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

IN THE MATTER OF:

SPECIAL EDUCATION
 CAUSE NO. 2013-SE-0090

TACOMA SCHOOL DISTRICT

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Anne Senter in Tacoma, Washington, on February 6, 7, 11, and 12, 2014. The Adult Student whose education is at issue¹ appeared for a portion of the hearing and was represented by Angela Shapow, attorney at law. The Tacoma School District (the District) was represented by Carlos Chavez, attorney at law. Also present was Jon Bell, District director of student services. The Adult Student's Mother was also present for a portion of the hearing.

STATEMENT OF THE CASE

The Adult Student filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on October 4, 2013. The Complaint was assigned Cause No. 2013-SE-0090 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered October 8, 2013, which assigned the matter to ALJ Michelle Mentzer. The District filed its Response to the Complaint on October 14, 2013. After the District filed a Motion of Prejudice, an Order of Reassignment of Administrative Law Judge and Order Changing Time of Prehearing Conference was entered on October 16, 2013, reassigning the matter to ALJ Anne Senter.

Prehearing conferences were held on October 31 and December 3, 2013, and January 14 and 21, 2014. Prehearing orders were entered October 31 and December 3, 2013, and January 15 and 21, 2014.

The parties timely submitted post-hearing briefs by postmarking them on March 14, 2014.

Due Date for Written Decision

As set forth in the Prehearing Order entered October 31, 2013, the due date for a written decision in this matter is thirty (30) days after the record of the hearing closes. The record of the hearing closed on March 14, 2014, with the submission of the parties' post-hearing briefs. Accordingly, the due date for a written decision is **April 13, 2014**.

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

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Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 - D25;

Adult Student's Exhibits: S1- S84 ; and

Court's Exhibits: C1- C2.

Witnesses Heard (in order of appearance):

Leonard Aron, M.Ed., Yellow Wood Academy;
Nicole Kimmerling, District special education teacher;
Susan Monroe, District special education teacher;
Outhai Seipt, District school psychologist;
Adult Student;
Mother;
Jean Lubken, District guidance counselor;
Jacquelyn Raymond, District special education teacher;
Rene Jones, College Success Foundation college preparatory advisor;
Bradley Jones, District general education teacher;
John Jones, District assistant principal;
Clifford Aziz, District general education teacher; and
Jonathan Bell, District assistant director of student services.

ISSUES

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

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) in the two-year period prior to October 4, 2013 by:
 - i. Improperly exiting the Student from special education services;
 - ii. Improperly graduating the Student in June 2013;
 - iii. Making the following unilateral changes to the Student's program without issuing prior written notice, obtaining the Student's consent, or holding an IEP meeting:
 - A. Changing the Student's grading from letter grade to Pass/Fail and modifying the curriculum in his second semester senior year World Issues class;
 - B. Dropping the Student from his special education math class approximately two weeks before the end of his senior year and giving him credit instead for a study skills class he was not enrolled in until May 8, 2013;

- iv. Failing its child find/identification duties to identify and evaluate the Student as being eligible for special education and related services in the areas of Reading, Focus, Organization, Study Skills, and Behavioral issues;
- v. Failing to properly evaluate the Student in February 2013 and in May 2013 by:
 - A. Not conducting a sufficiently comprehensive evaluation;
 - B. Not addressing all the Student's needs;
 - C. Not using a group of qualified people to conduct the evaluation;
 - D. Not considering information from a variety of sources;
- vi. Failing to develop an appropriate IEP in March 2012 by:
 - A. Not including adequate benchmarks or short-term objectives;
 - B. Not including adequate present level of progress;
 - C. Not including adequate transition services;
 - D. Not including annual goals;
 - E. Not including a statement as to why the Student cannot participate in regular assessments and how the alternate assessments selected were appropriate for the Student;
- vii. Failing to develop an appropriate IEP in February 2013 by:
 - A. Not including adequate annual goals, benchmarks, or short-term objectives;
 - B. Not including adequate present levels of progress;
 - C. Not including adequate transition services;
 - D. Not including a statement as to why the Student cannot participate in regular assessments and how the alternate assessments selected were appropriate for the Student;
- viii. Failing to develop an appropriate IEP in May 2013 by:
 - A. Not addressing the Student's academic needs;
 - B. Not including academic goals in Math;
- ix. Failing to follow procedures for the discipline of special education students by:

