed. It is surprising that the Student's IEP progress reports continually documented progress when he made no progress on the goals that were measured by his MAP scores.

17. Either the Student's IEPs were not reasonably calculated to lead to academic progress, or his goals and objectives were not effectively implemented. After insufficient academic progress resulted from the November 2008 IEP, significant changes in approach should have been made in the November 2009 IEP. They were not. After the November 2009 IEP resulted in insufficient progress, the October 2010 IEP should have taken a significantly different approach. It did not. Instead, the Student was left to languish academically, and the Parents were repeatedly reassured that the Student was progressing. As seen in the "Typical Growth" scores on MAP, similarly-situated students made significantly more progress than the Student in their MAP scores. It therefore cannot be assumed the Student failed to progress because he had reached his maximum academic potential.

18. We turn now to the Parents' request for a one-on-one academic aide. This is a fairly restrictive way to deliver educational services. It is not needed in the Student's math class, where he does not express feeling lost and anxious. However, a one-on-one academic aide is appropriate for the Student's language arts class. Two periods of reading and writing that he previously had are now compressed into one period, making it all the more crucial he gain the necessary instruction.

19. Regarding Dr. Audrey Don's recommendation that Lindamood Bell or a similar reading methodology be used, school districts are generally given deference when it comes to choosing educational methodologies. The Supreme Court has stated:

> In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States. The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child. The Act expressly charges States with the responsibility of "acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and [of] adopting, where appropriate, promising educational practices and materials." §§ 1413(a)(3). In the face of such a clear statutory directive, it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories in a proceeding conducted pursuant to §§ 1415(e)(2).

Rowley, supra, 458 U.S. at 207; 102 S. Ct. at 3051. *See Joshua A. v. Rocklin Unified Sch. Dist.,* 52 IDELR 64 (9th Cir. 2009) ("We need not decide whether District made the best decision or a correct decision, only whether its decision satisfied the requirements of the IDEA. In doing so, we 'must be careful to avoid imposing [the court's] view of preferable education methods upon the State.' [citation omitted]"); *Fairfax County Sch. Dist. v. Knight,* 261 F. App'x 606, 49 IDELR 122 (4th Cir. 2008) (deference is given to school districts choice not to use parents' preferred Lindamood Bell methodology); *Bend-Lapine Sch. Dist. v. DW,* 152 F.3d 923 (table) 28 IDELR 734 (9th Cir. 1998) ("It

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is not our place to resolve disputes about which is the proper methodology for a school to employ.") The Parents have not established that Lindamood Bell is the only methodology that can provide educational benefit to their son.

Did the District Violate the Parents' and Adult Student's Substantive Right to Appropriate Transition Planning and Services?

20. Transition services are defined by regulation as follows:

> (1) Transition services means a coordinated set of activities for a student eligible for special education that:
>
> (a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;
>
> (b) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:
>
> (i) Instruction;
>
> (ii) Related services;
>
> (iii) Community experiences;
>
> (iv) The development of employment and other post-school adult living objectives; and
>
> (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
>
> (2) Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education.

WAC 392-172A-01190; *see also* 34 CFR § 300.43. IEPs must include transition plans once a student turns 16 years old:

> (j) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:
>
> (i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
>
> (ii) The transition services including courses of study needed to assist the student in reaching those goals.

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WAC 392-172A-03090(1)(j); *see also* 34 CFR § 300.320(b).

21. The transition plans in the Student's October 2008, November 2009, and November 2010 IEPs met the requirements set forth above. The transition services the Student received were appropriate to provide him a meaningful educational benefit in this area.

22. Transition services do not guarantee adult independence for all students regardless of their capabilities. The services provided have assessed the Student's interests and capabilities using multiple assessment instruments, have provided him with in-class vocational education, on-campus work experience, and finally several jobs experiences in the community under the guidance of an OHS job coach. The Student has enjoyed his job experiences and has done well at them. The District has demonstrated a commitment in the IEPs that it will continue providing transition services and vocational experiences through the school year in which the Student turns 21 years old, assuming he is willing.

23. For these reasons, the Student has not carried his burden of proof that the District violated the IDEA with regard to his transition planning or services.

Did the District Violate the Parents' and Adult Student's Substantive Right to Accommodations That Would Enable Him to Benefit from His Education?

24. IEPs must contain:

> a statement of the program modifications or supports for school personnel that will be provided to enable the student:
>
> (i) To advance appropriately toward attaining the annual goals;
>
> (ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
>
> (Iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

WAC 392-172A-03090(1)(d)

25. The Parents agree that all accommodations in the Student's IEPs have been appropriate, and have been implemented.

26. There are several additional accommodations the Parents and their CCS advocates requested, but the IEP team did not adopt. There are rational reasons why the team declined the additional accommodations. A search of the Student's belongings for dangerous objects would be intrusive and would likely violate his constitutional right against unwarranted searches. There was no evidence the Student ever possessed a dangerous object at school. Restricting the Student from checking out books above his reading level from the school library would be demeaning, might provoke confrontations, and might violate his constitutional rights. Seating the Student alone while others are seated together at tables would unnecessarily increase the restrictiveness of his educational environment. There is no evidence the Student engaged in aggression toward other

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students, nor that restricting his social access would be educationally beneficial. All evidence indicated the Student is a highly social person who enjoys interacting with others, in class and elsewhere. Finally, the fading out of the Student's safety aide over time was opposed by the Parents, but they have not established that the continued presence of the aide was necessary.

27. The Student has not carried his burden of proof that the additional accommodations his Parents and their CCS advocates requested were appropriate or necessary for him to benefit from his education.

