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

IN THE MATTER OF

DIERINGER SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2014-SE-0005X

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Johnette Sullivan in Lake Tapps, Washington, on February 27 and February 28, 2014. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Parent was accompanied and advised by [REDACTED]. The Dieringer School District (District) appeared through Dr. Judy Martinson, Superintendent and Special Education Director, and was represented by Jeffrey Ganson, attorney at law.

STATEMENT OF THE CASE

The Parent filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on January 27, 2014, which was assigned Cause No. 2014-SE-0005X. The Complaint was forwarded to the Office of Administrative Hearings (OAH) for assignment of an ALJ. A Scheduling Notice – Expedited was entered January 27, 2014, which assigned the matter to ALJ Anne Senter. The District filed its Response to the Complaint on February 3, 2014. A prehearing conference was held on February 4, 2014. The ALJ elected to disqualify herself on the grounds that her impartiality might reasonably be questioned. On February 5, 2014, the matter was reassigned to ALJ Johnette Sullivan. The due process hearing set for February 25, 2014, was stricken and rescheduled to February 27 and 28, 2014.

A second prehearing conference was scheduled and held with ALJ Sullivan on February 11, 2014. Unless otherwise agreed by the parties, the Student's placement during the pendency of the expedited proceeding was confirmed to be the interim alternative educational setting. The Parent's request that the District be placed in Default of the proceedings following the resolution session was denied. Due to the expedited status, the due date for decision was confirmed to be March 14, 2014, which is within ten school days after the due process hearing.

Evidence Relied Upon

Exhibits Admitted:

Parent's Exhibits: P1 – P16, P19 – P22, and P24 – P31

District's Exhibits: D1, D3 – D13

Parties' Joint Exhibits: J1 – J13

¹To ensure confidentiality, names of parents and students are not used.

Witnesses Heard (in order of appearance):

Judy Martinson, District Superintendent and Special Education Director
Victor Matson, Teacher and Tutor
Erica Sage, Language Arts Teacher
Lisa Pritchett, Mathematics/Science Teacher
Jennifer Roscoe, School Counselor
David Uberti, Student Services Coordinator
Danielle McIntosh, Special Education Teacher
Nathan Salisbury, Middle School Principal
The Parent

ISSUES

The issues for the due process hearing are:

- a. Whether the District failed to provide a Free Appropriate Public Education (FAPE), from the Student's entry into the District in September 2013, to date of filing of the Complaint, including whether the District:
 - i. Failed to review or modify the Student's Individualized Education Program (IEP) developed at Orting School District (Orting) when it was accepted by the District in September 2013, and in response to Student's behavior, and at the Manifestation Meeting December 10, 2013. The Parent asserts the District improperly declined to review and modify the IEP prior to completion of a risk assessment report;
 - ii. Failed to address the behaviors of the Student when they escalated and the Student's behavior was impacting his ability, and the ability of other students, to learn, particularly staying in class and improper comments or vocalizing when upset;
 - iii. Failed to consider or perform a Functional Behavior Assessment (FBA) and develop a Behavior Intervention Plan (BIP) to address the behaviors of concern, and following the Manifestation Meeting, failed to provide Parent with prior written notice when the District decided to do an FBA in order to provide documentation for the psychiatrist conducting the risk assessment;
 - iv. Failed to allow the Parent an opportunity to participate in decision making and predetermination of placement without an IEP team meeting and without Parent input, denying meaningful parental input, regarding District decision to order a risk assessment and send prior written notice on December 2, 2013, of placement at a mental health facility, [REDACTED] and subsequent change without notice to placement at [REDACTED] on the grounds of [REDACTED];
 - v. Made recommendations for out-of-district placement based on the availability of services currently in the District, without considering bringing in services, and before determining what services were needed; further, that District alleged to have received email from the independent psychologist who conducted the risk

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MAR 18 2014

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assessment with a plan to return to school with plan to implement a BIP; District unilaterally rejected;

- vi. Failed to document, track and provide data on Student's escalating behaviors, as there are no notes from teachers or records of office referrals or other data to support the anecdotal reports made at the Manifestation Meeting;
 - vii. Failed to provide a comprehensive evaluation (March 2012 was last Orting comprehensive evaluation) and failed to identify the areas needed for evaluation in all areas of suspected disability, specifically social communication, how to adapt to change in school; the Parent asserts the change in Student's behavior should have triggered evaluation;
 - viii. Failed to have an appropriate IEP in place as there was no FBA, and no plan for social difficulties and transition to the new district setting;
 - ix. Failed to provide policies and procedures relating to risk assessment and emergency expulsion prior to or at the Manifestation Meeting, which hindered the Parent's ability to meaningfully participate, i.e., whether she or the District should be responsible to pay for the risk assessment. The Parent asserts she did not know to ask for the policies and procedures at that time, and did ask on January 22, 2014, and to date has not received a copy;
 - x. Failed to address the Student's assistive technology needs in the IEP process; Parent unable to attend September 2013 IEP meeting when District accepted the IEP developed at Orting, and has not specifically asked for laptop and software that she believes could help Student in school;
 - xi. Failed to implement the IEP once it was developed, specifically no record of intervention/behavioral specialist meeting social goals with 30 minutes one time weekly, or adaptive physical education goals to be assessed at 75% voluntarily met by end of term in spring 2014 as tracked and assessed by general education or special education teacher; Parent asserts Student placed in Study Skills Class without IEP team or parental input; and,
 - xii. Failed to provide progress report on measureable annual goals.
- b. And, whether the Parent is entitled to the requested remedies:
- i. The District to fund an outside evaluation by the Brooks Powers Group, or an independent evaluator chosen by the Parent, which process will include Parent meetings, observations, student testing and an evaluation meeting for the Brooks Powers Group to report their findings to the Student's IEP team;
 - ii. The District to fund two (2) years in the summer, a program with the components of social skills, education, behavior modification and adventure therapy, a minimum twenty (20) days in each summer of 2014 and 2015;

- iii. The District to contract with the Brooks Powers Group, or an independent organization chosen by the Parent, to perform a Functional Behavior Assessment (FBA) and develop a Behavior Intervention Plan (BIP) and a Positive Behavior Plan;
- iv. The District to contract with the Brooks Powers Group, or the independent organization chosen by the Parent, to work with the Student in school until they find out what works with him to implement the Behavior Intervention Plan and the Positive Behavior Plan and train District staff who work with the Student on a daily basis (e.g. certified, classified, and related services staff and administrative staff as appropriate);
- v. The District to contract with the Brooks Powers Group, or the independent organization chosen by the Parent, to assess the plans and modify as needed, with the schedule to be determined by the independent organization;
- vi. The District to contract with the Brooks Powers Group, or the independent organization chosen by the Parent, for services for the Student to transition to the changes at school, including returning to school from his current interim placement, and after the completion of the outside evaluation; and that the IEP team including the parent, in consultation with the independent organization completing the evaluation, will agree on the goals and activities of the transition services by May 5, 2014 (the District does not maintain a high school, and the Student's transition from middle school would necessarily be to another district which maintains a high school);
- vii. For private therapy/ counseling for the Student at public expense, to address the Student's difficulty with transition or change related to overcoming his social anxiety, and any damage related to being out of school and returning to a classroom placement;
- viii. The District to fund an educational placement, of the Parent's choosing, focusing on the service needs of the Student's IEP;
- ix. The District to provide transportation to where the Student's services are provided; and
- x. Other remedies as appropriate.

See Complaint, and the February 12, 2014, Second Prehearing Order.

FINDINGS OF FACT

General Background

1. The Student is age 13, in eighth grade, and lives with his mother. 
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MAR 18 2014

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2. At age 7, the Student was initially evaluated for special education services in [REDACTED]. He met eligibility criteria under the category of emotional behavioral disability. He had a tendency to throw tantrums, be disrespectful to adults, and had difficulty staying on task and in his seat. Exhibit J1-5.

3. The family moved to Washington and the Student was enrolled in the Orting School District (Orting). His special education services were continued in the area of social/emotional, and support in the area of math was added to address the Student's frustration in that area. The Parent does not recall and cannot confirm the statement's in Orting's records that the Student's behavior improved and he was exited from special education services in 2010 with a 504 Plan. Exhibit J1-5.

4. The 2011-2012 school term was sixth grade, and by January 2012, the Student was failing most of his classes. [REDACTED] issues and anxiety. Exhibit J1-1. [REDACTED]

The Orting Evaluation

5. Orting completed a comprehensive evaluation in March 2012. The areas of evaluation included medical-physical, general education, social/emotional, behavior, cognitive, academic, and observation. The Orting school psychologist gave her assurances that a full and individual evaluation of the Student in all areas of suspected disability was conducted in accordance with Washington law. Exhibit J1-3.

6. The Student's medical diagnoses from Seattle Children's Hospital were Major [REDACTED]. [REDACTED] The Student's level of anxiety in the school setting could be triggered by many factors. The Student tended to cry loudly, refuse to calm himself down, and to act out by kicking the wall or other action which could cause self-harm or school property destruction. He needed to learn coping skills, friendship skills, self-soothing techniques, and how to give himself a break rather than blaming himself severely for the smallest events. Exhibit J1-5.

7. A Behavior Assessment System for Children, Second Edition (BASC-2) was completed. Two teachers declined to participate, indicating they were unable to evaluate adequately due to the Student's high absenteeism. The Orting school psychologist considered the responses by the Student, the Parent, and one teacher to be acceptable. Overall the Student seemed to be very depressed and felt misunderstood, and the teacher noted he also had many physical complaints. The Student could improve in all areas of adaptive skills. The Orting school psychologist concluded that until the Student reduced his level of depression, he should remain in counseling, continue on his medication, and come to school on a regular basis. Exhibit J1-8. Regarding behavior, the Orting school psychologist described "melt downs" when the Student was reprimanded for small events and tended to blame himself severely for the smallest things which in his viewpoint were huge and major events. His view was black or white, all or nothing. She recommended work with a behavioral specialist to hopefully improve social skills and enable him to make friends, to improve his ability to deal with setbacks or constructive criticism in the classroom, and to offer him a way to view himself differently, as

someone who is allowed to and entitled to make mistakes and to accept himself for who he is. Exhibit J1-13.

