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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
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July 9, 2014

Parents

[Redacted]  
Auburn, WA 98001

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Fife School District  
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**In re: Fife School District - Special Education Cause No. 2013-SE-0112**

Dear Parties:

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

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

Sincerely,

Anne Senter  
Administrative Law Judge

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

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

SEATTLE-OAH

IN THE MATTER OF:

SPECIAL EDUCATION  
CAUSE NO. 2013-SE-0112

FIFE SCHOOL DISTRICT

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Anne Senter in Fife, Washington, on April 16-18 and 21-24, 2014. The Parents of the Student whose education is at issue<sup>1</sup> appeared and represented themselves. They were accompanied and advised by Tim Jon Runner. The Fife School District (District) was represented by Christopher L. Hirst, attorney at law. Nancy Fitta, District director of special programs, also appeared.

**STATEMENT OF THE CASE**

The Parents filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on December 11, 2013. The Complaint was assigned Cause No. 2013-SE-0112 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered December 12, 2013, which assigned the matter to ALJ Anne Senter. The District filed its Response to the Complaint on December 19, 2014.

The Parents filed a Motion for Stay-Put on December 18, 2013. Following briefing by the parties and oral argument, an Order Denying Parents' Stay-Put Motion was entered March 12, 2014.

The District filed a Notice of Insufficiency of Complaint on December 19, 2013. An Order on Challenge to Sufficiency was entered December 20, 2013, denying the District's challenge to the sufficiency of the Complaint.

The District filed a Motion for Summary Judgment on January 17, 2014. Following briefing by the parties and oral argument, an Order on District's Motion for Summary Judgment was entered March 4, 2014, denying the District's Motion.

Prehearing conferences were held on December 20, 2013, January 9, March 4 and 6, and April 2, 2014. Prehearing orders were entered December 23, 2013, January 13, February 13, 20, and 28, March 12, and April 2, 2014.

<sup>1</sup>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."

**Post-Hearing Briefs**

As set forth in the Order Regarding Closing of Record and Post-Hearing Briefs entered April 28, 2014, the parties agreed to file post-hearing briefs two weeks after they received the transcript of the hearing. The court reporter stated at that time that she may need seven weeks to produce the transcript, which would have been June 12, 2014. Based on that statement, the due date for post-hearing briefs to be postmarked was set for June 26, 2014, with the understanding that the due date would be resent if the transcripts were received by the parties sooner than June 12, 2014.

The parties received the transcript on May 21, 2014. Two weeks from that day was June 4, 2014. However, the ALJ determined in a Second Order Regarding Closing of Record and Post-Hearing Briefs that the due date should be based on the date the briefs were received by OAH, rather than when they were postmarked. Because of this change, three business days were added to the agreed-upon two weeks to allow for mailing, and it was determined that the post-hearing briefs would be due on June 9, 2014.

The parties filed post-hearing briefs on June 9, 2014.

**Due Date for Written Decision**

As set forth in the Second Prehearing Order, the due date for a written decision in this matter is thirty days after the record closes. The record closed on June 9, 2014, with the filing of the parties' post-hearing briefs. Accordingly, the due date for a written decision in this matter is **July 9, 2014**.

**Evidence Relied Upon****Exhibits Admitted:**

**District's Exhibits:** D1 – D68;

**Parents' Exhibits:** P1, P3 – P9, P11 – 14, P16, P18 (except p. 2), and P19; and

**Court's Exhibits:** C1 and C2.

**Witnesses Heard (in order of appearance):**

Nancy Fitta, District director of special programs;  
Joan Ann Banks, former District special education teacher, Columbia Junior High School;  
Jlynn Cook, District registrar and attendance secretary, Columbia Junior High School;  
Amber Barnes, District school psychologist, Columbia Junior High School;  
Andrew Michel, District social studies teacher, Columbia Junior High School;  
Shallae Hobbs, District school nurse, Columbia Junior High School;  
Cindy Swenson, District science teacher, Columbia Junior High School;  
Brooks Clergy, District school counselor, Columbia Junior High School;  
Kadee Tuttle, District school psychologist, Columbia Junior High School;  
Linda Lesley, District special programs secretary;  
Mark Robinson, District assistant principal, Columbia Junior High School;

Joette Hayden, Falcon Ridge Ranch principal and director of education;  
Sister 4, Student's sister  
Dr. Carolle Bell, PhD., Falcon Ridge Ranch counselor;  
Jamie Haynes, Falcon Ridge Ranch residential director;  
Daniel Lundell, Falcon Ridge Ranch teacher;  
Student's Father;  
Amy Mittelstaedt, District assistant principal, Surprise Lake Middle School;  
Melissa Brownell, District art teacher, Columbia Junior High School;  
Student's Mother;  
Matthew Gardiner, MD, Aspen Institute, consulting psychiatrist;  
Marette Satterlee, District English/language arts teacher, Surprise Lake Middle School;  
John Garrett, District technology teacher, Surprise Lake Middle School;  
Lynn Marchiano, District special education teacher, Columbia Junior High School;  
Jody Boyd, District science teacher, Surprise Lake Middle School;  
Shana Davis, District special education teacher, Surprise Lake Middle School;  
Jennifer Covey, District language arts/reading teacher, Surprise Lake Middle School;  
Stephen Sulzbacher, PhD., Seattle Children's Hospital; and  
Michelle Tiegs, District special education teacher, Surprise Lake Middle School.

### ISSUES

As set forth in the Seventh Prehearing Order, the issues for the due process hearing are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) on or after December 11, 2011, by:
  - i. Failing to provide all discipline records, including incident reports and assessment protocols, requested by the Parents on or after August 15, 2013;
  - ii. The Student's academic and behavioral regression;
  - iii. Failing to hold an individualized education program (IEP) meeting when the Student returned from her first placement at Falcon Ridge Ranch;
  - iv. Failing to consider assessment results and other information from Aspen Institute and Falcon Ridge Ranch when the Student returned from her first placement at Falcon Ridge Ranch;
  - v. Failing to provide an appropriate IEP for the Student when she returned from her first placement at Falcon Ridge Ranch;
  - vi. Failing to identify and address the Student's worsening behaviors after she returned from her first placement at Falcon Ridge Ranch;
  - vii. Failing to fund the Student's second placement at Falcon Ridge Ranch when the District offered no other placement for her and stated it would change the Student's expulsion to a suspension if she returned to Falcon Ridge Ranch;

- viii. Failing to hold an annual IEP team meeting for the Student when it was due;
  - ix. Failing to conduct a manifestation determination meeting before expelling the Student;
  - x. Failing to refer the Student to any local facilities or service providers that could serve her mental health and educational needs in a placement closer to home and in the least restrictive environment;
  - xi. Failing to hold an IEP meeting in March 2013 to determine what the Student's placement would be after her expulsion;
  - xii. Failing to fund the Student's second placement at Falcon Ridge Ranch, including transportation;
  - xiii. Failing to make a referral and/or enter into an interagency agreement with another agency that could help fund a placement for the Student;
  - xiv. Failing to provide procedural safeguards to the Parents at meetings and when the Student was expelled;
  - xv. Failing to inform Parents of the risks of not being reimbursed for a unilateral private placement in an out-of-state residential facility;
  - xvi. Failing to provide appropriate services in speech and language, social skills, and pragmatics;
- b. Whether Falcon Ridge Ranch is a proper placement for the Student;
- c. Whether a residential placement is necessary to provide special education and related services to the Student;
- d. And, whether the Parents are entitled to their requested remedies:
- i. Reimbursement to the Parents and/or payment to Falcon Ridge Ranch for:
    - A. Tuition;
    - B. Transportation;
    - C. Family visits;
    - D. Educational materials; and
    - E. Counseling;
  - ii. The District to develop an appropriate IEP for the Student that includes prospective placement at Falcon Ridge Ranch at District expense;
  - iii. Compensatory education in the areas of:
    - A. Mental health services;
    - B. Social skills;

- C. Task completion;
  - D. Functional communication;
  - E. Pragmatics;
  - F. Math fluency;
  - G. Reading fluency;
  - H. Attendance;
  - I. Visual/spatial deficits; and
  - J. Behavioral problems.
- iv. An order that the District recommend Falcon Ridge Ranch to the Washington Department of Education for inclusion on the list of non-public schools (NPS);
  - v. And/or other equitable remedies, as appropriate.