What Remedies is the Student Entitled To?

Prospective Placement at ETC Preparatory Academy

28. The Student has not carried his burden of proof that ETC would be an appropriate placement in his least restrictive environment. First, instruction exclusively in a one-on-one situation is one of the most highly restrictive educational environments possible. While the Student needs additional academic assistance, ETC is far more restrictive a setting than the evidence supports. The Student is a people-person, and derives much satisfaction and self-esteem from interacting with and helping others. He has never experienced a one-on-one instructional situation, so it is completely unknown how he would react to it. The risk that it would be too intense for him, and/or the format would bore him, are too great to warrant an untried placement of this sort.

29. Second, it would be a waste of three hours a day (15 hours a week) for the Student to be driven back and forth to Mercer Island for school. He would have no interaction with peers or educational staff during those three hours, only with a driver. If ETC were highly appropriate for the Student, and his public school setting was inappropriate and could not be ameliorated with additional services, then these factors might outweigh the three-hour commute. However, that is not the case.

One-on-One Academic Aide in Language Arts Class

30. For the reasons set forth above, the Student's IEP shall be amended to add a one-on-one academic aide for his language arts class. In the event the Student is averse to having this occur in front of his peers, he may choose instead to have the aide sit apart from him in the class, take notes, and meet with him every school day for 30 minutes, either before or after school, to re-teach, clarify, answer questions, and go over homework assignments from the language arts class.

Compensatory Education - Tutoring

31. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524, 43 IDELR 32 (D.C. Cir. 2005). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497, 21 IDELR 723 (9th Cir. 1994).

32. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. Flexibility rather than rigidity is called for. *Reid v. District*

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of Columbia, supra, 401 F.3d at 523-524. Both parties in this case have acted appropriately. Neither side has demonstrated the kind of uncooperative or obstructive conduct that might influence an award of compensatory education.

33. As a remedy for failing to progress in reading, writing, or math for two years, the Student is awarded the following: One-on-one tutoring from qualified staff to be mutually selected by the Parents, Student, and District. If the parties are unable to agree on a tutor, then the District shall make the selection. Tutoring is awarded in the amount of one hour per school day for one calendar year from the date of this decision, and an equal award for the following one-year period.[13]

34. The award is based on uncontested evidence from Special Education Director Jonathan Bell that the Student could benefit from a maximum of one hour per day of tutoring. This is in accord with the recommendation the Parents received from a private tutoring company. The length of the award is warranted because the Student was denied FAPE for two years in three core academic subjects, and has much ground to regain.

35. If the Student wishes to continue tutoring during summer breaks, the District shall provide that service. If the Student wishes have tutoring at a reduced rate during the summer, the District shall provide that service. The Student's requests for summer tutoring must be made in writing to the District at least one month before the last day of the school year.

36. If the Student misses a scheduled tutoring session without giving 24 hours' notice, the session will count against his compensatory education award unless his absence was due to circumstances that could not be foreseen 24 hours in advance, such as illness or emergency.

37. This compensatory education award is in addition to the prospective placement award of a one-on-one academic aide in the Student's language arts class. It is therefore in addition to the 30 minutes per day that the language arts aide may deliver services to the Student outside of school hours, if the Student chooses that method of delivery, as discussed above.

ORDER

a. The District did not violate the Parents' or the Adult Student's procedural rights under IDEA.

b. The District did not fail to provide appropriate transition plans, transition services, behavioral services, or accommodations, and therefore did not violate the IDEA in these regards.

c. The District violated the IDEA and denied the Adult Student a FAPE by failing to provide special education services reasonably calculated to lead to meaningful educational benefit in reading, writing, and math.

---

[13] The compensatory education remedy is separated into two year-long awards because the federal Department of Education prefers that remedies be able to be completed within one year. A single year of tutoring is insufficient to remedy the deprivation of FAPE in this case. Therefore, two awards are made for two separate years.

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d. As prospective placement to begin as soon as possible, but no later than three weeks from the date of this decision, the Adult Student shall receive a one-on-one academic aide in his language arts class.

e. The IEP team shall convene as soon as possible, but no later than three weeks from the date of this decision, to revise the Student's IEP so that he is more likely to make meaningful progress in reading, writing, and math.

f. As compensatory education, the Adult Student is awarded one hour per school day of one-on-one tutoring for a period of one year from the date of this decision, and an equal award for the following one-year period. If the Adult Student wishes to continue tutoring during summer breaks, the District shall provide that service. If the Student wishes have tutoring at a reduced rate during the summer, the District shall provide that service.

Signed at Seattle, Washington on April 27, 2011.

Michelle C. Mentzer
Administrative Law Judge
Office of Administrative Hearings

Final Decision

Further Appeal Rights: Information About Your Right To Bring A Petition For Reconsideration And Your Right To Bring A Civil Action

Reconsideration

This is a final administrative decision. Pursuant to RCW 34.05.470, either party may file a petition for reconsideration within 10 days after the ALJ has served the parties with the decision. Service of the decision upon the parties is defined as the date of mailing of this decision to the parties. A petition for reconsideration must be filed with the ALJ at his/her address and served on each party to the proceeding. The filing of a petition for reconsideration is not required before bringing a civil action under the appeal provisions of the IDEA.

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. If a timely petition for reconsideration is filed, this ninety-day period will begin to run after the

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disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein.

Parents
[redacted]

Jon Bell, Special Education Director
Orting School District
121 Whitesell St NE
Orting, WA 98360

Adult Student
[redacted]

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

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