8. The Student was administered the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), by the Orting school psychologist. He scored average range in verbal comprehension and perceptual reasoning, low average in working memory, and borderline in processing speed. [REDACTED] (If using the General Ability Index [GAI] score instead of the FSIQ, it would be 104 with a percentile of 61, which would be within the average range.) The Student's demonstrated strength was in his verbal skills, verbal knowledge and understanding obtained through both informal and formal education. Another strong area was perceptual reasoning. The Student's weakest area was in processing speed, which focuses heavily on visual processing and less on fine-motor skills. This measures perceptual discrimination, psychomotor speed, attention, concentration, short-term visual memory, visual-motor coordination and cognitive flexibility. Exhibit J1-14.

9. The Student was administered the Kaufman Test of Educational Achievement, Second Edition (KTEA-II), Comprehensive Form A, by the Orting school psychologist. The Kaufman showed his greatest strength to be in reading. He had standard scores within average range in both reading comprehension and letter and word recognition. His scores were at or above grade level in these two subtests. The Student demonstrated a good understanding of math story problems and scored within the average range. However, in the subtest of math computation, he scored below average range. This subtest included math problems written down on paper. The Student showed a large weakness in this area, and was unable to complete division problems, some one-digit multiplication, subtraction of fractions with the same denominator, and some multiplication with two-digit numbers, as well as basic algebraic equations. His standard score was well below grade level. His biggest area of weakness was in written language, with a standard score well below grade level within the lower extreme range. He had trouble understanding the task required, creating a properly formed sentence, and using capitalization and punctuation correctly. His spelling was poor and combined with poor punctuation would cause a reader confusion as to his meaning. Exhibit J1-16.

10. When the evaluation was completed, the Orting school psychologist recommended that special education services include specially designed instruction, related services, and supplementary aids and services. Specifically:

Written Language	[Student] requires SDI in the area of Written Expression to improve his skill in putting thoughts to paper, constructing a complete sentence and paragraph using proper punctuation, complex sentences and summaries.
Math	[Student] requires SDI in the area of Math Computation so he can improve upon his skills in addition, subtraction, and number concepts. His skills in story problems are average but he needs to improve his skills in basic calculation.
Behavior	[Student] in need of SDI in the area of Behavior so that he can learn new skills in emotional regulation, making and keeping friends, giving himself permission to make mistakes and to like himself for the fine young boy he is.
Related Services	Adaptive PE, Interyention Specialist
Supplementary	Break large projects into smaller parts, check frequently for

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MAR 18 2014

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Aids and Services	understanding, encourage team work when appropriate, encourage appropriate self-expression.
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Exhibit J1-3.

11. By May 23, 2012, the school psychologist noted the Student had been in attendance almost every day for two months. Exhibit J1-6.

12. The record does not include a 2012 Individualized Education Program (IEP) developed by Orting and the Parent, following the comprehensive evaluation. The Parent cannot recall whether Orting provided specially designed instruction under an IEP for the Student's seventh grade year 2012-2013.

13. [REDACTED]

The Orting IEP

14. Orting convened an annual IEP team meeting on May 16, 2013, which included the Parent. The team reviewed the March 2012 comprehensive evaluation summary, and the Student's performance on general state and district-wide assessments. The team determined the Student continued to qualify for services under health impairment. An IEP was signed the same day, with a next meeting planned on or before May 15, 2014. Exhibit J2.

15. The Orting team focused on planning for the remainder of seventh grade and the Student's eighth grade year, 2013-2014. After a review of the Student's present levels of performance, the team adopted five annual goals in the areas of written language, math calculation problems, social emotional feelings, social skills, and adaptive physical education (PE):

- a. Written language: By May 15, 2014, when given a grade level verbal or visual prompt the Student will use the writing process to write clearly and effectively, improving written expression from a Level 2 on the state scoring rubric for writing to a Level 3 on the state scoring rubric for writing as measured by classroom work samples and state/district assessments. Exhibit J2-7
 - i. Short term objectives or benchmarks included conventions, multiple paragraphs, and elaboration.
- b. Math calculation problems: By May 15, 2014, when given math calculation problems at his ability level, the Student will apply the appropriate operation needed to solve accurately, improving math calculation skills from a 7th grade level or equivalence to a 8th grade level or equivalency as measured by classroom assessments and district/state testing. Exhibit J2-7.
 - i. Short term objectives or benchmarks included multidigit multiplication/division with decimals, dividing fractions, and adding and subtracting fractions.

- c. Social/Emotional feelings: By May 15, 2014, when given a situation that is overwhelming or frustrating or anxiety producing, the Student will learn the steps to cope with or manage his negative emotions, improving his ability to cope with difficult situations from 3 out of 5 opportunities to 4 out of 5 opportunities as measured by teacher observation, data collection. Exhibit J2-8
 - i. Short term objectives or benchmarks included coping skills, reduce anxiety, and self advocacy.
- d. Social Skills: By May 15, 2014, when given the opportunity to interact in structured and non-structured environments, the Student will take responsibility for his feelings, learn problem solving skills, and learn to reduce anxiety, improving his ability to engage in socially appropriate peer and adult interactions from 3 out of 5 to 4 out of 5 opportunities as measured by data collection, referrals, and adult observation. Exhibit J2-9.
 - i. Short term objective or benchmarks included feelings language, improve self esteem and friendships.
- e. Adaptive PE: By May 15, 2014, when given the opportunity the Student will participate in the PE class improving social acceptance by peers, from refusing to participate in the PE class to participating in the PE class 75% of the time as measured by teacher observation and tracking.

16. For each annual goal, the Orting team determined progress would be reported quarterly using a "goal page." A copy of the goal page is not in the record.

17. The Orting IEP team found the Student had made progress in areas of computers and technology, and was quite savvy in those areas. The Student also had the ability to be a leader in small group settings, and other students looked up to him and gave him credit for his abilities. He had the potential to be able to lead larger groups.

18. The Orting IEP team decided the Student needed accommodations or modifications. The Student would have access or use of a calculator daily in all school settings, except when tested on mathematic facts or procedures. In PE, to address behavior the Student would not be required to dress in a uniform, and would not be graded on wearing a uniform. For extended writing assignments/responses (which were not daily), the length of assignments would be reduced. As needed, testing accommodations included alternate settings and more time. The remaining accommodations and modifications were daily, in all school settings, as follows:

- a. Behaviorally Related: alternative schedule, preferential seating
- b. Content Area: extra time to respond, break material into manageable parts, check work frequently to ensure understanding, extra time if student effort is shown, give short, concise directions, provide immediate feedback, repeat directions as needed.

Exhibit J2-11 to -12.

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MAR 18 2014

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19. The IEP addressed what type of assessments the Student would take and what administrative modifications were necessary. The Student was expected to participate in Measure of Academic Progress (MAP) testing, with alternate setting and more time, State Measurement of Student Progress (MSP) testing in Math Basic, Reading and Science, with alternate setting. Exhibit J2-13.

20. The Orting team summarized the Student's two program and two related services, including the start and end dates, the setting in which they would be provided, and who was responsible for providing them. Exhibit J2-14. The start and end dates were May 16, 2013 to May 15, 2014. A special education teacher, in a special education setting, was to provide math program 45 minutes 5 times weekly, and written language program 25 minutes 4 times weekly. A general education teacher in a general education setting would provide adaptive PE services 45 minutes five times weekly. None of these three were concurrent with the others. One related service was concurrent, for intervention specialist. The services were to be provided by an intervention/behavior specialist in special education setting, 30 minutes 1 time weekly.

21. The Orting team considered placement options and selected 40% - 79% in regular class. The team rejected 80% - 100% in regular class, and 39% or below in regular class, because academic and non-academic benefit could not be satisfactorily achieved. The placement decision was that the Student would receive specially designed instruction and services in the areas of written expression and mathematics. He would receive related services in behavior intervention. He would participate with general education peers in general education classrooms. He would have the opportunity for all extracurricular and non-academic activities. Exhibit J2-15.

22. The Student completed seventh grade at Orting. His grades and his behavior improved. He made friends. He had good attendance. He developed a rapport and relationships with the teachers. He was looking forward to returning for eighth grade.

23. In August 2013, the Parent decided to enroll the two younger siblings in Dieringer School District's elementary school. She expected Orting to continue to transport the Student to and from Lake Tapps. When she contacted Orting to prepare for the Student's eighth grade year, she learned to her surprise and dismay that Orting no longer considered the Student [REDACTED] Orting would no longer provide transportation for the Student to and from Lake Tapps. The Parent considered her lack of finances and the schedules of the younger siblings and decided she was not able to transport the Student to and from Orting daily. Unexpectedly, without time to plan and help the Student transition to this significant change, the Parent enrolled the Student in the District.

Enrollment in the District

24. The Parent and Student met with the student services coordinator at Lake Tapps Middle School (LTMS) on or about [REDACTED]. The coordinator is the District athletic director, and coaches football and track programs. He also serves as District 504 coordinator and testing coordinator. His duties included responsibility for welcoming students who are new to the District, as well as District students who are new to the middle school. The coordinator understood the Student was very unhappy and wanted to return to his friends and the teachers

he knew at Orting. The coordinator regretted that the Student had enrolled too late to participate in the three-day welcome camp held earlier in the month. The coordinator spent several hours with the Parent and Student, giving a tour of the middle school building and campus, describing routines and schedules, rules and expectations, lunch periods and the cafeteria line.

25. The coordinator introduced the Parent and Student to the school counselor and the special education teacher. The Orting education records had not yet been received in the District. The coordinator talked at length with the Parent and Student about the Orting IEP and the Student's difficulty with transitions. The Parent explained the Student's cell phone was a lifeline which he used at Orting to calm himself. The coordinator explained that middle school rules for students banned having cell phones except during lunch. To avoid violating the rule, the coordinator suggested that the Student ask the teacher for permission to see the coordinator or school counselor if he needed to use his cell phone. The coordinator discussed with the Parent a class schedule for the Student to begin eighth grade.

26. The Student began eighth grade at LTMS on the first day of class on Tuesday following the Labor Day holiday. [REDACTED]

27. The special education teacher provides copies of IEPs to teachers and others as needed. For easy daily use, she provided a quick glance cheat sheet with 19 specific types of modifications and accommodations. In the row after a student's name, she used a check mark to indicate which modifications and accommodations applied for that student. The sheet contained the names of nine students, including this Student. However, as his Orting records had not yet been received, she put a check mark only by the column for MSP Basic (a statewide test). Exhibit J4-2.