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- A. Not timely holding a manifestation determination meeting;
 - B. Not providing special education services to allow the Student to make progress in general and special education during his suspension;
 - C. Failing to evaluate the Student before his disciplinary change in placement;
- x. Failing to provide adequate or appropriate transition services and goals tailored to the Student's specific needs to prepare him for post-secondary education and employment; and
- b. Whether the Adult Student is entitled to his requested remedies:
- i. Compensatory education in the total amount of 800 hours in the areas of Reading, Transition Services, Math, and Study/Organizational Skills for the time period October 4, 2011, to the present;
 - ii. Prospective placement on a community college campus to allow the Student to take pre-college level courses as a transitional program to prepare for continuing education at the college level and transportation or reimbursement for transportation to and from the campus;
 - iii. Reimbursement to the Parents for the Student's educational evaluation and educational consultation;
 - iv. And/or other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. At the time of the hearing, the Adult Student was 19 years old and had graduated from the District.
2. The Adult Student was initially evaluated and determined eligible for special education and related services in kindergarten under the specific learning disability (SLD) category. Exhibits D1, page 1; S8, page 3. He received specially designed instruction (SDI) in reading, written language, and math. *Id.* Following a reevaluation in the third grade, he was determined to need SDI only in math and written language and, after another reevaluation in the sixth grade, only in math. *Id.*; S10, page 1; S9, page 1.
3. The Adult Student's progress reports noted difficulties with attention and/or organization as early as the first grade. *See, e.g.*, Exhibits S8 (1st grade: "sometimes needs to be reminded to listen and follow directions;" "needs to focus his attention"); S47 (2nd grade: "easily distracted in class;" "trouble focusing and staying on task"); S46 (4th grade: "off-task behaviors;" "needs to be called upon often in order for him to be focused in class and in his tutoring sessions"); S44 (6th grade: "very easily distracted"); S34, 37 (7th grade: "study habits and/or organization need to be

improved;" "needs to be less social and/or pay more attention to his class work;" "needs to pay attention in class"); S33 (8th grade: "needs to be less social and/or pay more attention to his class work;" "needs to pay attention in class").

Grade 9 – 2009-2010 school year at Wilson High School

4. The Adult Student attended Wilson High School (Wilson) in the District in the ninth grade during the 2009 - 2010 school year. The IEP that would have been in effect at the beginning of the school year is not in the record.

5. The Adult Student took general education Algebra 1² both first and second semesters. Exhibits D23, S25; Raymond testimony. He did not pass it the first semester, but received a D and .50 credits when he took it a second time. Exhibits D23, S25. The Adult Student took special education study skills basic 1 and 2 that year as well, earning a C- and .50 credits the first semester and a C and .50 credits the second semester. *Id.* Jacquelyn Raymond, a special education teacher, provided him with SDI in math during that class. (Raymond, Tr. 552). He also took "modified integ math," another special education class, second semester and earned a C- and .50 credits. Exhibits D23, S25.

6. The Student's triennial reevaluation took place in February 2010. Exhibits D1, S8. A supplementary report for SLDs stated that the Adult Student's "academic achievement levels in reading comprehension, math reasoning, and written language indicate that he is not making sufficient progress to meet state grade level standards" and that his assessment scores and functional classroom performance were significantly below grade level. Exhibits D1, page 5; S8, page 7. The report does not state whether the Student met the criteria for a severe discrepancy in any of these areas. *Id.* Based on the Student's scores, he would have qualified for SDI in math reasoning and reading comprehension using the discrepancy model. (Seipt, Tr. 268).

7. The evaluation included classroom observation forms from five of the Adult Student's teachers. Exhibits D1; S8, pages 12-16. Several of the teachers noted that he did not consistently have materials organized, work independently without frequent help from the teacher, or remain on-task well. *Id.* One teacher noted that he "require[d] consistent reminders to stay on task and keep the ipod away." Exhibits D1; S8, page 13. Another stated that he had "greatly improved since September in the areas of listening without talking, working on assignments, in class, and turning in assignments," but noted that improvements could still be made. Exhibits D1; S8, page 14. Ms. Raymond, the special education teacher, noted in her observation form, that the Adult Student is "usually distracted by any little thing" and that his "class clowning [and] inability to focus are contributing factors to some of his low grades." Exhibit D1.