### FINDINGS OF FACT

#### Background.

1. The Parents adopted the Student when she was five years old. (Father, Tr. 582) The Parents also have a biological daughter, three other adopted daughters, and are the legal guardians of a fifth girl. (Mother, Tr. 763) These girls ranged in age from 7 through 20 years old at the time of the due process hearing. *Id.*

2. The District served the Student under a 504 plan beginning in the first grade. (Mother, Tr. 770) The Student was first determined eligible for special education and related services under the Health Impaired category during third grade. Exhibit P8, pages 15-21.

3. At the time of the due process hearing, the Student was 14 years old and attending Falcon Ridge Ranch (Falcon Ridge), a private school located outside Washington State. Had she remained in the District and continued to progress from grade to grade each year, she would have been in ninth grade at the time of the hearing.

1. At the time of the due process hearing, the Student was 14 years old and attending a private school, Falcon Ridge Ranch, located outside Washington State. Had she remained in the District and continued to progress from grade to grade each year, she would have been in the ninth grade at the time of the hearing.

#### Surprise Lake Middle School.

2. The Student attended Surprise Lake Middle School (Surprise Lake) for the sixth and a portion of the seventh grade during the 2010-2011 and 2011-2012 school years.

3. The Parents had the Student evaluated at the University of Washington Fetal Alcohol Syndrome Diagnostic and Prevention Network Clinic in March 2011. Exhibits D3, P1. The evaluation resulted in a medical report dated April 1, 2011 (the UW report). Exhibits D3, P1.

4. The District conducted a triennial evaluation of the Student in May 2011. Exhibits D4, P8, pages 1-13. The District considered the UW report in its reevaluation. *Id.*

5. The reevaluation included a communication evaluation. Exhibits D4, pages 7-8; P8, pages 7-8. Based on the results of the evaluation, it was concluded that the Student did not qualify for direct communication services at that time. Exhibits D4, page 8; P8, page 8. Nonetheless, it was determined that she would benefit from consultative communication services to address her "social/pragmatic deficits." *Id.*

6. The reevaluation included observation of the Student in class. Exhibits D4, page 3; P8, page 3. She demonstrated on-task behavior during a science class approximately 50% of the time, and on-task behavior for only 15% during the following class. *Id.*

7. One of the assessments administered was the Woodcock Johnson Psychoeducational Battery – Third Edition (WJ-III). Exhibits D4, page 4; P8, page 4. The Student received the following standard scores:

Basic Reading Skills	88
Letter-Word Identification	85
Word Attack	92
Reading Fluency	92
Reading Comprehension	93
Passage Comprehension	95
Reading Vocabulary	92
Math Calculation Skills	89
Calculation	92
Math Fluency	86
Math Reasoning	89
Applied Problems	88
Quantitative Concepts	91
Written Expression	98
Writing Fluency	102
Writing Sample	92

Exhibits D4, pages 4-5; P8, pages 4-5.

8. The 2011 reevaluation noted that the Behavior Assessment System for Children–Second Edition (BASC-2) was used to assess the Student's social skills, emotional adjustment, and behavior as part of her 2008 evaluation. Exhibits D4, page 5; P8, page 5. The teacher questionnaires in 2008 identified clinically significant concerns with the Student's hyperactivity, anxiety, depression, somatization, atypicality, learning problems, and functional communication, as well as at-risk concerns with the Student's withdrawal, attention problems, adaptability, and study skills. Exhibits D4, pages 5-6; P8, pages 5-6.

9. As part of the reevaluation, the Self-Report of Personality (SRP) was administered to assess the Student's functioning. Exhibits D4, page 6; P8, page 6. Items of concern included the Student's attitude to school, attitude to teachers, depression, sense of inadequacy, attention problems, self-esteem, and self-reliance. Exhibits D4, page 7; P8, page 7. Critical items included the following: nobody ever listens to me, I sometimes want to hurt myself, I just don't care anymore, no one understands me sometimes, I often hate school, I sometimes feel sad, I

sometimes feel like life is getting worse and worse, I sometimes hear voices in my head that no one else can hear, and people almost always make fun of me. *Id.*

10. Kadee Tuttle, the school psychologist conducting the SRP, asked the Student about these items and determined that most of her responses sounded like “teenage angst,” such as her Parents don’t listen, and her sisters are mean. *Id.* She followed up on some of the more concerning statements and learned that the Student did not have a plan to harm herself and that the Student had misunderstood the statement about hearing voices. *Id.*; Tuttle testimony.

11. The reevaluation noted that the Student’s mood fluctuated tremendously on a day-to-day basis, and appeared somewhat related to medication. Exhibits D4, page 7; P8, page 7. On some days when she was especially unfocused and disruptive, the Student would admit she had not taken her medication. *Id.* On other days, she was focused, hard-working, and contributed with pertinent information to class discussions. *Id.* She was also described as sometimes being “clingy,” meaning she needed a lot of reassurance and praise and followed the teacher around the room. Other times she was described as “sleepy,” “tangential,” meaning raising unrelated topics, and “weepy,” such as complaining about her relationships with siblings and peers. *Id.*

12. No functional behavioral analysis (FBA) was conducted as part of the reevaluation. Exhibits D4, P8.

13. Following the reevaluation, an annual IEP was developed for the Student on May 11, 2011. Exhibit D5. The IEP provided for specially designed instruction in reading, written language, math, social emotional/behavior, and study skills. *Id.* at 13. It also provided for 15 minutes of consultative communication services per month. *Id.* at 6, 13.

14. The IEP noted that the team concluded the Student’s least restrictive environment (LRE) might be in a general education class with para-professional support. Exhibit D5, page 5. It stated that, beginning the following school year, the Student would be given a four-week trial in a general education reading class with 20 minutes of para-educator support. *Id.*

15. Goals under the category of social/emotional/behavior included improving the organization of the Student’s binders, improving the Student’s ability to turn in her completed assignments when in small group instruction, improving her ability to stay on topic during a conversation or class discussion, increasing time on task, and increasing output as far as assignments completed. Exhibit D5, pages 6-7.

16. The IEP stated that the Student’s behavior impeded- her learning or that of others. Exhibit D5, page 7. Specifically, it stated that the Student had a tendency to wander during class and required clear expectations as to where to do her work as well as reminders to stay on task. *Id.*

17. The IEP was amended on December 6, 2011, during the Student’s seventh-grade year. Exhibit D6, page 1; P7, page 3. It was determined that, based on her current success in her trial placement in a general education language arts class, the placement would continue for the remainder of the current IEP. *Id.* Additionally, it was determined that the Student would be best served in a special education reading class, rather than a general education reading class. *Id.*



18. In January 2012, the IEP was amended again, reducing the Student's minutes of social/emotional instruction from 47 minutes per day every day to ten minutes per day. Exhibits D7, P7, pages 1-2. This change was made because of the Student's "overall success in both her general education and special education placements." *Id*

19. The District issued an IEP progress report for the Student in February 2012. Exhibit D8. It showed completion or progress toward completion of each of the Student's goals, including the social/emotional/behavior goals described above. *Id*.

20. On May 2, 2012, an annual IEP was developed for the Student. Exhibits D10, P6. The IEP provided for specially designed instruction in reading, written language, math, "social emotional/behavior," and study skills. Exhibit D10, page 12; P6.

21. The IEP team determined that, because of the Student's "lack of self-confidence and her need for reassurance," it would be best for the Student to continue her general education placement through the end of her seventh-grade year, and then return to a special education reading class in eighth grade when she would progress to Columbia Junior High School (Columbia). Exhibits D10, page 3; P6.