Transfer and Adoption of IEP

28. Orting responded quickly to the records request and sent the District copies of the March 2012 comprehensive evaluation summary and the May 2013 IEP. On September 4, 2013, a letter was sent to the Parent to give notice of an IEP meeting on September 10, 2013. Exhibit J3-4. A telephone message was also left for the Parent on September 5, 2013. Exhibit J3-5. The Parent did not respond. From her communication with District employees, she had come to expect that the District would likely adopt the Orting IEP without change.

29. The school psychologist, special education teacher, and middle school principal who served as the local educational agency representative, met on September 10, 2013 and reviewed the educational records sent by Orting. The meeting notice had indicated a general education teacher was invited, but neither the Parent nor a general education teacher participated.

30. The team accepted the Orting comprehensive evaluation, accepted the health impairment qualifying category, and recommended continued placement in accordance with the Orting IEP. Exhibit J3-1. The District accepted the Orting placement option of 40% to 79% in regular class and the placement decision rationale. Exhibit J3-2.

MAR 18 2014

OFFICE OF PROFESSIONAL PRACTICES

31. The District IEP team adopted the Orting IEP. The District did not reprint Orting's listing of accommodations and modifications by program or service type, or for state- or district-wide assessments of student achievement, or its special education and related services summary of program and services. The District used its own software to create a form on which District staff could make quarterly progress reports. The District added the Orting IEP's annual goals and short-term objectives without change to its own Measureable Annual Goals -- Student Program form. Exhibit J5.

32. The student services coordinator was not an IEP team member. There is no record that he discussed with the team members the Parent's concern about the Student's use of a cell phone during the school day. The team did not make any accommodations or modifications regarding the Student's cell phone.

District Practices

33. LTMS staff held monthly meetings in grade-level groups. The eighth grade level attendees include the nurse, psychologist, student services coordinator, counselor, as well as the eighth grade general and special education teachers and other service providers. They share information, including successes and challenges. They learn from one another's knowledge and experience. They review IEPs and 504 plans, and discuss students who merit special praise or concern. The meetings are not documented.

34. LTMS uses demerit or "blue" slips to record when a student violated any of eight rules. Points range from 1 to 5 demerits. The form includes three carbon copies, with one copy for the student. Three demerit points warrants lunch detention and no after school activities. A total of 15 demerit points within two weeks prompts administrative office notification, which notifies parents. A teacher or para-educator has discretion when to issue a demerit slip based on circumstances, and typically show restraint before issuing demerits to students on a 504 Plan or IEP.

35. Middle school students at LTMS are not permitted to have a cell phone in their possession during class time. If the rule is violated, the student must surrender the cell phone to the teacher, and the phone is not returned to the student. The student's parent must come to the office to pick up the phone.

District Implementation of the Student's IEP

36. On September 18, 2013, the special education teacher responded to teacher requests for electronic versions of the quick glance cheat sheets. She re-circulated the version created before the Orting documents were received. The re-circulated cheat sheet did not reflect the Student's accommodations and modifications adopted during the District's IEP meeting. However, there is no evidence that any of the Student's teachers or providers relied on the cheat sheet to limit his accommodations and modifications, or believed the Student's accommodations and modifications were limited to the area of MSP testing.

37. The District designated the special education teacher as the Student's IEP case manager. Her duties included working with para-educators, general education teachers, and others, to advise, consult, and help implement the Student's IEP. She was also responsible to make progress report updates regarding the IEP measureable annual goals.

38. The Student's general education teachers taught eighth grade language arts, math/science, and history. His special education teacher taught math, written language, and study skills, and supported the general education programs by helping with homework or class assignments and providing extra time and attention for the Student to do general education work in the special education resource room setting.

39. The Student's language arts teacher recalls the eighth-grade staff group discussed the Student at a meeting in September 2013, before teachers had a copy of his records from Orting. The special services coordinator and special education teacher, and perhaps also the school counselor, provided the group with a very detailed description of meetings with the Parent and Student, including the unique living situation with the uncle and that the Student was likely to have difficulty transitioning.

Intervention Behavior Specialist

40. The District does not have an employee serving LTMS with the title of intervention behavior specialist. At building level, behavioral issues are handled by the IEP case manager or counselor, individually or as a team. When asked to identify the District's intervention behavior specialist, most LTMS witnesses referred by name to a woman who did not work at LTMS, but who is currently employed by the District as a school counselor. She is not certified as a behavioral specialist.

41. The District did not assign one person to provide a 30 minute behavior intervention session 1 time weekly to the Student. The IEP listed the service as concurrent with all other services and programs. The District implemented the behavior intervention services across all school settings, and counted toward those 30 minutes weekly the time the Student spent with the school counselor, student services coordinator, para-educators, and special education teacher. The District does not have documentation of the minutes per week by any employee focused on behavior intervention. Only the special education teacher made progress reports in this area, and those reflected primarily her own experience with the Student.

School Counselor

42. The school counselor has a master's degree in guidance and education. This is her fourth year as a school counselor. Her education prepared her to deal with counseling and behavior in the educational setting. She does not have credentials for family or other counseling. She is familiar with IEP and behavior intervention plan (BIP) forms, but has not written an IEP or a BIP. She described a BIP as a tool used to improve academics, but she could not explain the purpose of a BIP as compared to other plans or tools in use in the educational setting. For the first time in her career, she was serving as case manager for another student during the 2013-2014 school term. It was an opportunity to become more familiar with IEPs, which she described as very detailed. She knew the Student had an IEP, but she has not read it.

43. There were about 510 students attending LTMS in fall 2013, and the counselor maintained files on about 30 of them. Her file on the Student contained only a few notes on a single page, and is not in the record.

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MAR 18 2014

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44. There were about 40 new students at LTMS in September 2013, and the school counselor's job duties include looking after them. Students with an IEP were on her radar. She had a Tuesday "lunch bunch" of several boys including the Student. The setting is casual to encourage the students to be comfortable and acclimate to middle school. The purpose is to create a time students can work with her, help students who may be shy to make friends with four to five peers, have fun, and build relationships. Students chose whether to accept the invitation to be in a lunch bunch. The Student participated voluntarily and rarely missed a Tuesday lunch bunch. He rarely needed a reminder that it was Tuesday, the day to take his lunch tray to the counselor's office.

45. The counselor really wanted the Student to like LTMS and his peers and teachers as well as or better than he liked Orting. She observed him make friends, do well with his social peers, and did not hear him say anything negative about other students. He was not as nice when speaking about teachers, and expressed when he thought a demerit was given unfairly. She liked the Student and did not have any issues with him. She felt they were progressing well, and that he was growing more comfortable with her.

46. The counselor learned some general education teachers were concerned about the Student's crying and other behavior. She participated in eighth-grade staff group discussions about how to help the Student acclimate to LTMS, including the development in late October or early November 2013 of a protocol if behavior escalated. She did not know whether the Student's behavior was impacting his ability to learn, or the ability of others to learn, as she did not observe the Student in the classroom setting.

47. The counselor contacted the Orting case manager. She did not document the call, but it was likely in mid-November 2013. She learned the Student had once hated Orting, too, so she was encouraged that he could grow to love LTMS as he had grown to love Orting. The Orting case manager emphasized the Student loved computers, and he benefited when Orting staff had pumped up the positive to encourage him. The Student was given tasks as the case manager's aide, which built his self esteem. He had some set backs and still cried occasionally, but progressed. The counselor was encouraged by the conversation, as it appeared the pattern at Orting was being repeated at LTMS but it could be overcome. She began to consider how she might be able to have the Student help her with tasks.

48. The counselor called the Parent once when she observed the Student not eating lunch. She followed the Parent's advice to encourage but not force the student, as sometimes his medication impacts his appetite. The counselor decided to go through the lunch line with the Student.

49. The counselor did not have a record of dates she met with the Student, alone or with the student services coordinator, on occasions the Student was removed from a class. She recalls an occasion involving the history teacher and thought it might have involved a demerit or blue slip. The record does not contain a blue slip related to history class. She recalls she met with the Student for 30-40 minutes at most. She recalls a cell phone incident with the language arts teacher. The counselor, student services coordinator and the language arts teacher could not recall the date on which the Student was escorted out of language arts class when he refused to give the teacher his cell phone. No one documented the event. The preponderance of credible evidence supports a finding that the date happened to be the Parent's birthday, and

she was on her way to lunch with a friend when she received a telephone call from the student services coordinator. The record supports a finding that the date was October 11, 2013.

50. The counselor saw that the Student was having a hard time with the school rule regarding cell phones, and she described his cell phone as his "connector" in a greater degree than his peers. She believed he would not do well if he was without his cell phone over night. To accommodate his needs, she decided to call the Parent and ask if she could pick him up from school and take possession of the cell phone, too. It was only mid-day, but the counselor thought it best he have time to deescalate, and she did not think he would be able to return to class if worried about not having his cell phone overnight.

51. The counselor recalls the November 6, 2013, event when the language arts teacher issued the demerit slip. She does not recall the reason for the slip, only that the Student was very upset and needed about 30-40 minutes to deescalate. She was very pleased that after meeting with her and the student services coordinator, the Student was able to regain control of his emotions. She wanted him to have the experience of going back to class and felt very positive about his ability to do so, even if only five or so minutes remained in the period. She thought the Student's ability to return to class demonstrated growth and progress.

Student Services Coordinator

52. The student services coordinator holds a master's degree in education and a teaching certificate, and has about nine years experience. He received training at a prior district regarding de-escalation techniques, including in the context of athletics. He has taken many courses on safe schools, which include techniques regarding assessing situations, how to move from a classroom or find neutral or safe places, when to refer to a counselor, and how to wait and cool off, talk or vent. He considers himself a good listening, and he believes honesty is essential. He consults with the school counselor and principal for advice on how to "switch things up" and try other methods. He has served the District for three years. He deals with a wide range of student behavior.

53. After meeting with the Student and Parent on August 26, 2013, he made a point of greeting the Student and taking every opportunity available to interact with the Student. The student services coordinator relies on his youth and his role as a coach to build rapport with LTMS students. It his goal to interact with every student every school day, and he places himself at the school entrance to greet students, and talks to students in the cafeteria during lunch, and meets one-on-one with about 10 students daily.

54. The student services coordinator read the Student's IEP and records from Orting. He participated in the monthly meetings for the eighth-grade staff group.