8. The evaluation summary stated that the Student's "low average reading comprehension and written expression scores suggest that his low average skills may affect his progress in the general education curriculum." Exhibits D1, page 3; S8, page 5. It also stated that behavior is

² The District's courses entitled Algebra 1 and 2 are together the equivalent of the Algebra 1 state requirement. (Lubken, Tr. 497) Similarly, the District's courses entitled Algebra 3 and 4 are together the equivalent of the state Algebra 2 requirement. *Id.*

not indicated as a primary, significant factor interfering with educational performance in spite of some difficulty with attention to task, organizational skills, and work completion. *Id.* The report concluded that the Student remained eligible for special education under the SLD category, and recommended SDI in math. Exhibits D1, page 4; S8, page 6.

9. The District issued a Prior Written Notice dated March 1, 2010. Exhibits D1, page 16. It stated that the District was proposing to continue special education services. *Id.* It noted that the District had considered providing special education services for reading and/or written language but rejected doing so because SDI in those subjects was not needed for success in a general education program based on the team's review of the data including functional classroom performance. *Id.* Further, it stated that the Student could succeed in general education English if he made a good effort and got additional help after school. *Id.* It also noted that the Parent was not in favor of adding SDI for reading and/or written language, and that the team supported her in the decision to provide SDI for math only. *Id.*

10. The Adult Student's annual IEP for this year is dated March 1, 2010. Exhibits D2; S1. It provides for SDI in math for 275 minutes per week. Exhibits D2, page 1; S1, page 1.

11. The IEP states that the Student will participate in the reading, writing, and science portions of the Washington Assessment of Student Learning (WASL) with accommodations. *Id.* For math, it states that the Student will participate in the "WASL-Basic (Level 2)." *Id.* It notes that parents and students should be informed that certain assessments, including WASL-Basic, lead to a Certificate of Individual Achievement (CIA) rather than a Certificate of Academic Achievement (CAA). *Id.*

Grade 10 – 2010-2011 School Year at Foss High School

12. In the tenth grade, the Adult Student transferred to Foss High School (Foss), another District school. He came to Foss with his IEP from Wilson. (Kimmerling, Tr. 142)

13. He took Geometry 1 and 2, receiving .50 credits for each class and a D and a C- respectively. Exhibits D23, S25. He also took study skills basic each semester, earning an A the first semester and a P the second semester and .50 credits for each class. *Id.* The study skills course was a special education course in math. (Kimmerling, Tr. 188.)

14. During his sophomore year, the Adult Student told the Foss basketball coach that he had ADHD. (Adult Student, Tr. 309) There is no evidence that the coach shared this information with anyone on the IEP team or any school administrator.

15. The Adult Student's annual IEP for this year is dated March 1, 2011. Exhibits D3, S2. It continues to provide for 275 minutes per week of SDI in math. Exhibits D3, page 1; S2, page 1.

16. The IEP states that the Adult Student will participate in the MSP or HSPE with accommodations for reading and writing and in the HSPE Basic for math. Exhibits D3, page 8; S2, page 8. "HSPE Basic" means that achieving the basic level constitutes passing for the student even though a student not in special education would not pass at this level.

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17. The IEP states that the Adult Student will take general education classes to meet the standard high school graduation and college entrance requirements. Exhibits D3, page 5; S2, page 5.

18. The transition plan in the IEP states that he might need academic support in reading and writing. Exhibits D3, page 4; S2, page 5.

19. The Adult Student did not pass the HSPE in writing that he took in Spring 2011. Exhibits D21, page 1; Exhibit S16. His HSPE report shows that he "passed" the HSPE in reading although he only achieved Level 2 (Basic), which shows proficiency at a basic level and is not generally a passing score. *Id.* The Adult Student's IEP had not provided for him to participate in the HSPE reading assessment at the basic level and there is no evidence in the record as to why he was considered to have passed.³

20. The Adult Student also took an End-of-Course Exam in Geometry in Spring 2011, but did not pass, having scored at the Level 1 (Below Basic), which represents little to no mastery of the subject's skills and knowledge. Exhibits S15, page 1.