22. The PWN issued regarding the IEP stated that the team had agreed that the Student would continue her general education placement in writing and elective general education reading through the remainder of the school year, and then transition back to a special education reading/writing class for her eighth-grade year at Columbia. Exhibits D10, page 16; P4, page 17. It stated the team had considered keeping the Student in a general education placement for writing, but decided she would be better served in a resource room for eighth grade "due to her high social/emotional needs." *Id*.

23. With respect to communications, the IEP stated the following:

[The Student] was evaluated in the area of communication in April of 2011. The results of testing indicated average to below average receptive and expressive language skills. [The Student's] overall scores in language and social language development fell above the criterion cut off for qualification. Based on these results, [the Student] no longer qualified for specially designed instruction in the area of Communication. While [the Student] did not qualify for direct services, she was allotted 15 minutes per month of SLP consultation to problem solve any communication issues with her teachers. [The Student's] teacher(s) have not noted any concern regardin [sic] difficultlies [sic] with her communication skills. They do not feel that additional SLP consultation is warranted. The SLP will be available for consultation on an "as needed" basis, if there are communication concerns that arise, however no direct minutes will be allotted for this indirect service.

Exhibits D10, pages 5-6; P6.

24. With respect to the Student's present levels of educational performance related to her social, emotional, and behavioral needs, the May 2012 IEP stated the following:

Since [the Student] has stopped receiving 47 minutes daily of social emotional instruction in the resource room, she has continued to demonstrate overall success in special education and general education classes. Her parents report a change in her medication and they feel that this is contributing to her improvement in behavior.

[The Student's] moods can still fluctuate tremendously on a daily basis and this can affect her class work. Most days she is focused and working hard, however there are other days in which she cannot focus, is disruptive and very needy. She will cling to staff members and follow them around the room or area. These behaviors tend to increase when [the Student] is challenged academically or asked to work/perform independently.

[The Student] will still occasionally struggle to stay on topic during class discussions or during conversations with peers, however her ability to stay on topic has increased dramatically since last year at this time.

Organizing her work materials is still challenging for [the Student]. Her papers are often scattered and she has trouble finding her projects that are in progress. [The Student's] overall work turn-in percentage is high and her grades are all mostly Cs and Bs so this indicates that while still disorganized, [the Student] is finding a system that is working for her.

[The Student's] Health Impairment (HI) makes it extremely difficult for her to focus on her schoolwork and to organize her materials.

Exhibits D10, page 5; P6.

25. The May 2012 IEP provided for five minutes of social/emotional/behavioral instruction per day, five days per week, to be provided by the special education teacher for the remainder of the seventh-grade year, and ten minutes of instruction five days per week for the eighth-grade year. Exhibits D10, page 12; P6. There is one IEP goal in this area: to improve the Student's ability to stay on topic during a conversation or class discussion, from being on topic 50% of the time to 80% of the time. *Id.*

26. The IEP also contained two study skills goals to address the issues identified in the present levels of performance under social, emotional, and behavioral. Exhibits D10, pages 5-6; P6. One was to increase her ability to work independently from 30% to 70% of work completed without teacher guidance, and the other was to increase time on task from 50% to 80% of class time on task. *Id.* The IEP provided for five minutes of study skills instruction per day, five days per week, to be provided by the special education teacher. Exhibits D10, page 12; P6.

27. As in the 2011 IEP, the 2012 IEP contained a statement that the Student's behavior impeded her learning or that of others. Exhibit D10, page 7; P6. Again, it specifically noted that she had a tendency to wander and required clear expectations as to where to do her work and reminders to stay on task. *Id.*

28. The Student's Sister, who is in the same grade, observed that the Student was rude to a girl on the bus and that she printed out inappropriate song lyrics at lunch. (Sister, Tr. 530). The Sister was aware that the Student had lost her computer privileges at school after using them inappropriately. (Sister, Tr. 531) She was also aware that the Student "snuck off with her boyfriend and skipped class. (Sister, Tr. 530)

29. While at Surprise Lake in the seventh grade, the Student received the following discipline. Exhibits D64, page 1; P11, page 3. She received a warning for eating on the bus. *Id.* She received lunch detention three times: once for having another student forge a bus note for her, once for excessive tardies, and once for using inappropriate language in her school email account. *Id.* She was also suspended from her school email account for a month for that behavior. *Id.* She twice received after-school detention: once for failing to complete work and once for skipping a class and hiding in an elevator. *Id.* Amy Mittelstaedt, the assistant principal at Surprise Lake observed that this behavior is not unusual for a middle school student. (Mittelstaedt, Tr. 734, 737)

30. Near the end of the Student's seventh-grade year, the Mother discovered that the Student had written a detailed plan for killing her Parents and siblings in her journal. (Mother, Tr. 773-74) The Student also stated in her journal that she hated her life and wanted to do drugs and die. (Mother, Tr. 775)

31. The Parents consulted their medical insurance provider, which ultimately recommended that the Parents take the Student to Aspen Institute for Behavioral Assessment (Aspen) in Utah. (Mother, Tr. 777)

Aspen Institute and Falcon Ridge Ranch.

32. The Student was admitted to Aspen on May 30, 2012. Exhibit D20, page 2. The Parents' medical insurance paid for the majority of Aspen's evaluation. *Id.*

33. Aspen generated a lengthy multidisciplinary report (Aspen report). Exhibit D20. The report identified the following diagnoses as of the time of her discharge:

- Major Depressive Disorder
- Rule out Dysthymic Disorder
- Rule out Depressive Disorder not otherwise specified
- Rule out Bipolar Disorder not otherwise specified
- Anxiety Disorder not otherwise specified
- Rule out Generalized Anxiety Disorder
- Rule out Posttraumatic Stress Disorder
- Reactive Attachment Disorder
- Learning Disorder not otherwise specified
- Attention-Deficit/Hyperactivity Disorder, combined type
- Rule out Oppositional Defiant Disorder
- Rule out a Cognitive Disorder due to fetal alcohol exposure

Exhibit D20, page 37.

34. It was determined that the Student's global assessment of functioning (GAF) soon after she entered Aspen was 38 and that her highest GAF in the past year had been 65-70. Exhibit D10, page 7. A GAF of 38 represents seriously impaired functioning. (Dr. Sulzbacher testimony; Dr. Gardiner testimony)

35. As part of the Aspen evaluation, a WJ-III was administered soon after the Student arrived, resulting in the following standard scores for the Student:

<b>Broad Reading</b>	83
Letter-Word Identification	88
Reading Fluency	88
Passage Comprehension	78
<b>Broad Written Language</b>	72
Spelling	84
Writing Fluency	91
Writing Samples	55
<b>Broad Math</b>	66
Calculation	79
Math Fluency	66
Applied Problems	70
<b>Math Calculation Skills</b>	71
<b>Written Expression</b>	70
<b>Academic Fluency</b>	80

Exhibit D20, pages 14-15; Gardiner testimony.

36. Dr. Sulzbacher opined that the results of academic testing of an individual with the Student's diagnoses should be reviewed with caution, and that diagnostic testing should be done to determine whether the performance is affected by the underlying diagnoses. (Sulzbacher testimony) This opinion was not controverted by any other expert. Moreover, both Dr. Sulzbacher and Dr. Gardiner agreed that changes such as moving from a student's home and neighborhood school to a residential facility are particularly difficult for individuals with reactive attachment disorder. (Sulzbacher testimony; Gardiner testimony) The ALJ accepts Dr. Sulzbacher's expert opinion and views the Student's Aspen WJ-III scores with caution because of her diagnoses, her recent move to a residential placement, and her very low G.A.F. score at the time.

37. The Aspen report ultimately recommended that the Student be placed in a residential treatment program. Exhibit D20, page 39; Mother, Tr. 778.

38. The Student was discharged from Aspen on June 30, 2012. Exhibit D20, page 2. Directly after the Student's discharge from Aspen, the Parents placed her at Falcon Ridge Ranch, a residential treatment program in Utah. (Mother, Tr. 778; Father, Tr. 695) The Falcon Ridge program included individual and family counseling, equine therapy, and academic classes.