55. The student services coordinator had lunch with the Student, and went to the special education teacher's class every other day to interact with the Student and his peers. He asked the Student about computer games and other interests, common interests he thought would encourage conversation. He describes his own humor as goofy and he related to the Student's humor, and tried to use humor to build rapport, and when the Student was frustrated or became upset, to deescalate the situation.

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MAR 18 2014

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56. The student services coordinator estimated on five to six occasions he met with the Student because the Student left class voluntarily or at the request of a teacher. He estimates three or four of those occasions the Student was highly agitated. He cannot recall the exact total. He did not discipline the student. He believed it was important to give the Student some slack, to check up without being over bearing, to give the Student a few minutes to process and react. He did not want documentation to follow any student just because the student was having a bad day or having personal problems. He would have documented his contacts with the Student if he saw a pattern of poor behavior emerging; however, the student services coordinator observed the Student's behavior to be improving.

57. The Parent recalls two calls from the student services coordinator to give her a heads-up the Student had a frustrating day. She also recalls the two calls to come and bring the Student home, on October 11, 2013, and November 26, 2013.

58. The student services coordinator kept notes informally using stickee pads or other pieces of paper, which he would discard after they were no longer needed. He did not maintain a file on the Student. Demerit or blue slips were maintained in the office. After general education teachers described crying or similar behavior, and a cell phone event in language arts, at a meeting of the eighth-grade staff group in late October 2013 or early November 2013, a discussion was had regarding how to better address behavior issues. The student services coordinator made notes, then typed a protocol which summarized the group's decision. Once the protocol was circulated, he discarded his meeting notes.

59. The protocol was on plain paper and undated, and headed [Student name] Protocol. It read:

- If [Student] is feeling upset or getting frustrated in a call he may ask to go see [student services coordinator] or [counselor] to give him a break or calm him down.
- If teachers notice [Student] getting frustrated or upset they are to ask him to see [student services coordinator] or [counselor]. If [Student] refuses to leave the room [student services coordinator] or [principal] will walk him to the office.
- If [Student] is being disrespectful to staff [student services coordinator] and [counselor] will bring him to the office to talk him through the situation.

Exhibit J2-2.

60. The record is silent regarding whether the student services coordinator communicated to the District IEP team or the eighth-grade staff group specifically about the conversation he had with Student and Parent on August 26, 2013, about cell phones. The record is silent regarding whether accommodations or modifications were considered, given that LTMS rules banned student cell phones except at lunch, which conflicted with how the Student had used the cell phone at Orting to calm himself.

61. The student services coordinator observed the Student's behavior improve from their first meeting on August 26, 2013. The Student might repeat that he hated school and wanted to go back to Orting, but with less venom or emphasis. The Student's negative

comments became less frequent. He observed the Student's behavior after he returned to school following the cell phone event in language arts class, and did not observe a repeat of the behavior for several weeks. The Student might become frustrated, but the student services coordinator observed very little anger displayed until November 26, 2013. The student services coordinator would not have predicted the emergency expulsion which occurred on November 26, 2013.

History Teacher

62. The history teacher did not testify and there is no documentation of record from him. However, from the testimony of the other teachers, student services coordinator and school counselor, it is found that he orally reported his concerns about the Student's behavior and sought their advice. Other than descriptions of crying or "melt downs", the record does not indicate the specific behaviors in history class, the context in which the behaviors occurred, the dates and frequency of occurrence, or whether the history teacher observed the behaviors to get better, worsen, or stay the same. The history teacher did not issue any demerit slips to the Student. The history teacher did not refer the Student for discipline.

Special Education Teacher

63. The special education teacher holds a bachelor's degree and an endorsement in kindergarten to eighth grade in general education, and kindergarten to twelfth grade in special education. She earned her masters degree and a kindergarten to eighth grade endorsement in educational technology. She was a member of the District's IEP team, and reviewed carefully the educational records from Orting. It was significant to her that the Student's qualifying condition was health impairment and not behavioral impairment. She found it important that he had previously exited special education, and that his behavior appeared to be directed internally toward himself and not toward teachers or others. She thought the Orting IEP looked to be an adequate fit based on the comprehensive evaluation, and believed the District could provide for the Student's needs in their special education program.

64. She delivered the math and written language programs in the resource room, which itself was considered an accommodation or modification because it is a supported special education classroom. The resource room had a smaller class size, operated at a slower pace, utilized projects instead of individual writing assignments, and had para-educators to check to see if students were on task or needed help. The para-educators were present in general education classes to hear explanations, instructions, and home work assignments given by teachers to the students. The same para-educators came to the resource room during study skills to be available to answer questions and help students with general education work as needed.

65. The special education teacher did not observe the Student cry in class or have difficulty regulating his emotions. When she heard general educators describe such behavior during their monthly meetings, she was surprised and wondered how they could be describing the same boy.

66. In addition to monthly group meetings among eighth grade staff, the special education teacher sought end-of-day reviews from other educators about the Student's program, academic and behavior and social skills. She met with para-educators three or four

MAR 18 2014

OFFICE OF PROFESSIONAL PRACTICES

times weekly to discuss the Student's progress. The special education teacher relied on her observations when she made a progress report update on November 1, 2013. A few days earlier, she and her para-educator had issued the Student his first two demerit slips, each for five points for failing to treat the para-educator with respect. The demerit slips, totaling 10 points and issued on October 28 and 29, 2013, were for lying to the para-educator about having completed homework or a science story when they were not in fact done. Exhibit J6. The Student did not misbehave emotionally or cry, and the special education teacher did not consider the events relevant when she made the IEP quarterly progress report comments.

67. Under Social/Emotional, the special education teacher reported the Student appeared to be making process toward his goal. She described several situations in which he made quiet comments under his breath in frustration, but then pulled himself together and quickly returned to the task. Under Social Skills, she reported the Student had been a delight to have in class. He had a fun sense of humor and responded well to most reminders to stay on task. She reported that for the most part his interactions with peers had been positive. She categorized his progress as having emerging skills demonstrated, but may not achieve annual goals within duration of IEP. Exhibit J13-3 to -5.

68. Regarding Written Language and Math Computation goals, the special education teacher reported sufficient progress was being made to achieve goals within the duration of the IEP. On a recent writing sample, the Student was able to follow class instruction to make a tree map with three parts, and write a three paragraph letter. The Student was reported to be doing a nice job and needed very little encouragement. The Student scored 100% on a recent addition and subtraction assessment, scored 80% on multiplication, and one problem missed was a simple carrying issue. The Student had only attempted one of the division problems, which he completed correctly. The November 2013 quarterly progress report did not refer to progress toward the state scoring rubric for writing, or the grade level or equivalency for math. Exhibit J13-1 to -2.

69. The special education teacher testified she mailed the progress reports to the Parent. The postal service did not return the envelopes as undeliverable. The Parent had no recollection of reading the reports prior to a records review in January 2014.

Language Arts Teacher

70. The language arts teacher holds a masters degree in education and is a national board certified teacher. Exhibit P19-2. She recalls receiving a copy of the Student's special education records with his IEP shortly after school started in September 2013. She reviewed the records while also skimming for what was pertinent to her class. She noted the behavioral issues related to the Student's emotions, and that he had a writing disability. That fact was noteworthy, as she is the reading-writing specialist. She implemented accommodations immediately, deciding to require little writing. She pre-tested the Student's vocabulary, and determined it was sixth grade level. She allowed the Student to write in his book, rather than transfer a separate written answer to another paper. She allowed the Student to circle answers to show reading comprehension. She found him to be a lovely reader, and did not observe reading comprehension was an issue. She found the IEP very helpful to understand anxiety and depression, and the gains the Student had previously made. She was sensitive to changes in environment for teens generally, and to adjustments to a very small school district.

71. The language arts teacher kneels to be at eye-level with her students, but noted the Student would not make eye contact although he was generally responsive. Over time, she saw him sit more erect in his seat, and increased his "leaning in" when engaged. He learned symbols and allusions well, began to hold up his hand and be engaged in class, even if he still did not make eye contact.

72. The language arts teacher observed "things were great" with the Student and she found stories by other general education teachers of "melt downs" to be shocking.

73. On October 11, 2013, the language arts teacher asked the student services coordinator, or some one in the office to come and escort the Student out of her class. The class was doing independent work quietly when the Student's cell phone rang, a violation of school rules which requires the teacher to take possession of the phone. The language arts teacher leaned in quietly and asked for the cell phone, but the student loudly said he would not give her his cell phone. The language arts teacher moved away so he could calm and think for himself. Two minutes later, she quietly asked again, indicating it would be insubordination if he refused. He repeated loudly that he was not going to give her his cell phone. To avoid further disruption, but still enforce the school's rules, she contacted the student services coordinator and the student was removed from her class. She did not issue a demerit slip. She did not document the incident. The Student's behavior surprised her, but she did not experience fear. However, from that date forward, she felt that the rapport with the Student was gone.

74. Several weeks later, on November 6, 2013, the language arts teacher did issue a demerit slip to the Student. A posted school-wide rule prohibited talking after the bell. She emphasized in her class the need to respect a period of silence for warm up and early work. The Student did not have his paper, and turned to engage the boy behind him. Because she strongly emphasizes this rule, she issued a demerit slip and it was given to him by the para-educator. The Student started to crumple the slip, and the teacher ignored him. She moved to the other side of the board to focus students' attention on her. He continued crumpling the slip and began to smile. The teacher was unsure if the smile was a sign of humor, but she tried to deescalate the situation with humor. She observed the Student did not appear to be acting silly but appeared to be angry because he began to rip the paper and smash it on his desk with some intensity. He began to throw the paper on the floor as she tried to teach. He threw his notebook on the floor in her general direction. She asked the para-educator to escort him to the office. As he was leaving class, the Student yelled, "I hate this school. All the teachers are liars." The class was distracted for 10-15 minutes during this event.

75. None of the LTMS staff could recall the date they met and developed a protocol for dealing with the Student, or the date when the student services coordinator circulated the protocol in writing, the language arts teacher was certain it was before November 6, 2013. She recalled the protocol being discussed, and it was her intent to implement the protocol when she asked the para-educator to escort the Student from the classroom.

76. The language arts teacher was surprised by the Student's volatility. She was surprised that he was returned to her class before the period ended. He sat in his chair, but she was not comfortable. She felt too nervous to approach him when he returned to class. She did not issue a demerit slip based on the protocol, and because she thought it best not to hold him to the standard she held other students to because discipline sacrificed the learning environment. She did have some concern that failing to discipline might compromise the

integrity of the eighth grade rules. She spoke to the student services coordinator about the decision to return the Student to her class that same day near the end of the period. She told him the Student's return made her nervous, and the student services coordinator apologized.