Grade 11 – 2011-2012 School Year at Foss

21. In the eleventh grade, the Adult Student took general education Algebra 3 and Algebra 4/trig. Exhibits D23, S25. He did not pass Algebra 3, but earned a D and .50 credits in Algebra 4/trig. *Id.* That year he also took Modified Algebra 1C and 1D, which are special education classes. *Id.* He earned an A and .50 credits in each of those classes. *Id.* The purpose of the special education math classes was to support the Adult Student in his general education math classes. (Monroe, Tr. 207)

22. The Adult Student received a B+ in Junior English 1 and an A- in Junior English 2 that year. Exhibits D23, S25. Those are both general education English classes. *Id.*

23. The Adult Student participated in an advisory period, called Falcon Teams, during his Junior year. (Adult Student, Tr. 14) The class was led by Nicole Kimmerling, who was also his special education case manager. The team met twice per month for 40 to 50 minutes. (Adult Student, Tr. 147-48) The sessions covered subjects such as academic and career goals, looking for colleges, determining what to do after high school, and resumes. (Adult Student, Tr. 147-48; Kimmerling, Tr. 148)

24. A HSPE individual report for November 2011 was issued on January 16, 2012. Exhibits D21, page 2; S18. The report stated that the Student had not passed math, and his proficiency level was Basic (Level 2). *Id.* Based on the March 2011 IEP, obtaining Level 2 should have constituted passing for the Adult Student. The HSPE report stated that the Student had already passed reading, and did not provide a score for writing, noting that no test booklet was found for the Student in that subject. *Id.*

³ The District's brief refers to the Adult Student "passing" the reading portion of the HSPE at the basic level as "inadvertent."

25. The Student's annual IEP for this year is dated March 1, 2012. Exhibits D4; S3. It provides for services in math to be delivered for 55 minutes, five times per week. Exhibits D4, page 9; S3, page 11.

26. The IEP states the following regarding the Student's present levels of performance:

General Education

In the general education setting, [the Adult Student] has demonstrated that he can be successful and meet the standards in the classes.

Academic :

[The Adult Student's] disability in math adversely impacts his ability to be successful in the general education math setting without the support of specially designed instruction in math.

[The Adult Student] continues to be enrolled in general education math classes with additional support in his LRC class

Age Appropriate Transition Assessment

Needs

A career cluster survey indicates that [the Adult Student] needs to continue building skills in communication and handling several responsibilities at once. [The Adult Student] indicates that these are things he likes to do and that will help him in his education and training pathway.

Strengths

In the career clusters survey, [the Adult Student] identifies himself as a decision maker, innovative/inquisitive, friendly, helpful, and a good listener.

Preferences

The career clusters survey indicates that [the Student] prefers language arts and social studies classes.

Exhibits D4, pages 3-4; S3, pages 5-6.

27. The IEP contains a page entitled "Measurable Annual Goals." Exhibits D4, page 6; S3, page 8. However, the spaces for including goals and the date by which they will be accomplished are blank. *Id.* The IEP contains no math or other academic goals. Exhibits D4, S3.

28. The only goals in the IEP address the Adult Student's transition from high school. The first goal, in the content area of education training, is that "after graduating high school, [the Adult Student] will attend university to obtain training in the sports medicine field." Exhibits D4, page 5; S3, page 7. The transition service related to that goal is that the Student will "research and obtain information from at least 3 different 4 year colleges (sic) that have programs in sports

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medicine." *Id.* The second goal, in the content area of employment, is that, "[a]fter graduating high school, [the Adult Student] will obtain competitive employment." *Id.* The transition services related to this goal are that the Student "will complete a resume and obtain 3 letters of recommendation to keep in his portfolio to use while applying for jobs." *Id.* "Family and Student" are identified as the "staff/agency responsible" for the transition services related to both goals. *Id.*

29. The IEP states that the Adult Student was taking the classes he needed to meet the standard graduation criteria of 23 credits and college entrance requirements and that his special education classes were "replacing some elective credits only." Exhibits D4, page 5; S3, page 7.