39. The Mother notified Columbia in July 2012 that the Student was attending Falcon Ridge and would be there for six months. Exhibits D21, P3, page 1. She stated that she would contact the school in January to enroll her and talk about her IEP. *Id.*

40. The Parents' medical insurance paid for six months at Falcon Ridge. (Mother, Tr. 782) When the six months was up, the Student returned home. *Id.*

Columbia Junior High.

41. The Parents met with Brooks Clergy, a counselor at Columbia before the Student returned to school. (Father, Tr. 698) They talked with him about the Falcon Ridge program and the concerns presented by the staff there, and informed him of her academic and behavioral issues. (Father, Tr. 698)

42. Nancy Fitta, the District's director of special programs, reviewed the Student's most recent District evaluation and IEP and determined that they were still current. (Fitta testimony) She also confirmed that no IEP had been implemented at Falcon Ridge. *Id.* She notified staff at Columbia that the District would reinstate the services in the May 2012 IEP. Exhibits D24, P3, page 3. Ms. Fitta informed the school staff that the Parents had provided an evaluation conducted while the Student was out of the District. *Id.* She stated the IEP team could discuss whether anything should be formally added to the District's evaluation by revision or whether it would want to conduct a new reevaluation. *Id.* She suggested that the team see how the Student settles in before deciding the proper course of action on considering the outside evaluation and any additional testing that might be necessary. *Id.*

43. The Student started attending classes at Columbia on February 4, 2013. Exhibit D27.

44. On February 6, 2013, District staff met to discuss the Student. Exhibit D28. In attendance were Joanie Banks, special education teacher; Melissa Brownell, art teacher; Ms. Fitta; Amber Barnes, school psychologist; Lynn Marchiano, special education teacher; Cindy Swenson, science teacher; Andrew Michel, social studies teacher, and Shellae Hobbs (formerly Eugley), school nurse. Exhibit D29, page 3. The Parents were not invited and did not attend.

45. At the meeting, the teachers were introduced to the Student's IEP and her needs. (Fitta testimony; Barnes testimony) Ms. Barnes also went through the diagnoses in the Aspen report and discussed how they might affect the Student. (Barnes testimony)

46. Ms. Swenson, the science teacher, communicated to Ms. Barnes and Ms. Banks on February 14 and 20, 2013, that the Student was struggling in her class. Ms. Swenson expressed that the Student could not do the work, and had to be watched because she "picks" up things that do not belong to her. Exhibit P3, pages 4, 5. She also stated that the Student had told her that she was overwhelmed in the hallway during passing time. Exhibit P3, page 5.

47. On or about February 20, 2013, Ms. Banks, one of the Student's special education teachers, called the Mother to express her concerns about the Student's behavior in her class and in the hallway. (Mother, Tr. 784, 860) The Mother requested an IEP meeting to talk about these issues, and Ms. Banks agreed to schedule one. (Mother, Tr. 785, 860).

48. An IEP meeting was scheduled for February 27, 2013, in response to the Parent's request and to address the concerns raised by teachers. In attendance were the Parents, Ms. Fitta, Ms. Hobbs, Ms. Brownell, Mr. Michel, Assistant Principal Mark Robinson, Ms. Swenson, Ms. Banks, and Ms. Barnes. Exhibit D31; Barnes testimony.

49. Ms. Swenson discussed problems the Student was having in her science class, including the Student's need for modified assignments and her anxiety. (Mother, Tr. 791-92, 861) Ms. Brownell, the Student's art teacher, stated that the Student was doing well in her class. (Mother, Tr. 791-92)

50. Two representatives of Falcon Ridge, Lorneta Ferguson and Joette Hayden, participated in the meeting by phone at the Parents' request. (Mother, Tr. 795) Ms. Ferguson had been the Student's counselor there and Ms. Hayden was the academic director. (Mother, Tr. 796) Team members asked them questions about the program and what worked for the Student. (Mother, Tr. 795) Additionally, the Parents shared a document about reactive detachment disorder with the District members of the team. (Mother, Tr. 702)

51. Prior to the meeting, District staff had prepared a draft functional behavioral assessment (FBA) for the Student. Exhibits D32, P4, pages 9-10. The draft FBA identified getting upset and yelling or swearing at other students and taking school supplies from classes as the behavioral concerns. Exhibit D32, page 1. The draft FBA determined that a behavioral intervention plan (BIP) was not required because she was so new to the school that more data was needed before a BIP would be implemented. Exhibit D32, page 1A. Because of the length of time spent at the meeting talking with the representatives from Falcon Ridge, there was no time to discuss the draft FBA. (Fitta testimony)

52. Following the meeting, Ms. Swenson prepared a behavior chart to help track the Student's behavior in her science class. Exhibit D33. She shared it with other teachers by email in case they wanted to use or adapt it in their classes. *Id.*

53. Also following the meeting, the Mother requested of Ms. Fitta that Ms. Barnes not work with the Student or her sibling. Exhibits D34, P3, page 6. The Mother believed Ms. Barnes was disrespectful to her and minimized her concerns about the Student and her sister. (Mother, Tr. 867-68)

54. The Parents were frustrated that a number of their concerns had not been addressed at the meeting on February 27, 2013. (Mother, Tr. 799) On March 3, 2013, they sent an email to Ms. Fitta and Assistant Principal Robinson, asking a number of questions about the Student's education. Exhibit D3, page 8. The Parents' questions included why the results of the Aspen evaluation had not been implemented, why her current IEP hadn't been implemented since her return, why the Parents were not invited to the first staff meeting involving the Student, and several questions about what took place at the meeting on February 27, 2014. *Id.*

55. Ms. Fitta scheduled a meeting "to discuss the independent evaluation documents [the Parents] provided" and "to determine best next steps in supporting her needs through her IEP." Ms. Fitta invited Ms. Tuttle and the Parents. Exhibits D36, P4, page 8. Ms. Tuttle was invited because she was going to take over for Ms. Barnes as the school psychologist for the Student and her sister. (Fitta testimony)

56. The meeting was held on March 8, 2013, with the Mother, Ms. Fitta, and Ms. Tuttle attending. Exhibit D38. At the meeting, the Mother signed a consent form for the District to evaluate the Student. Exhibits D37, P4, page 6. The consent form stated that the Student would be reevaluated to "update her special education evaluation (to include information from an IEE provided to the district by the family) and to determine whether she requires more time in

program.” *Id.* Additional testing would be provided in the areas of reading, math, written language, health and development, social, emotional and behavioral, communication, and organizational/study skills. *Id.* The Parent requested and the District agreed to fund an IEE regarding the Student’s communication. (Mother, Tr. 804) Additionally, Ms. Fitta talked about a number of possibilities for the Student such as increasing the amount of special education, providing a paraeducator to walk with the Student between classes and at lunch, and having two classes with the same teacher. (Mother, Tr. 801) Ms. Fitta offered the Mother a copy of the procedural safeguards at this meeting, but she declined to accept it. (Fitta testimony)

57. That same day, the Student verbally threatened to bring a gun to school and shoot another student or to “shoot up” the school. Exhibits D39; P11, pages 7-12.

58. Valarie Palumbo, the acting principal at Columbia that day, notified that Parents that the Student was emergency expelled and would have to be picked up from school. (Mother, Tr. 805) Ms. Palumbo did not explain whether the District would continue to educate the Student if she were expelled, or say anything about a manifestation determination meeting. (Mother, Tr. 805-06; Father, Tr. 710) Nor did the Parents ask about these subjects. (Mother testimony; Father, Tr. 720) Ms. Palumbo told them that Assistant Principal Robinson would be in touch with them when he returned to school the following week. (Palumbo, Tr. 845; Father, Tr. 720) The Parents believed that they would be responsible to educate the Student because she had been expelled. (Mother, Tr. 869; Father, Tr. 710, 716)

59. An emergency expulsion is an action taken by school administration when there is a threat to student safety or a significant disruption of the educational process. (Robinson, Tr. 412) It is a temporary action to ensure student safety while the District investigates the alleged misconduct and determines the best course of action. *Id.* at 413-14. Emergency expulsions are typically converted to another form of discipline, generally a short-term or a long-term suspension. *Id.* at 413. A short-term suspension is ten or fewer school days. *Id.* at 425. A long-term suspension is more than ten school days. *Id.* at 426.