Mathematics/Science Teacher

77. The mathematics teacher has fifteen years of teaching experience. She received and reviewed a copy of the Student's IEP in September 2013. She reviewed his math and reading scores in the Orting comprehensive evaluation, and his special needs for accommodations and modifications. She believed he was in the right place at fifth period, which is itself an accommodation. In that period, all students receive information read aloud by the teacher and para-educators, and all receive extra time to complete work. There are fewer writing expectations, use of a notebook, highlighted power point to reduce writing, no writing conventions required. However, the Student did not struggle with writing in her class and generally finished his work before others. The Student did well academically and the mathematics teacher was pleased.

78. The Student was shy in the beginning, with little engagement. Overtime, he engaged in conversations and the teacher observed him making friends. Science is taught in pods, not desks, in student teams. At the start of eighth grade, the Student watched others, but he started to engage with others and work with others as the fall term progressed. The teacher observed some days the Student was positive and willing, and other days negative and not wanting to do what he was asked. She employed several strategies working with the Student. She used 'verbal walk-by's", one-on-one, frequent checking on work with the para-educator to ask if the Student understood or needed help to get on or stay on task. She would ask if the Student wanted to do a task in another way, to encourage him to engage and offer input.

79. The mathematics teacher did not issue any demerits to the Student, but twice she had the Student removed from her classroom. The first event occurred about three weeks before November 26, 2013. In computer lab, students may sit where they choose and each works on a computer. The teacher and para-educator walk through the lab and check to see if students are on task or need help. The Student and a boy seated next to him were not focused, and neither had any work on the computer screen. They were reminded to focus, stop visiting, and start working. On the second rotation, they each had typed their names but had done no work, and were reminded again to begin work. When 15 minutes had passed with little work typed, the teacher asked the Student to log off and move. She asked the Student rather than the boy nearby because of the seating in the lab, as the Student was closest and it was more difficult to move the other boy. The Student refused to move and said the teacher could not make him move. The teacher told the other boy to move, and he did move. The Student yelled that he had logged off, threw his chair and was angry. He was told to go to the office, but he yelled that he was not going anywhere. He put his face down on the keyboard and began to cry. The teacher called the student services coordinator who came and escorted the Student from the classroom.

80. The mathematics teacher did not consider the computer lab event to be disciplinary. She believed that under his IEP the student needed to be given time to cool down. She did not document the event because she expected any documentation would be completed by the student services coordinator. This was her first experience with an expression of anger by the Student. When he threw the chair he glared at her, and the mathematics teacher was

fearful. The mathematics teacher told the student services coordinator she had safety concerns.

Parent

81. The Parent recalls little, if any, communication with the special education teacher or any teacher after early September 2013. She read the special education teacher's November 1, 2013, quarterly progress reports for the first time in January 2014. Most communication between the District and the Parent regarding the Student came from the student services coordinator. The Parent expected the Student's transition to the District would be difficult, and had experience with his oppositional behavior and his tendency to verbalize when he was frustrated. Based on the infrequent calls from him, she believed the Student was gradually adjusting and progressing.

82. The Parent did not know the history teacher reported concerns about the Student's crying and other behavioral problems. She does not know the number of those incidents or the facts of the incidents. The teacher did not document the events. The Parent did not know the eighth-grade staff group developed a protocol to respond to the Student's classroom behavior. She is displeased that District employees did not keep detailed written records of each time the Student's behavior resulted in interaction with a para-educator or teacher in order to deescalate in the classroom. She is displeased that the District employees did not keep detailed written records of each time the Student was asked to leave the classroom, or his behavior prompted him to ask to be allowed to voluntarily leave the classroom, to talk to the counselor or the student services coordinator. She does not understand how the District intended to measure progress toward behavior and social skills goals under the IEP. She expected documentation that was specific as to grade level, whether positive or negative.

83. For the most part, the District witnesses indicated they relied on observation and shared oral communications within the eighth-grade staff group. In the context of a school day, educators do not document every interaction with a student, but would document behavior if it was significant. Most District witnesses did not consider the events to be significant and merit documentation, until November 26, 2013. Most but not all teachers, and both the counselor and student services coordinator, thought the Student's transition to the District was progressing well and that his behavior and social skills were improving. None of the educators, counselors or others asked for an IEP team to be convened because most thought the Student was transitioning as expected, and those who testified who had concerns about behavior did not believe the behavior had reached the level that a functional behavior assessment was needed.

November 26, 2013

84. On November 25, 2013, the counselor and student services coordinator happened to be delivering turkeys and food for a "holiday help" program to families in need of support, including to the Student's home. The Parent told them she would be going to the hospital for testing the next morning, and asked them to keep an eye out on the Student as it had been about two years since he had had to worry about her health. There is no evidence of record that this information was shared with his teachers the next day.

85. On November 26, 2013, the language arts teacher was aware of the approaching one year anniversary of the Newtown, Connecticut, shooting. Her young children were about

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MAR 18 2014

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the same age, and attend the District's elementary school. Her first year of teaching was at Columbine High School. She choked up at that memory, when she explained at hearing the context in which she teaches. She is sensitive to the potential for school violence, and aware of the increasing reports in the news regarding school violence.

86. The Student went to language arts class but when the bell rang, he put his head down on his desk. It was not his usual "MO" as she was accustomed to seeing him begin doing his work right away. She did not want to anger the Student, because since she issued the demerit slip for talking after the bell, she was afraid of what he might do if angered. She asked the para-educator to inquire, hoping it would appear less confrontational. The para-educator reported back that the Student said he was tired. That was not an acceptable excuse, but the language arts teacher decided to give him a few minutes to see if he would start his work. When his head remained on his desk, she approached and assured him it would be all right to go to the nurse's office if he was sick. He said he was not sick, he was just tired. With any other student she would have insisted he either start working or go see the nurse. She decided to allow the Student to remain at his desk with his head down.

87. The language arts teacher subjectively believed the Student was dehumanizing her. They no longer had any rapport, which caused her to wonder about the impact on his moral inclinations. She explained she meant that absent a good relationship, a student might be less inclined to care enough to restrain from doing harm. She believes a good student-teacher relationship is a factor in a safe school environment. She did not know he might be under stress because his Parent had an appointment for testing at the hospital that morning, or that he had not taken his medication that day.

88. The mathematics teacher requested that the Student leave the classroom later in the day on November 26, 2013. She did not document the event. She recalls that the Student started tapping on his keyboard and ignored requests to please stop. As she walked toward his desk, the Student started to pound on the keyboard. The teacher placed the keyboard behind the monitor, hoping it would no longer be a distraction to the Student. The Student reached around the monitor and continued to tap and sometimes pound on the keyboard. The mathematics teacher thought about the protocol developed for such situations and decided to send the Student to the office. She asked him to go three times, but he refused to leave. He did get his back pack and walked down near the counter, but he did not leave. She described how he glared at her and his stare was angry. He told her adamantly that he would not go, and yelled that he hated all the teachers at this school. She picked up the phone to call the office, and the Student moved back to his computer table, while he continued to glare at her. He appeared to be angrier than during the computer lab incident a few weeks before, and she felt fearful. She testified his continued glare chilled her to the bone.

89. The student services coordinator had heard the Student reported he was tired that day, but he had not met with the Student. He was in a meeting that afternoon when he saw the Student in the office. He then met with the Student and counselor and learned the Student's view of what had happened in math class. The Student was upset, understanding that the math teacher wanted to suspend him for two days because of his behavior. He grew angrier and appeared different from prior contacts. He hid his head or kept it down. The student services coordinator explained that he himself has attention deficit issues and his own coping mechanism is to fidget or hold things. He was not concerned when the Student began to hold a pen and use a downward motion on the table top, believing the behavior was a coping

mechanism. He began to worry when the Student grew angrier. The Student did not calm down as he had in the past. He said he hated the school and the teachers, and that he wanted to shoot the school.

90. The counselor recalls she was called in to the student service coordinator's office and observed the Student to be distraught and at an all time low. He was hiding under his jacket, mad, crying, and very emotional. He would pull his jacket collar up over his head and face. She learned he had forgotten to take his medications that morning. She knew his mother had medical issues which might be a source of worry to the Student. She and the student service coordinator remained calm, but on this day the Student grew more agitated. He repeated that he hated the school and the teachers. He said he wanted to shoot the school. He had a pen or mechanical pencil in his hand and began banging on the table. As he continued to grow more aggressive in his motion, she thought to herself, "My God, is he going to hurt himself?" She did not fear for herself or the student services coordinator.

91. While working at other districts, the student services coordinator had two parents shoot each other, and at an alternative school, a parent came armed in full fatigues. He took seriously the Student's threat, as all threats must be taken seriously, even though he had not expected it.

92. The counselor and the student services coordinator each realized that the moment the Student used the word "shoot", resolution of the situation was out of their hands. The counselor remained with the Student while the student services coordinator stepped out to find and inform the principal. The student services coordinator telephoned the Parent and asked her to come to the school. They remained with the Student until the Parent arrived, and continued to talk with Parent and Student until the principal was available to join them.

Emergency Expulsion

93. The student services coordinator gave an oral and written report to the principal about the Student's statement about shooting the school. Exhibit J7. The principal prepared an emergency expulsion form based on intimidation/threat, and a letter with details about the emergency expulsion process for serious misconduct under the Discipline Policy. He gave the form and the letter to the Parent on November 26, 2013. Exhibit J8. The information included the right to appeal to the superintendent.

94. The letter stated in part:

This emergency expulsion will be in effect until converted to another form of discipline or until the following provisions are met:

- (1) [Student] must have a Threat Assessment completed by a mutually agreed upon Health Care Professional. A release of confidentiality must be signed enabling [Student's] records to be shared with the school district. The names of health care providers who provide threat assessments can be made available upon request.
- (2) If a threat assessment is received within ten (10) school business days and indicates [Student] can be returned to school safely, this emergency expulsion may be converted to a short-term suspension.

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MAR 18 2014

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Please note that within ten (10) school business days, a determination must be made to convert [Student's] emergency expulsion to another form of discipline, and the IEP team will need to meet by the tenth business day to determine whether [Student's] behavior is a manifestation of his disability, and whether any aspects of his placement or educational program should be changed. You will receive a separate notice scheduling this meeting with the IEP team.