30. The IEP states that the Student will participate in the state High School Proficiency Exams (HSPE) without accommodations for writing, and that he will participate in the Developmentally Appropriate Proficiency Exam (DAPE) without accommodations for math. Exhibits D4, page 8; S3, page 10. The IEP states:

[The Adult Student] has taken the state assessments. He has met the reading requirement, but not the writing requirement. [The Adult Student] has attempted the math HSPE and is now eligible for the DAPE as that is the area he qualifies in.

Exhibits D4, page 2; S3, page 4.

31. The Adult Student turned 18 in May 2012.

32. A Spring 2012 HSPE individual score report was issued on June 7, 2012. Exhibits D21, page 3; S17. The report states that the Student passed the writing exam at Level 3 (Proficient), which represents mastery of a subject's skill and knowledge. *Id.* The Student received a scale score of 20, which falls at the top of the range for Level 3. *Id.* The report noted that the Student had already passed reading. Exhibit D21, page 3.

Grade 12 – 2012-2013 school year at Foss

33. The Adult Student's attendance his senior year was very poor, especially in his first period special education math class taught by Susan Monroe. Exhibits D26, S54; (J. Jones, Tr. 666) He had significantly more absences that year as compared to his junior year. (Stipulation, Tr. 664)

34. The Adult Student took general education English from Clifford Aziz both semesters his senior year. (Aziz, Tr. 362-63) Mr. Aziz observed that the Adult Student was not motivated and was not always on task or focusing. (Aziz, Tr. 684) Mr. Aziz had to encourage the Adult Student and remind him to complete assignments and to stay focused. *Id.* He observed that the Adult Student had average intelligence and was able to do the assigned work. *Id.* Mr. Aziz attributed the Adult Student's declining performance to a lack of motivation and effort, not to a disability. (Aziz, Tr. 686) Mr. Aziz saw no reason to believe the Adult Student needed special education in reading or writing. (Aziz, Tr. 687-88) He observed that the Adult Student's writing appeared to be at least average based on his journal entries. (Aziz, Tr. 688)

35. In November or December 2012, the Parent and Adult Student met with Ms. Monroe. S57, page 2. Ms. Monroe had called a conference because of her concerns about the Adult Student's poor attendance and lack of effort. (Monroe, Tr. 214) The Parent expressed concern about the Adult Student being allowed to play basketball if he was not attending class. (Monroe, Tr. 200) They went together to talk with the athletic director about the Adult Student's attendance, and about his not playing basketball if he was not attending class. (Monroe, Tr. 199-200)

36. In approximately December 2012, the Parent met with the Student's counselor to make sure he had all the credits he needed to graduate and to get an update on his grades. Exhibit S57, page 3.

37. In his first semester, the Adult Student took Mathematics 1, a special education class, and received a D and .50 credits. Exhibits D23, S25. He also received a D in Civics, a D in French 3, a C+ in Senior English 1, and a B- in US History. *Id.* He attempted, but did not pass, Engineer Design 1. *Id.*

38. Second semester, the Adult Student began taking Mathematics 2, also a special education class with Ms. Monroe. His attendance in the class remained poor.

39. The Adult Student took World Issues, a general education class, from Bradley Jones his second semester. (B. Jones, Tr. 611) Mr. Jones stated that the Adult Student's grades suggest that his writing was "marginal," but noted that he is not qualified to determine whether the Adult Student has a learning disability in the subject. (B. Jones, Tr. 618)

40. In approximately January 2013, the Parent called the Adult Student's basketball coach and asked the coach to pull the Adult Student from the team because he was not attending his first period class and she was worried about his grades. Exhibit S57, page 3. The Parent agreed to allow the Adult Student to stay on the team after the coach convinced her he would talk to the Adult Student. *Id.*

41. In approximately February 2013, the Parent called Assistant Principal John Jones about her concerns with the Adult Student's grades and skipping classes, and whether they would prevent the the Adult Student from graduating. Exhibit S57, page 3. Mr. Jones indicated that he would work with the Adult Student to keep him on track. *Id.* Mr. Jones believed that this conversation took place during basketball season during the Adult Student's junior year. (J. Jones, Tr. 642) It is found that the conversation Mr. Jones recalled took place the Student's senior year, because that is when the Parent asserted she spoke with him, the Adult Student's attendance was not yet poor his junior year, and the Parent was not yet concerned about his ability to graduate as a junior.