60. March 8, 2013, was the last day the Student attended school at Columbia. Considering holidays and mid-winter break, there were 22 school days during the time of the Student’s attendance there. Exhibit D65, page 1.

61. While the Student was at Columbia, she experienced behavioral issues in Ms. Swenson’s science class and Ms. Banks’s special education class. (Swenson testimony; Banks testimony) Ms. Swenson observed that the Student wandered in her classroom, was sometimes off-task, and had taken small items from her desk. (Swenson testimony) Ms. Swenson found this behavior improved when she was able to seat the Student near her. (Swenson testimony) Additionally, she had implemented a behavior checklist soon before the Student left Columbia. (Swenson testimony) Ms. Banks observed the behavior described in the draft FBA – the Student getting upset, yelling, and swearing at other students. (Banks, Tr. 152) Sometimes these were actions in response to a certain boy not responding to the Student. (Banks, Tr. 156) Ms. Banks talked to the boy and told him he needed to answer the Student when she spoke to him. (Banks, Tr. 156) The Student also wandered some in Ms. Banks’s classroom. (Banks, Tr. 155) Ms. Banks assigned her a seat in the back of the room and let her walk around little bit or “wiggle more” if she needed to. (Banks, Tr. 155) The threat leading to the emergency expulsion took place in Ms. Banks’s class. (Banks, Tr. 178) The Student did not experience significant behavior problems or off-task behavior in her other classes. (Testimony of Columbia teachers)

62. The Student had not received any discipline during her eighth-grade year before the emergency expulsion because of her threat to another student Exhibits D64, pages 3-4; P11, pages 1-2.

63. The morning after the Student was emergency expelled, she reported to the Parents that she had "self-harmed" and that she was having strong thoughts about killing herself. (Mother, Tr. 806) The Mother called the Student's therapist, who recommended that she call 911. (Mother, Tr. 807) The police interviewed the Student and then had her transported to a hospital by ambulance, where she was placed under suicide watch. (Mother, Tr. 807; Father, Tr. 712) At the end of the day, the Student reported that she no longer wanted to kill herself and she was released from the hospital because she did not consent to stay. (Mother, Tr. 807; Father, Tr. 712-13)

#### Return to Falcon Ridge.

64. The Mother spoke with someone at Falcon Ridge, who recommended that the Student return. (Mother, Tr. 808) The Parents' medical insurance provider agreed to cover another six months there at 90% of the cost. (Mother, Tr. 808)

65. That same day, March 9, 2013, Ms. Fitta sent an email to Ms. Banks and Assistant Principal Robinson noting that it had become clear from the meeting the day before that the District should consider increasing the Student's time in special education. Exhibits D40, P3, pages 10-11. Ms. Fitta identified a number of needs and offered some suggestions for interim actions that could be taken while the team was waiting for the reevaluation to be conducted, including having the Student stay with one teacher for two periods to reduce transitions, providing paraeducator support in class and between classes, and providing an alternative or supervised lunch. *Id.*

66. Assistant Principal Robinson sent the Parents a letter dated March 11, 2013, stating that the Student had been placed on emergency expulsion for threatening to shoot another student with a gun and could not attend school until the matter had been resolved. Exhibits D41, P4, pages 4-5. The letter explained the Parents' right to request a hearing to contest the expulsion. It did not state when the Student could return to school or mention the District's potential obligations to conduct a manifestation determination meeting or educate the Student while she was expelled. *Id.*

67. Also on March 11, 2013, the Mother notified Ms. Fitta by email that the Parents were taking the Student back to Falcon Ridge the next morning for six months and then the Parents would decide what to do from there. Exhibit D42. The Mother stated in the email that the Student had harmed herself on the previous Saturday and told the Parents that she wanted to kill herself. *Id.* The Mother did not ask any questions about the emergency expulsion in the email and did not request that the District pay for the Student's placement at Falcon Ridge. *Id.*

68. On March 12, 2013, the Mother returned the Student to Falcon Ridge. (Mother, Tr. 850)

69. The Mother called Assistant Principal Robinson from the airport and told him she was on the way back to Falcon Ridge with the Student. (Robinson, Tr. 428) Since the Student would no longer be at Columbia for him to continue his investigation and because students sometimes



have difficulty enrolling in other schools because of their discipline status, Mr. Robinson told the Mother that he would convert the emergency expulsion to a short-term suspension. (Robinson, Tr. 416) The Mother did not ask Mr. Robinson any questions during this call about the process of returning the Student to Columbia from her emergency suspension. (Robinson, Tr. 429)

70. The District provided a Prior Written Notice (PWN) to the Parents dated March 12, 2013, stating that it had initiated a special education reevaluation for the Student on March 8, 2013. Exhibit D45. It noted that the Parents had initiated the reevaluation. It stated that the Student had recently returned home after nine months of residential treatment, that her behavior at home was not significantly improved, that she was having ongoing social difficulties with other students, that she had stolen petty items from two teachers, and had recently threatened a student with a gun, resulting in an emergency suspension. *Id.* The notice further stated that the team also discussed schedule options to reduce the number of transitions in the Student's day as well as increasing supervision in unstructured settings, such as lunch and passing periods, and that these changes should be in effect when the Student returns. *Id.*

71. Assistant Principal Robinson sent the Parents a second letter, this one dated March 13, 2013. Exhibits D46, P4, page 3. It stated that her emergency expulsion had been converted to a short-term suspension "so [the Student] could enroll in her previous school – Falcon Ridge Ranch." *Id.* The letter states that future enrollment "may be contingent upon a re-entry conference and threat assessment to assure personal and school safety." *Id.*

72. The District withdrew the Student from school based on Assistant Principal Robinson's telephone conversation with the Mother. Exhibit D47.

73. Ms. Tuttle sent the Parents a PWN dated March 18, 2013, informing them that the District was terminating the reevaluation for the Student initiated on March 8, 2014, because the Parents had withdrawn the Student from the District. Exhibits D48, P4, page 2.

74. Ms. Fitta sent the Mother a letter dated April 26, 2013, confirming that the District had agreed at the meeting on March 8, 2013, to fund an IEE for the Student in the area of speech and language. Exhibits D49, P4, page 1.

75. In May 2013, the Parents and Falcon Ridge began communicating with Ms. Fitta in an attempt to see if the District would fund the Student's placement at Falcon Ridge when the second round of insurance coverage ran out. Ultimately, Ms. Fitta informed the Parents that, because the Student was not a resident of the District while she was living in Utah, she would need to come home for an evaluation by the District in order to determine if a residential placement was appropriate for her. See, e.g., Exhibits D58, P3, pages 32-33.

76. Ms. Fitta also provided the Mother with some possible resources for the family to consider if the Student were to return to Washington. Exhibits D51, P3, pages 20-21.

77. When the second six months of insurance coverage ran out, Falcon Ridge allowed the Student to stay without payment because the Student's treatment team believed that she was a threat to herself or others. (Mother, Tr. 813)

Procedural safeguards.

78. The District provided procedural safeguards to the Parents on an annual basis. They were mailed to and received by the family in September 2011, September 2012, and February 2013. Exhibit D68. (Lesley testimony; Mother's testimony)

Parents' request for documentation from the District.

79. In approximately August 2013, the Parents requested all educational records concerning the Student from the District, including her cumulative file, special education file, and health file, and emails containing the Mother's or Student's names. (Fitta, Tr. 1361-62) The Parents later added that they would like personal notes and phone logs. *Id.* at 1362. The District provided a very large stack of documents in response to this request within two and one-half to three weeks. *Id.* at 1363. The District provided a second batch of documents approximately two weeks later containing the responses to the second request. *Id.* There is no evidence that any IEP meeting, resolution session, or hearing was scheduled to take place during the time the District gathered the information.