95. The letter did not mention payment of the assessment, but the District does not dispute that the Parent was orally informed that she was expected to pay.

96. On the first school day after the Thanksgiving holiday, December 2, 2013, the school psychologist telephoned the Parent and invited her to the December 11, 2013, manifestation meeting. She also intended to check in about the status of the Student's threat assessment. The Parent was unhappy with the date and asked that it be scheduled earlier. The Parent was told the time was needed to complete the threat assessment and review the provider's report. The Parent expressed doubts about the need for a threat assessment. She also had difficulty as a single parent on disability paying for an assessment. The Parent questioned whether it was legal for the school to ask her to pay. The psychologist said she would talk to the superintendent and principal, and someone would respond. Exhibit P3.

97. The record does not establish the date the District agreed to pay for the assessment, but it did agree to pay. Based on testimony and emails between the Parent and principal, the date was before December 9, 2013. Exhibit P7. The Parent had few or no replies to her attempts to contact providers. The Parent was grateful when the principal agreed to take the lead in finding an available provider. Unfortunately, the providers who were contacted indicated they were not available. A threat assessment was not completed before the manifestation meeting.

98. On December 3, 2013, the Parent asked the principal whether it was possible for the Student to get the work that he was missing and complete it at home. She mentioned one of his triggers for melt downs in the past was being behind in school. She mentioned the Student's anxiety and that he gets upset about falling grades, and struggled to make up the work once he is behind. The principal replied that technically makeup work is not required on an expulsion; however, the Parent had been working closely with the District and seemed willing to do what was necessary to get the Student back in school so he was willing to make an exception. He asked her to give him until the end of day December 4, 2013. Exhibit D1. The principal granted the request. Exhibit P5.

Meeting of the Manifestation Determination Team

99. The Parent attended the manifestation meeting. She denies receiving written notice of the meeting, but acknowledged she received oral notice. The District's records include a Contact Attempt Report, showing a letter sent and a telephone call made on December 6, 2013, regarding a December 11, 2013, meeting. The document does not identify the employee who made the call or sent the letter. Exhibit D4-6. The record includes a Notice of Meeting dated December 6, 2013, for a meeting on December 11, 2013, described as an FBA meeting for the purpose of a Functional Behavioral Assessment. Exhibit D4-5. The Parent acknowledges that following the manifestation determination, the team talked about an FBA.

100. The District's software program automatically inserts into its forms the date the program is actuated. The user must remember to update the date to show the date the form is completed or finished. This dating issue caused confusion to the Parent, and contributed to her suspicion that decisions were predetermined, or documents were not created on the dates indicated.

101. The District's records include two Prior Written Notices which related to December 2013. One is dated December 6, 2013, to inform the Parent the District is proposing to change the Student's educational setting on December 16, 2013. The content describes details about the team's decision made at the December 11, 2013 meeting. Exhibit D4-4. Such information would not have been known on December 6, 2013.

102. The other Prior Written Notice is dated December 2, 2013. Exhibit D3-4. The Notice states the purpose is to inform the Parent that the District was proposing to initiate disciplinary action that is a change of placement. The action would be initiated on December 11, 2013. The Notice stated that if behavior is determined to be a part of the Student's disability, the IEP team will make an appropriate plan to address some or all of the following areas as the student may not be expelled from the school system and must come up with an alternative option. Most of the content of the Notice summarizes the December 11, 2013, meeting. Such information would not have been known on December 2, 2013.

103. It is found that both Prior Written Notices were created during or shortly after the December 11, 2013, IEP team meeting.

104. The IEP team which met for a manifestation determination included the Parent, the Student's language arts general education teacher, the school psychometrist, the principal, the superintendent, and the Student's special education teacher. The Parent invited a parent support advocate from a local mental health organization. She had experience with the advocate a few years earlier in Orting.

105. The Parent felt blindsided at the start of the meeting when she heard reports from teachers about the extent of the Student's behavior problems at school. She recalls the language arts teacher describing the Student as one of the worst she had seen in her 14 years. The Parent had not previously been aware there was a morning incident on November 26, 2013. She was surprised to learn the language arts teacher was afraid and had a real fear of the Student, based on details about pushing stuff off his desk and other details new to the Parent. She had not known the history teacher had done a lot of time one-on-one with the Student to deescalate. The Parent's description of the fear expressed by teachers is found credible and is consistent with how some teachers described their feelings.

106. The Parent informed the team the Student had not taken his ADHD medication on November 26, 2013, and was likely stressed due to the change in his routine as she was at the hospital for testing. She and her advocate discussed the Student's history and their belief that the Student's actions were the result of his diagnosed mental disorders. The IEP team determined the Student's conduct had a direct and substantial relationship to his disability, but was not a result of failure to implement his IEP. Exhibit D3.

107. The Parent agreed, however, with the manifestation determination.

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OFFICE OF PROFESSIONAL PRACTICES

Functional Behavioral Assessment

108. The IEP team immediately began to conduct an FBA. The District's records include an FBA dated December 11, 2013. Exhibit D4-1 to -3. On its face, it is incomplete as some sections are blank and spaces for insertion of examples or dates work is to begin are blank. The Parent was surprised to read the form during a January 2014 records review, and mistakenly believed the District had adopted an FBA without her input. The preponderance of evidence is that on December 11, 2013, a draft was begun but not completed. The attendance of the Parent's advocate is not noted, and the school attendees are identified by title, when it is custom to update the software forms with the attendees names.

109. While the team was performing an FBA, the Parent's advocate interjected an idea. She had not yet mentioned the idea to the Parent, but to brainstorm she wondered if the Student would benefit from an out-of-district placement. She did not know if that was a possible placement option. The Parent had not considered that option. The advocate mentioned some options, and the Parent said she was open to the idea. To the surprise of the principal, the superintendent said the District would consider funding an out-of-district placement. The discussion turned away from completing the FBA to discussion of out-of-district placement options. The parent advocate mentioned two or three options, to which the superintendent responded that she would look into them. The superintendent expressed her reluctance about one placement based on prior experience with another student. The team realized it needed more information, and the discussion turned to an interim placement.

110. The District would not agree to allow the Student to return to LTMS without a threat assessment. The team agreed to start one-on-one tutoring until the threat assessment could be completed, and more information could be gathered about placement options. The Parent rejected tutoring at home based on the Student's oppositional issues, and the District agreed to the District office. The District offered to transport the Student, which the Parent initially declined. Later, she would ask the District to provide transportation which it did.

111. It is found that the FBA in the student's records constituted an incomplete draft, and that an FBA was not completed in December 2013.

The Tutor

112. The District contracted with a tutor who is an experienced teacher with a lifetime teaching credential and certified to teach kindergarten to twelve grade. He is not a behavior intervention specialist and has not provided behavior intervention services. He does not provide any physical education opportunities to the Student. His role is as an instructor only. He has no fear working with the Student, and has not experienced any behavior problems. He observed that the Student was thriving in the interim placement, and had asked for more homework. He denied that the District had asked him to ask the Student about his feelings about returning to school. He did recall talking to the Student when the Student brought up the topic of returning to school.

113. The special education teacher contacted the tutor to inquire about the Student's progress under the interim alternative placement. She updated the comments section in his Measureable Annual goals to report on January 29, 2014, for Written Language and Math Calculation. The tutor had reported the Student enjoyed writing, was able to write in coherent

paragraphs, prefers to write on a topic of his own choosing, including a persuasive piece about too much homework. He was working hard in math and had mastered addition, subtraction and multiplication and appeared to understand the long-division process. He was currently working with fractions and doing well, but it was difficult to put a precise grade level on his work. The tutor had reported he was making nice progress. Exhibit J13-1 to - 2.

114. As the Student was in an interim alternative placement which lacked school-based social situations and peer interaction, the January 29, 2014, progress report indicated insufficient progress toward meeting his Social Emotional and Social Skills goals. Exhibit J13-3 to -5.

Investigation of Out-of-District Placement Options

115. The superintendent and the Parent continued in December 2013 to communicate about out-of-district placement options. Some were public institutions, others were private. The superintendent called to coordinate a tour of one option (Firwood), but the Parent wondered whether they should wait until the threat assessment was completed. A conference call was made to Firwood, and the superintendent and Parent learned Firwood staff preferred to have the threat assessment information before it would consider the Student.

116. By mid-January 2013, the superintendent had received a copy of the threat assessment report. She contacted the Parent to continue the process of finding an out-of-district placement. The Parent was surprised. The Parent had been confident the threat assessment would indicate her son spoke without intending a threat, and the provider had indicated in her opinion that out of district placement was not needed. The superintendent was surprised to learn the Parent had not simultaneously received a copy of the report. She began to read from the report's recommendations to the Parent, which caught the Parent off-guard because she was expecting a different outcome. While waiting for the superintendent to send her a copy, the Parent spoke to the provider who explained the shift in her recommendations. The Parent wrote the superintendent to indicate she was willing to tour Firwood. She also asked the superintendent to consider other options, including Northwest School of Innovative Learning (SOIL) and ReLife. Exhibit D6.

117. The Parent came to believe the District had unfairly influenced the provider who conducted the threat assessment. This contributed to her loss of trust in the District and its staff. District staff were also confused, because the idea of an out-of-district placement had not originated with the District. The idea had originated with the Parent's advocate, and the District believed the Parent was interested in an out-of-district placement.

The Threat Assessment

118. Ashley Harmon is a medical doctor with a Seattle practice in child, adolescent, and adult psychiatry. Dr. Harmon agreed to evaluate the Student and report whether he was in danger of hurting himself or others in the school environment. She did not testify.

119. The principal had earlier provided Dr. Harmon with documents she requested, which included the Orting records, the District IEP, the protocol created by the eighth-grade staff group, the notes of the student services coordinator regarding the November 26, 2013, threat, the demerit forms, an electronic mail from the Parent listing Student medications, and his

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MAR 18 2014

OFFICE OF PROFESSIONAL PRACTICES

academic history or grades for first quarter. Exhibit J9. The evidence does not support the Parent's assertion that the incomplete FBA was provided to Dr. Harmon. The FBA is not listed as an attachment or otherwise referenced in the electronic mail between the District and Dr. Harmon. See Exhibits P14, J9 and J10.