80. A few additional documents were found later, including some health reports that had not been properly copied and documents that had been misfiled. (Fitta testimony, Tr. 1363 and elsewhere) These documents were disclosed as they were found. *Id.* at 1364.

81. The Parents requested test protocols used for the 2011 reevaluation of the Student, but the District declined to provide these, citing copyright laws. (Fitta, Tr. 1364-65) The District provided the scoring sheets for the tests, and offered to provide the protocols to a person properly credentialed to administer and interpret the test. *Id.* at 1365. There is no evidence as to whether these test protocols contained any identifying information about the Student.

Opinion evidence regarding need for private placement.

82. The Parents provided the testimony of numerous witnesses who opined that the Student should remain in a residential placement. Most of these opinions focused on the safety of the Student and others. Hayden, Tr. 452 ("to sum it up, we did not feel like she was safe . . . that she couldn't be safe to herself and others around her"); Bell, Tr. 623 (most of the reasons are related to safety). Others focused on her ability to be successful. See, e.g., Hayden, Tr. 464. Dr. Gardiner stated that the Student needed ongoing residential treatment for her psychological problems and psychiatric illnesses. (Gardiner, Tr. 926.) He explained that she had not been doing well with treatment on an outpatient basis at home and he believed she needed more intensive treatment in a residential setting. *Id.* His viewpoint was "primarily from a psychiatric or mental health viewpoint" but he also took into account that a more intensive academic structure might also benefit her to the extent she had been struggling academically. *Id.*

**CONCLUSIONS OF LAW**Jurisdiction and burden of proof.

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA),

Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the Parents are seeking relief in this case, they have the burden of proof.

#### The IDEA.

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

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

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

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

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act.

*Rowley*, 458 U.S. at 188-189.

Allegedly failing to provide all discipline records, including incident reports and assessment protocols, requested by the Parents on or after August 15, 2013.

5. Districts must permit parents of students eligible for special education to inspect and review any "education records relating to the student which are collected, maintained, or used by the district or other public agency." WAC 392-172A-05190(1). The District must comply with

requests “promptly and before any meeting regarding an IEP or hearing or resolution session.” *Id.* The District shall respond, in no case, more than 45 calendar days after the request is made. *Id.* See also 34 C.F.R. § 300.613.

6. “Education records” means the type of records covered under the definition of “education records” in the Family Educational Rights and Privacy Act (FERPA). WAC 392-172A-05180; 34 C.F.R. § 300.611. Under FERPA regulations, education records are those directly related to a student and maintained by an education agency and not specifically excluded. 34 C.F.R. §99.3.

7. “A test protocol is not generally an education record unless it includes the student’s name or other personally identifying information and the student’s answers to the questions in the test protocol.” *Letter to Anonymous*, 111 LRP 18281 (FPCO 2010). However, test protocols containing personally identifiable information are education records that Parents are entitled to inspect and review. *School Dist. U-46*, 45 IDELR 74 (SEA IL 2005).

8. Because there is no evidence in the record as to whether the test protocols contained identifying information about the Student, the Parents have not met their burden of proving the District violated the IDEA by failing to provide the protocols.

9. Because the District provided the bulk of the requested documents within five weeks (which is approximately 35 calendar days) of the Parents’ request and there is no evidence of an IEP meeting, resolution meeting, or hearing during that time period, the Parents have not met their burden of proving a violation of the IDEA with respect to the timing of the production of those documents.

10. Although the issue statement refers to a failure to provide “incident reports,” there is no record evidence that incident reports existed or that the District failed to provide them. Accordingly, no violation is found with respect to incident reports.

11. The District did produce a few documents more than 45 days after the Parents’ request because those documents had inadvertently not been located before. Because the right to inspect and review education records is one of the procedural rights available to parents, the failure to timely provide that right is a procedural violation.

12. Not all procedural violations result in the denial of FAPE. *L.M. v. Capistrano Unified Sch. Dist.*, 538 F.3d 1261 (9<sup>th</sup> Cir. 2008). Procedural inadequacies constitute a denial of FAPE only when they impede a student’s right to FAPE, cause a loss of educational benefit, or significantly impede the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE. WAC 392-172A-05105(2). See also 34 CFR § 300.513. As the Student was not attending school in the District at the time of the request, the District’s failure to timely provide a small number of documents did not result in a loss of educational opportunity to the Student or infringe on the Parents’ opportunity to participate in the IEP formation process. Accordingly, there is no violation of FAPE.

The Student's alleged academic and behavioral regression.*Academic regression*

13. The Parents argue that the Student regressed academically between 2011 and 2012, and that this regression supports a conclusion the Student was denied FAPE. The Parents' evidence of this regression are the Student's two sets of standard scores<sup>2</sup> on the WJ-III, one administered by the District in 2011, and the second administered while the Student was at Aspen in 2012.

14. There are a number of problems with this argument. One, it is not clear from the record how the Parents determined that certain subtests used in the two assessments were equivalent. For example, the Parents compare scores for a category they call "Broad Math." Parents' Brief at 10. The Aspen report contained a score for a category with this name but the District evaluation did not. The Parents appear to have used the score from a District category entitled "Math Calculation Skills" to compare to the Aspen "Broad Math" score. The Parents then used the same District "Math Calculation Skills" score to compare with a score in a category in the Aspen report entitled "Math Calculation Skills." There is no evidence in the record to explain whether the Parents are, in each instance, comparing scores for similar subtests.

15. Moreover, the ALJ has accepted Dr. Sulzbacher's opinion that the results of standardized academic testing for an individual with the Student's diagnoses be reviewed with caution because of the possibility that the performance is affected by the underlying diagnoses. Additionally, both Dr. Sulzbacher and Dr. Gardiner, opined that changes such as moving from home and a neighborhood school to a residential facility are particularly difficult for individuals, like the Student, with reactive attachment disorder. This is supported by the Student's GAF score of 38 at the time of her admission at Aspen, near when the testing took place. This score indicates seriously impaired functioning and is significantly lower than earlier in the same year. For these reasons, the Student's lower WJ-III scores obtained at Aspen do not demonstrate that the Student regressed academically or failed to make progress. Moreover, the District's progress reports and IEPs demonstrate that the Student made progress on her IEP goals.

16. With respect to this issue, the Parents also point to discussions once the Student entered Columbia about her struggles in her science class and the eventual determination that her schedule should be changed pending a reevaluation. Parents' Brief at 15-16, 18. But the Parents do not explain how the Student's struggles at Columbia or discussions about them demonstrate academic regression. The Student's experiences at Columbia and the District's actions once she was there are discussed with respect to a number of other issues below.

17. The Parents have not proven that the Student regressed academically, or that any such regression was the result of the District violating the IDEA or denying the Student FAPE.

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<sup>2</sup> The Parents also argue that the "percentiles" are lower, but there is no record evidence about where they obtained the percentiles they provided in connection with the assessments administered by the District. For that reason, only the standard scores are considered.

*Behavioral regression*

18. The Parents argue that the Student's behaviors regressed from the time of the District's May 2011 reevaluation to the time of the May 2012 IEP. In support of this argument, they cite the goals and comments in the May 2011 IEP. Parents' Brief at 19. But the progress reports under the 2011 IEP and statements in the 2012 IEP demonstrate that the Student completed or made progress on her 2011 behavioral goals, rather than regressed. As to the comments in the 2011 IEP about wandering in class, the Parents do not demonstrate that this behavior worsened after that IEP.

19. The Parents also compare the results of the Behavior Assessment System for Children (BASC-2) from the District's 2011 reevaluation to the results of the BASC-2 administered in 2012 when the Student was at Aspen. Parents' Brief at 19. They note that four areas of concern were identified by Aspen that had not been identified by the District. Because Aspen did not have any District teachers complete BASC-2 questionnaires, the results do not reflect the Student's behavior at the District and therefore do not demonstrate behavioral regression there.