120. Dr. Harmon met with the Student for over an hour, and the Parent for about forty-five minutes, ending with a joint meeting, for an evaluation session of about two hours duration on January 9, 2014. The Parent understood Dr. Harmon would be recommending the Student transition back to LTMS, and that he did not represent a threat to himself or others at the school. The Parent was pleased with that outcome. Although her advocate had raised the idea of an out-of-placement option, she had come to prefer that the Student return to LTMS as soon as possible.

121. On January 11, 2014, Dr. Harmon sent an electronic mail to the principal. She wanted to talk as soon as possible. She expected to have her report finished over the weekend. She wanted to know what specific questions the District wanted to have answered. She wrote:

1. He is a low risk student to return to school – low risk relative to his statement/threat. He is a behavioral challenge undoubtedly. Since transitions are hard, I would suggest he returning to SPED classes first; then move back into a full day while he has frequent check ins.
2. I have ideas about the behavior plan, ways to elaborate it some more.
3. I'm not sure he is at an out of district level, but I'm not sure what staff and supports you have there either.
4. His slow processing speed and ADHD are a large part of the problem in addition to the sudden transition this year and his home life. He might need more SPED classes.
5. I also have some ideas about his medications and having a back up supply of medication at the school in case he misses a dose.

Dr. Harmon noted some schools prefer she just keep to the question of safety in evaluation, and to let her know what would be helpful. Exhibit J10-1.

122. The principal did speak with Dr. Harmon, and recalls Dr. Harmon's surprise when he informed her that the District does not have a high school, and is only a K-8 district. The principal explained that Washington law permits students who finish in a non-high school district to choose to attend any public high school in the state. Dr. Harmon had expected the Student would transition from the District's middle school to its high school. She had not considered the impact of a second transition to some other district, so shortly after the Student transitioned from the interim placement to the middle school. The principal understood she was concerned there would be too many transitions in a short time period.

123. On January 14, 2014, Dr. Harmon sent the principal a draft of her report and asked if he had comments or questions. Exhibit P14. The Parent was not provided the same opportunity. The fact the District had an opportunity to review the draft added to the Parent's concern the District was unfairly interfering with the assessment. However, the draft does not differ in any significant way from the final report. Exhibit J11. Dr. Harmon issued a written report which she signed, but did not date. She sent the report only to the District. Exhibit J12.

124. Dr. Harmon summarized the factors she found were reassuring and which lowered the risk of the Student perpetrating violence on himself or others. She wrote:

After discussing the resources available at North Tapps Middle School and the upcoming transition to another district for high school, it is my recommendation that out of district setting be explored in order to provide concurrent psychiatric treatment with a full time special education. This will offer [Student] the best possible situation for future success in school and life. The [District] is committed to supplying the level of support needed to ensure [Student] is able to make academic progress.

My recommendations include the following:

1. Continue daily tutoring to maintain his academics while a placement is located.
2. Explore possibly increasing his Zoloft with his nurse practitioner given his clinical symptoms of depression and anxiety and level of psychosocial stressors.
3. Continue his psychotherapy at Sound Behavioral Health.
4. An out of district setting needs to include a similar group of peers that struggle with emotional and academic disabilities as well as a high teacher to student ratio. [Student] needs to feel safe in a setting in order to make progress. He made great progress in the past with behavioral programming and support. Highly trained teachers with certification in special education and extensive experience working with psychiatrically ill teens with resulting behavioral issues. Availability of licensed psychologists, social workers, and school adjustment counselors at all times. Scheduled individual and/or group therapy at least once weekly that includes collaboration with his outside providers. Regular family contact to coordinate future academic planning and needs.

[Student] is an engaging and insightful 14 year old that is able to verbalize his feelings when he is calm. He is also very sensitive and caring that leaves him vulnerable to acting out within the context of triggers like transitions and academic learning. He is currently experiencing an exacerbation of his MDD that is contributing to his volatility. With continued treatment and academic supports, treatment and academic supports, there is no reason to expect anything less than success. The goal for [Student] would be to make process toward returning to a public setting for high school.

Exhibit J11-5 to -6.

125. The Parent objects to the reference about "the resources available." Her belief the District unfairly influenced Dr. Harmon, that the District had opportunity to review a draft, and that the District received a copy of the final report before she did, are factors which have contributed to her loss of trust in the District and LTMS staff.

126. The preponderance of credible evidence supports a finding that Dr. Harmon practices in the metropolitan Seattle area. Her initial statements to the Parent about her anticipated recommendation were more likely than not based on her expectation that the

MAR 18 2014

OFFICE OF PROFESSIONAL PRACTICES

Student would transition from the District's interim placement to middle school and then to high school. No further findings can be made without speculating, as Dr. Harmon did not testify.

127. The District stands ready to proceed with an early comprehensive reevaluation in all areas of need. It is ready to proceed to complete the FBA and develop a BIP. It is ready to consider all placement options, including LTMS as well as out-of-district placements. Previously, staff expressed safety concerns related to the Student's return to LTMS. The principal remarked in an email that the District could not legally keep out the Student if he was expelled for conduct caused by his disability. The language arts teacher admitted she was insensitive when she replied to the email, "Well, who do we get to sue when he comes in with a knife or gun?" She explained the context in which she made the remark (Finding No. 85).

128. The Parent is concerned the IEP team will rely solely on Dr. Harmon's recommendation to determine placement. However, the IEP team has not yet reconvened. There is no basis in the record to find that the IEP team, including the Parent and any Parent advocate, would not be able to consider all available information to make a placement decision.

Parent's Complaint

129. The Parent filed a Due Process Hearing complaint on January 27, 2014. The District was surprised to learn the Parent filed a complaint.

130. The Parent did not raise the issue of PE prior to filing the complaint. The District asserts the Parent participated in development of the Student's class schedule with the student services coordinator on August 26, 2013, that she asked the Student not participate in PE. It contends the Parent knew or should have known the Student was not participating in PE, as PE was not one of his classes. Exhibit J9-4. The IEP does not describe or define "adaptive." It does state that the Student will not be required to wear a uniform, nor be graded regarding wearing a uniform. The District asserts the opportunity to participate in PE in second quarter was always an option, once the Student had transitioned into LTMS, to meet the IEP goal.

131. The Parent asserts she did not have a full understanding of the options, when she agreed at the manifestation meeting. After Dr. Harmon's report was issued, she felt trapped and bullied and without options.

132. The Parent believes the Student needs a comprehensive evaluation. The District agrees, and that waiting until March 2015 is not appropriate. The District is prepared to conduct a comprehensive evaluation. The Parent wants an independent evaluation at public expense, as she no longer trusts in the District or its ability to conduct an evaluation. She contacted an independent group (Brooks Powers), and their next available opening was April 2013. She did not know how long it would take for a report to be issued after testing and assessments were completed. A few days prior to hearing, the Parent contacted a Puyallup-based provider who conducts "social communication" evaluations. The document and witness list exchange deadline had already passed. The provider told the Parent to expect about 30 days.

133. The Parent agreed the descriptions of the Student's "melt downs" or classroom behaviors of shutting down or failing to listen were a repeat of his behavior at Orting. His sixth grade year at Orting was difficult, but improved significantly with only a few behavior issues in seventh grade. She admitted Orting staff were able to address the Student's behavior and

social skills issues without an FBA or BIP. The Parent believed that through trial and error, Orting staff learned how to help the Student. She faults the District for not contacting Orting to learn the techniques which worked, and how to avoid triggers so that the poor behavior does not occur at all, or at least does not escalate.

134. To the Parent, the resolution of this case comes down to truth and trust. She does not believe the facts or reality presented by the District. With her trust broken, she believes someone independent, without a vested interest in the outcome, needs to do the comprehensive evaluation and advise the IEP team regarding the best placement.

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 US 49, 126 S. Ct. 528, 163 L. Ed. 2d 387, 44 IDELR 150 (2005). As the Parent is the party seeking relief in this case, she has the burden of proof.

Free Appropriate Public Education and Educational Benefit

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. The educational benefit must be a "meaningful" one. *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1501, 24 IDELR 68 (9th Cir. 1996).

5. Procedural violations do not automatically require a finding of a denial of FAPE. However, procedural violations that impede the student's right to FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of

MAR 18 2014

OFFICE OF PROFESSIONAL PRACTICES

FAPE, or caused a deprivation of educational benefit clearly result in the denial of FAPE. 34 C.F.R. § 300.513(a)(2); WAC 392-172A-05105(2).

6. In the Ninth Circuit, educational progress is not only measured by demonstrated competence in the academic setting, but also on the progress a student makes on the central goals of the IEP. *County of San Diego v. Calif. Special Education Hearing Office*, 93 F.3d 1458, 1467 (9th Cir. 1996). Educational needs are to be construed to include not only a student's ability to score well on a test, but also "the handicapped child's academic, social, health, emotional, communicative, physical and vocational needs." *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996)

7. The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of the student. 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; WAC 392-172A-01175.

8. The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; WAC 392-172A-01155.

Parent's Right to Participate in Evaluation, IEP Team, and Placement Decisions

9. The IDEA requires that parents be given the opportunity to actively participate in their child's education, both in the formulation and review of the student's IEP. WAC 392-172A-03040, -03050, -03095, -03100, and -03115. The appendix to the Federal Regulations gives further definition to the parents' role in the process:

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

64 Fed. Reg. 12473 (Mar. 12, 1999).

10. The District correctly adopted Orting's comprehensive evaluation and IEP. There is no evidence the District had new information about the Student's individual needs to merit amendment of the IEP at the start of the 2013 school term.

11. The title of District employees is not determinative in providing the individualized and specially designed instruction and related services listed in the IEP. The lack of an employee bearing the title "behavior intervention specialist" did not equate to a failure to provide FAPE. While the better practice would have been to change the reference to a person holding a specific title, failure to do so did not constitute a violation of the Parent's rights or a denial of FAPE. Minor discrepancies in implementing an IEP do not constitute a denial of FAPE. *Van*

Duyn v. Baker SD, 502 F.3d 811, 107 LRP 51948 (9th Cir. 2007). The relevant focus is whether the District provided the concurrent behavior intervention services by qualified personnel in a special education setting as required by the IEP. The special education teacher and the student services coordinator are both qualified personnel, and both were very familiar with the Student's IEP requirements and interacted frequently each week with the Student. Both served the Student in areas of behavior, emotions, and social skills. The counselor's knowledge of the IEP requirements was second hand, from the student services coordinator and teachers and others, including during the eighth grade level group meetings. She had not read the Student's IEP. The time she spent with the Student is not counted toward the 30 minutes weekly of behavior intervention services. However, the Student received more than 30 minutes weekly from his special education teacher and the student services coordinator, both qualified educators able to provide behavior intervention services.