20. The Parents also argue that the District should have recommended counseling or conducted an FBA based on reports the Student made as part of the May 2011 reevaluation. Parents' Brief at 20. Similarly, they note behaviors identified in the May 2012 IEP and argue that an FBA should have been conducted then. Parents' Brief at 20. But such statements in an IEP do not demonstrate behavioral regression without evidence of a lesser frequency of the behavior before the IEP or an increase in the behavior after the IEP. Moreover, the Parents did not allege a failure to provide counseling or an FBA as issues for the due process hearing.

21. The Parents also point to testimony by the Student's sister that the Student "snuck off with her boyfriend," skipped class, said "really rude stuff" to people and printed out inappropriate songs. Parents' Brief at 15. Because this behavior is not compared to behavior before or after the time period it occurred, it is not itself evidence of behavioral regression.

22. While the Student had a variety of behavior concerns, the Parents have not proven behavioral "regression" between the 2011 reevaluation and the 2012 IEP, or when the Student left school for Falcon Ridge the first time.

23. The Student's behavior at Columbia following her first residential placement and the District's actions with respect to it are addressed more specifically below and are not further considered here.

Allegedly failing to hold an individualized education program (IEP) meeting when the Student returned from her first placement at Falcon Ridge Ranch.

24. An IEP team must include the student's parents, at least one general education teacher, at least one special education teacher, a representative of the district, and an individual who can interpret the instructional implications of evaluation results. WAC 392-172A-03090; 34 CFR §300.321.

25. The meeting on February 27, 2013, included all the necessary participants, and the team discussed matters related to the Student's IEP. That no changes were made to the Student's IEP as a result of the meeting does not mean it was not an IEP team meeting. Thus, the District held an IEP team meeting soon after the Student returned from Falcon Ridge.

26. More specifically, the Parents appear to argue that an IEP team meeting should have been held and a new IEP created immediately upon the Student's return to school, considering the Aspen report and the Student's experiences at Aspen and Falcon Ridge.

27. IEPs must be revised, as appropriate, to address any lack of expected progress toward annual goals, the results of any reevaluations, information about the student provided by the parents, and the student's anticipated needs. WAC 392-172A-03110(3)(b); 34 CFR § 300.324.

28. The rule does not state how soon after receiving new information a district must review it and determine whether to modify the IEP so a rule of reasonableness is applied, taking into consideration a school district's calendar, the relative importance of the need in question, and what if any educational progress the student was making in the absence of that need being addressed. *Ellensburg School Dist.*, Cause No. 2013-SE-0032 (SEA WA 2013).

29. It is concluded that it was reasonable for the District to initially provide the services in its current IEP while it observed how the Student settled in to her new school and conducted a reevaluation. It would not have been reasonable for the District to wait indefinitely to revise the Student's IEP. Here, within 22 school days, the IEP team met to learn more about the Falcon Ridge program and its staff's recommendations and to discuss problems identified upon the Student's return to school and a reevaluation was initiated. The length of time under these circumstances was reasonable and does not violate the IDEA.

Allegedly failing to consider assessment results and other information from Aspen Institute and Falcon Ridge Ranch when the Student returned from her first placement at Falcon Ridge Ranch.

30. As discussed above, an IEP team must revise an IEP to address the result of any reevaluations and information provided by parents. WAC 392-172A-03110(3); 34 CFR § 300.324.

31. The IEP team received considerable information from Falcon Ridge at the IEP meeting on February 27, 2013, but had not yet at the time of the Student's withdrawal met again to consider whether to revise the IEP. Additionally, the District had, at the time of the Student's withdrawal, initiated a reevaluation that would have included a review of the Aspen report in conjunction with additional evaluations of the Student. As discussed above, this was a reasonable approach and the District was proceeding at a reasonable pace. Accordingly, the Parents have not proven a violation with respect to the failure to consider information from Aspen and Falcon Ridge.

Allegedly failing to provide an appropriate IEP for the Student when she returned from her first placement at Falcon Ridge Ranch.

32. The Parents' argument that the District failed to provide an appropriate IEP for the Student is primarily the same as the arguments presented in the previous two issues – that the IEP team

should have immediately implemented a new IEP and considered the Aspen report. As these arguments are addressed above, they are not considered further.

Allegedly failing to identify and address the Student's worsening behaviors after she returned from her first placement at Falcon Ridge Ranch.

33. The District did identify the Student's behavioral problems and began taking steps to address them. Ms. Swenson and Ms. Banks both identified issues in their classes, which became the subject of the draft FBA. Both teachers also used their own classroom management techniques to address the behaviors in the interim. Other behavioral problems, including the Student's problems during unstructured time, were identified in the March 8, 2013, meeting with Ms. Fitta. Plans were underway to provide temporary supports for the Student, such as a schedule change and more paraeducator assistance in the classroom and during unstructured time, while the reevaluation was being conducted. The District acted reasonably in identifying and beginning to address the Student's behavior in the short time period before she was withdrawn from the District.

Allegedly failing to conduct a manifestation determination meeting before expelling the Student.

34. A manifestation determination meeting must be held within ten school days of a "decision to change the placement" of a student eligible for special education because of a violation of a code of student conduct. WAC 392-172A-05145(5)(a); 34 CFR §300.530(e)(1).

35. A change of placement occurs when the removal is for more than ten consecutive school days or when the student has been subject to a series of removals that constitute a pattern and total more than ten school days in a school year. WAC 392-172A-05155(1); 34 CFR § 300.536.

36. Because the emergency expulsion was for an indefinite period of time that could have been (and ultimately was) for less than ten days, the decision to impose it was not a decision to change the Student's placement. Accordingly, the requirement to conduct a manifestation determination meeting was not triggered and the District's failure to hold such a meeting did not violate the IDEA.

Allegedly failing to provide procedural safeguards to the Parents at meetings and when the Student was expelled.

37. Districts must provide a copy of the procedural safeguards available to the parents of students eligible for special education one time each school year and upon the occurrence of certain events, including when a decision is made to remove a student for more than ten school days in a year and that removal constitutes a change of placement. WAC 392-172A-05015(1); 34 CFR §300.504. The other events triggering the requirement to provide procedural safeguards do not apply here and there is no requirement that Districts otherwise provide procedural safeguards at meetings. *Id.*

38. As set forth above, the decision to impose an emergency expulsion was not a decision to change the Student's placement. Accordingly, procedural safeguards were not required.



39. The Parents acknowledge that they received procedural safeguards at least once per year. Because none of the other events requiring a District to provide procedural safeguards took place, the Parents have failed to prove a violation of the IDEA in the respect.

Allegedly failing to hold an IEP meeting in March 2013 to determine what the Student's placement would be after her expulsion.

40. After a student has been removed from her current placement for a violation of student conduct rules for ten school days in the same school year, a district must provide "educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP." WAC 392-172A-05145(2)(b), (4)(a); 34 CFR §300.530(d).

41. Because the Student here was ultimately suspended for only two school days she was not removed from her educational placement for over ten days. Thus, the District had no obligation to provide educational services during a disciplinary removal and, therefore, no obligation to hold an IEP meeting to determine what services it would provide.

Allegedly failing to inform Parents of the risks of not being reimbursed for a unilateral private placement in an out-of-state residential facility.

42. The Parents have not cited and the ALJ has not located any requirement (other than to provide the procedural safeguards addressed above) that a district notify parents of any risks related to reimbursement for a unilateral placement in an out-of-state residential facility. Accordingly, the Parents have not proven a violation in this regard.

Allegedly failing to fund the Student's second placement at Falcon Ridge Ranch when the District offered no other placement for her and stated it would change the Student's expulsion to a suspension if she returned to Falcon Ridge Ranch.

43. The Parents appear to argue that the District is financially responsible for the Student's residential placement at Falcon Ridge because it left her with no District placement when it imposed the emergency expulsion. As discussed above, had the Student been removed for more than ten school days, the District would have been obligated to provide educational services. Thus, the Student would not have been without a placement.