12. The District did not ignore the history teacher's reports of crying and emotional behavior by the Student. The sharing and discussing of observations amongst the Student's eighth grade educators was timely and appropriate. An important consideration to the educators was that the Student had few or no emotional or behavioral problems in other classrooms and settings. He was shy, but the evidence is undisputed that he made friends and had no record of difficulties with peers. Most educators reported a growing rapport with the Student. The Student had been in school over five weeks when the Parent was called on her birthday regarding the cell phone, and almost four weeks passed before the November 6, 2013, demerit slip incident with the language arts teacher. The student services coordinator considered the resolution of that event to be a significant improvement, as the Student was able to become calm, control his emotions, and return to the language arts class before the period ended. The protocol the eighth grade group had agreed to try appeared to have served its purpose. The evidence does not support a conclusion that the District had information to show that an IEP team must be convened prior to the November 26, 2013, expulsion. The District did not deny FAPE based on failure to convene an IEP team meeting prior to the November 26, 2013, expulsion.

13. The Parent did not develop the record on the issue of study skills class or show how the District's provision of services by the special education teacher was contrary to the IEP. The IEP continued the Orting recommendation of 40-79% of time in a regular or general education setting. A specific class does not constitute a placement. The record does not establish that the District violated FAPE by providing services and specially designed instruction by a special education teacher in a study skills class.

14. The Parent did not develop the record regarding assistive technology. The record contains no basis to determine the District violated FAPE by failing to provide a laptop and software of any other assistive technology to the Student.

15. The Parent's right to actively participate in developing, reviewing and revising the IEP does not equate to active participation in the classroom instruction or choices of materials and methodologies. It is the role and responsibility of educators to exercise their professional judgment, expertise and observation to determine which methods or techniques address a student's needs. The Parent described Orting's educators as having developed a plan through trial and error to find what worked. Orting's IEP summarized what had worked in the list of accommodations and modifications. The District correctly adopted and implemented the Orting accommodations and modifications, and District educators shared their observations of the

MAR 18 2014

OFFICE OF PROFESSIONAL PRACTICES

Student's classroom and school-setting responses. The educators' decision to try a uniform approach and write a classroom protocol was within their purview and responsibility. It was the educators' duty to respond to classroom observations and plan and monitor various methods to implement the IEP in the school setting. The development of the classroom protocol without inviting input from the Parent did not violate the Parent's right of participation.

16. A BIP may be part of an IEP or a separate document. The parties agree that after the IEP team determined the behavior which resulted in the emergency expulsion on November 26, 2013, was a manifestation of the Student's behavior, the IEP team needed to perform an FBA and develop a BIP. WAC 392-172A-05145(6). The Parent contends the District should have convened an IEP team earlier to perform an FBA and develop an IEP. The Student had attended school for twelve weeks when the expulsion occurred, and during that period the pattern of behavior was one of improvement. The Parent has not proven that the District had knowledge that student needed a formal FBA and BIP prior to the November 26, 2013, incident.

17. The Parent has not proven that she had reason to believe or expect that the Student was participating in PE. The preponderance of credible evidence is that the class schedule was discussed with the Parent, that the District staff reasonably believed she asked that the Student not participate in PE during the difficult transition from Orting, and that the availability of second quarter PE to meet the IEP goals was available. The Parent has not proven the District denied the Student FAPE based on lack of a PE program.

18. The Parent has not proven the District violated her rights by failing to provide her with progress reports. The Parent had no recollection of reading the reports prior to a January 2014 records review, but the lack of recollection does not prove that the special educator erred and did not send the reports.

Prior Written Notice

19. A district is required to give parents prior written notice whenever it proposes or refuses to initiate or change the identification, evaluation, educational placement or provision of FAPE to a student eligible for special education. The contents of the notice are to include, in part, a statement of the action taken or refused and notice of that parents have procedural safeguards, to which they may have access. WAC 392-172A-05010.

20. The Parent has not proven the District failed to meet notice requirements. It is concluded there was no procedural violation regarding prior written notices.

Procedural requirements for discipline of a Student receiving special education services

21. The IDEA identifies specific procedural requirements for discipline of a Student receiving special education services. WAC 392-172A-05140 – WAC 392-172A-05175.

22. The expulsion rules do not address the issue of parental payment for a risk assessment as a condition of return to school. The District's discipline policy or procedure is not of record, and it may require payment. However, the District is responsible for paying for assessments and evaluations of special education students. No case law has been found which requires the District to pay for a risk assessment prior to a determination that the conduct

for which the student is being disciplined is a manifestation of his disability. It is concluded that the District was obligated to pay for the risk assessment once the IEP team determined the conduct was a manifestation of the disability. For sake of argument, even if the District had an obligation to pay prior to the manifestation determination, there is no evidence that delay between the November 26, 2013, expulsion, and the District's agreement to pay prior to the December 11, 2013, manifestation meeting, resulted in a denial of FAPE.

Independent Educational Evaluation

23. The District bears the duty to evaluate. Each school district has an affirmative obligation to reevaluate a student at least every three years, or earlier if conditions warrant a reevaluation. 34 C.F.R. § 300.303(b)(2); WAC 392-172A-03015(2). The purpose of an evaluation is to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.15, 300.301(c)(2); WAC 392-172A-01070. Federal and State regulations require a school district to evaluate a student, "in all areas of suspected disability." The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F.R. § 300.304(c)(4), (6); WAC 392-172A-03020(3)(e), (g). The evaluators must also use a variety of assessment tools and strategies to gather functional and developmental information about the child. 34 C.F.R. § 300.304(b)(1); WAC 392-172A-03020(2)(a).

24. The Parent's assertion that the Student's poor behavior was escalating and warranted early reevaluation has not been proven. It is understandable that the Parent would consider the expulsion and wonder how it could have been avoided. However, the evidence simply does not prove the Student's behavior was escalating, or that his conduct prior to November 26, 2013, was such that reasonable educators would believe early reevaluation was warranted. The District did not deny the Student FAPE due to failure to do an early reevaluation.

25. Here, the District has not yet done an evaluation. The Parent has not proven the existence of extraordinary circumstances that would warrant an IEE at public expense prior to the District's completion of its obligation to conduct an evaluation. Case law from state due process hearings on the topic is based on egregious delays or other significant violations by districts. An 18-month evaluation delay justified reimbursement of private school and evaluations the parent obtained in the interim. *Montgomery County Intermediate Unit*, 109 LRP 62289 (SEA PA 2009). Failure to conduct a fine motor exam was not enough to invalidate a district's comprehensive occupational therapy assessment in *Garvey Sch. Dist.*, 109 LRP 23281 (SEA CA 2009). A minor testing error did not require a district to pay for an independent assessment in *Capistrano Unified Sch. Dist.*, 52 IDELR 272 (SEA CA 2009).

26. The Parent has not proven circumstances entitle her to an IEE at public expense at this time. The parent's request for an IEE is premature.

Predetermination of Placement

27. The Parent asserts that following the manifestation meeting and receipt of the threat assessment report from Dr. Harmon, the District has predetermined an out-of-district placement. The preponderance of evidence does not support that conclusion. The District did not initiate the idea of an out-of-district placement. The District's willingness to consider and pay for an

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MAR 18 2014

OFFICE OF PROFESSIONAL PRACTICES

out-of-district placement prompted the IEP team to decide to investigate and gather more information upon which to make a placement decision. The Parent was an active participant. The action to investigate further is not a predetermination.

28. It is understandable the Parent is concerned about the weight IEP team members may give to Dr. Harmon's placement recommendation. However, when the IEP team reconvenes, it is legally obligated to give consideration to the Parent's information and concerns, and to consider all available information regarding the Student's need for specially designed instruction and related services. It is premature to conclude the IEP team will fail in its responsibilities.

Rejection of All Other Arguments

29. All arguments made by the parties have been considered. Arguments that are not specifically addressed have been duly considered but are found to have no merit or to not substantially affect a party's rights.

Conclusion

30. The parties need to figure out a way to agree on how best to exit the Student from the interim placement as soon as possible. Each party may have their own understanding of truth, but each must acknowledge that the facts and reality have changed. The District needs to acknowledge and be sensitive to the Parent's reasonable apprehension after she heard the fears expressed by the language arts teacher and others, and how she felt blindsided to hear anecdotal reports about her son that were disturbing and led to her loss of trust. The Parent needs to acknowledge and be sensitive to the context in which educators teach, of individual teacher's experiences involving school violence, and that fears based on speculation change once facts are known. If an IEP team placement decision involves return to LTMS, in addition to performing an FBA and developing a BIP, the team is encouraged to consider how to appropriately alleviate fears of staff (if any fears remain after consideration of Dr. Harmon's findings regarding the low risk of harm).

DECISION

The District did not commit a procedural or substantive violation of the IDEA by adopting Orting's March 2012 comprehensive evaluation and May 2013 IEP, or by not convening an IEP to perform an FBA and develop a BIP, or in its implementing of the IEP.

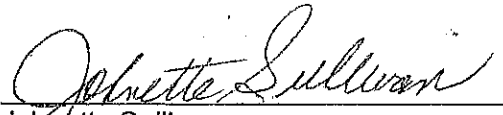
The District did not commit a procedural or substantive violation of the IDEA related to holding a manifestation determination meeting, or failing to complete an FBA.

The District did not commit a procedural or substantive violation of the IDEA by failing to provide the Parent with prior written notices when it proposed to initiate a change in educational setting or placement.

The District did not commit a procedural or substantive violation of the IDEA by predetermining placement following the current interim placement.

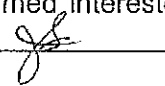
The Parent is not entitled to an IEE at public expense at this time.

Signed at Yakima, Washington on March 14, 2014.



Johnette Sullivan
Administrative Law Judge
Office of Administrative Hearings

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. 

Parent



Dr. Judy Martinson, Superintendent and Special
Education Director
Dieringer School District
1320 - 178th Ave E
Lake Tapps, WA 98391



Jeffrey Ganson, Attorney at Law
Porter Foster Rorick LLP
800 Two Union Square
601 Union St
Seattle, WA 98101

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

Final Decision

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 action must be provided to OSPI, Administrative Resource Services.