44. The Parents also appear to argue that the District's conversion of the emergency expulsion to a two-day suspension because the Student was returning to Falcon Ridge somehow obligated the District to pay for the Falcon Ridge placement. The Parents had already informed the District they were returning the Student to Falcon Ridge and were on their way there when the District made the change. There is no evidence of any agreement on the part of the District to pay for Falcon Ridge.

45. Neither the emergency expulsion nor its conversion to a short-term suspension obligate the District to pay for the Student's placement at Falcon Ridge.

Allegedly failing to fund the Student's second placement at Falcon Ridge Ranch, including transportation.

46. A residential placement is only appropriate when it is "necessary to provide special education and related services." *Seattle Sch. Dist. v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996). A residential placement is "necessary," under Ninth Circuit law, when the "student is incapable of deriving educational benefit outside of a residential placement." *Ashland Sch. Dist. v. Parents of R.J.*, 588 F.3d 1004 (9th Cir. 2009). If a placement is a response to medical, social, or emotional problems . . . quite apart from the learning process," than it is not necessary under the IDEA. *Clovis Unified Sch. Dist. v. Cal. Ofc. of Admin. Hearings*, 903 F.2d 635 (9th Cir. 1990).

47. When a student's "primary" problems are educationally related, residential placements are deemed necessary. See *San Diego v. Cal. Special Ed. Hearing Ofc.*, 93 F.3d 1458 (9th Cir. 1996). If, however, the services provided are not "primarily provided to allow the student to benefit from his education" or when it is "mostly" a student's "risky behaviors" away from school that are the issue, a residential placement is not necessary. See, e.g., *Clovis*, 903 F.2d at 645; *Ashland (R.J.)*, 588 F.3d at 1010.

48. In determining the purpose of a placement, courts will consider the timing of the placement. See *Forest Grove Sch. Dist. v. T.A.*, 638 F.3d 1234 (9th Cir. 2011)(parents placed student after escalating drug abuse and behavioral problems and directly after he tried to run away from home).

49. Additionally, districts are authorized to contract with nonpublic agencies to provide special education services to eligible students *only* if the district "cannot provide an appropriate education for the student within the district." WAC 392-172A-04080; 34 CFR § 300.145. If there is an appropriate public school program available, a district need not consider private placement "even though a private school might be more appropriate or better able to serve the child." *N.T. v. District of Columbia*, 112 LRP 2066 (D.D.C. 2012).

50. Moreover, the IDEA requires that students be placed in the least restrictive environment (LRE) to meet their needs. 20 U.S.C. § 1412(5)(a); 34 CFR § 300.114; WAC 392-172A-02050.

51. Here, the Parents have not proven that the District cannot provide an appropriate placement for the Student. The Parents withdrew the Student from the District while it was still in the process of determining her needs and what changes might be necessary to her program. Additionally, the "primary" reason for the Student's placement was the potential for very dangerous behavior in the home. The Parents understandably took the Student's threats to harm her family and herself seriously and made a legitimate choice for the family to place the Student in a residential program. Because the reason for her placement is not "primarily" related to education, residential placement is not necessary and therefore not appropriate. Additionally, no witness testified that the Student was incapable of obtaining an educational benefit outside of a residential placement, which is a very restrictive environment. For these reasons, the Parents have not proven that residential placement is necessary to provide special education and related services. Accordingly, the District did not violate the IDEA in declining to fund the residential placement.

Allegedly failing to hold an annual IEP team meeting for the Student when it was due.

52. Districts are not obligated to serve a student who resides outside their district. Under Washington law, a student's residency for purposes of special education is the physical location of the student's principal abode. WAC 392-172A-01160, 392-137-115. Thus, a student's residency is where the student resides, not where the parents reside. See, e.g., *Shoreline Sch. Dist.*, 220 F. Supp. 1175 (W.D. WA 2002). Thus, when parents unilaterally place a student in a residential placement in another state, the student is no longer a resident of the school district in which the student's parents reside. See, e.g., *J.S., supra*; *Monroe Sch. Dist.*, Cause Nos. 2008-0115/-0020 (SEA WA 2009). The Student's unilateral placement outside the District was not due to the District's denial of FAPE so the District has no duty to offer the Student a new IEP while in the private placement. *Monroe, supra*. Accordingly, the Parents have not proven a violation of the IDEA.

Allegedly failing to refer the Student to any local facilities or service providers that could serve her mental health and educational needs in a placement closer to home and in the least restrictive environment and allegedly failing to make a referral and/or enter into an interagency agreement with another agency that could help fund a placement for the Student.<sup>3</sup>

53. The Parents have not cited and the ALJ has not located authority requiring a District to refer a Student to services or agencies that could assist the Student with needs outside of school that are not significantly interfering with the Student's ability to access her education. Nor have the Parents demonstrated that the Student could not access her education at Columbia as the Parents removed her from school and returned her to Falcon Ridge before the threats leading to the emergency expulsion could be investigated.

Allegedly failing to provide appropriate services in speech and language, social skills, and pragmatics.

*Speech and language, including pragmatics*

54. The Parents argue that the District's May 2011 reevaluation of the Student did not include a comprehensive assessment by a certified speech therapist as recommended by the UW report and that it improperly determined that the Student was not eligible for direct services related to speech and language, including pragmatics. As this evaluation was conducted outside the period covered by the statute of limitations, arguments about whether the evaluation itself was appropriate are not considered.<sup>4</sup> See WAC 392-172A-05080 (two-year statute of limitations). Because the evaluation concluded that the Student did not require services in speech, language, or pragmatics, and the Parents have not otherwise demonstrated that these services should have been provided in the Student's May 2012 IEP (the only IEP developed within the statute of limitations period), they have not met their burden to prove a violation in this regard.

<sup>3</sup> These two issues are addressed together because they are so similar.

<sup>4</sup> The District agreed to fund an IEE in communications based on the Parents' request at the meeting on March 8, 2013. There is no evidence that the Parents took this opportunity to evaluate the Student's communication needs at the District's expense.

55. The Parents also argue that consultative communication services provided in the May 2011 IEP were eliminated from the May 2012 IEP without explanation. To the contrary, the May 2012 IEP specifically stated that the Student's teachers had not noted any concerns regarding difficulty with her communication skills, and did not feel that additional SLP consultation was warranted. For that reason, the SLP would be available for consultative services on an "as needed" basis rather than for fifteen minutes per month. Thus, an explanation was provided and services were not completely eliminated. Moreover, the Parents have not met their burden of proving that the Student continued to require 15 minutes per month of consultative communications services in order to access her education. Accordingly, they have not established a violation with respect to the Student's need for communication services.

#### *Social skills*

56. The Parents appear to argue that the May 2012 IEP did not provide for appropriate social skills services because the District had reduced the Student's instruction from 47 minutes to ten minutes per day earlier in the year because of her "overall success in general education and special education" but then determined in the May 2012 IEP that she would be better served in a resource room for reading and writing in eighth grade due to her "high social/emotional needs." The Parents also note that a 2008 assessment determined that social skills was a clinically significant area for the Student, and that the District's 2011 assessment determined that her "overall behavior symptoms index" was rated within the clinically significant range, indicating that certain of the Student's behaviors would be expected to have an adverse impact on her academic progress. Neither the differing ways that the IEP described the Student's social skills nor the identification of social skills needs in evaluations are specific enough to demonstrate that either the number of minutes of social skills instruction offered or the social skills goal was inappropriate to serve the Student's needs in this area. Accordingly, the Parents have not proven a violation in this respect.

#### Remedies.

57. As the Parents have not proven a violation of the IDEA that resulted in a denial of FAPE, no remedies are warranted.

### ORDER

The Parents have not proven any violation of the Individuals with Disabilities Education Act that denied the Student a free appropriate public education. Accordingly, all requested remedies are denied.

Signed at Seattle, Washington on July 9, 2014.



Anne Senter  
Administrative Law Judge  
Office of Administrative Hearings

**Right To Bring A Civil Action Under The IDEA**

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

Parents

  
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cc: Administrative Resource Services, OSPI  
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