42. The Adult Student's triennial reevaluation took place in February 2013. Exhibits D5, S7; Seipt, Tr. 251. Outhai Seipt, District school psychologist, was responsible for the reevaluation. (Seipt, Tr. 233.) Ms. Seipt skimmed the Adult Student's file to determine the areas in which he had previously qualified, and then tested him in math. (Seipt, Tr. 251) She did not test the Adult Student in reading or writing because they were not areas he "qualified in." (Seipt, Tr. 232, 257) Nor did she request teacher observations or gather any information from his teachers. (Seipt, Tr. 239-40) Ms. Seipt was not aware of the Adult Student's attendance issues. (Seipt, Tr. 248)

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She asked the Adult Student how he was doing in his other classes and he said "fine" so she determined that math remained his only area of concern. (Seipt, Tr. 255)

43. Ms. Seipt determined that the Adult Student continued to be eligible for special education in math based on his test scores, his failing some math classes, and her understanding that he had failed the HSPE. Exhibits D5, S7; Seipt, Tr. 241.

44. The Student's annual IEP for this year is dated February 28, 2013. Exhibits D6; S4. Like the prior year's IEP, it provides for 55 minutes of special education services in math five times weekly. Exhibits D6, page 9; S4, page 9.

45. The IEP states the following regarding the Student's present levels of performance:

General Education

This student's disability adversely impacts his ability to progress in the general education curriculum to such an extent that specially designed instruction is needed in mathematics.

[The Adult Student] is in (sic)

Academic

Math – The TOMA annual assessment indicates that [the Student] is at the 7.1 grade equivalency. His subscores were as follows: 7.2 math vocabulary, 6.8 computation, 12 general information, and 2.7 in story problems. [The Adult Student] needs to continue to build his skills in these areas.

[The Adult Student] has taken general education math classes along with special education classes to receive specially designed instruction. This student's disability adversely impacts his ability to progress in the general education curriculum to such an extent that specially designed instruction is needed in mathematics.

Age Appropriate Transition Assessment

Needs

[The Adult Student's] evaluation indicates that he continues to need specially designed instruction in mathematics.

Strengths

Career cruising indicates that [the Adult Student] prefers classes where he learns tactilely. He prefers to do activities where he can interact with people as well.

Interests

Career cruising and a career clusters quiz indicates that [the Adult Student] is interested in careers such as athletic training, physical therapy, nursing, and others careers that involve planning, managing, and providing services to others.

Exhibits D6, pages 3-4; S4, pages 3-4.

46. The IEP contains one annual goal for math:

By 2/27/2014, when given Math calculation and math reasoning problems, [the Adult Student] will solve improving calculation and math reasoning skills from the grade level equivalency to the grade level equivalency as measured by Curriculum based assessments.

Exhibits D6, page 6; S4, page 6.

47. The IEP also contains two transition goals. The first goal, in the area of education/training, is that "[a]fter graduating high school, [the Adult Student] will attend college to obtain a degree." Exhibits D6, page 5; S4, page 5. The transition services related to that goal are that the Adult Student "will complete financial aid forms and college applications for at least 3 colleges of interest." *Id.* The second goal, in the content area of employment, is that, "[a]fter graduating high school, [the Adult Student] will obtain competitive employment." *Id.* The transition services are that the Adult Student will "attend a VADIS seminar and will practice filling out job applications." *Id.* "Family and Student" are identified as the "staff/agency responsible" for the transition services related to both goals. *Id.* There is no evidence in the record about what a "VADIS seminar" is other than a statement that one was offered at Foss that year. (Kimmerling, Tr. 161)

48. The IEP states that, with respect to state assessments, the Adult Student will participate in a locally determined assessment (LDA) without accommodations for math. Exhibits D6, page 7; S4, page 7. Under "team considerations," it is noted that the Student "still needs to meet the math requirements and he is eligible to take the LDA this year" without further explanation. Exhibits D6, page 2; S4, page 2.

49. The IEP states that the Adult Student was planning on graduating in June, that he had 20 credits, and would need to earn 23 credits "in the required areas" to be eligible to graduate. Exhibit D6, page 5; S4, page 5. It did not mention anything about whether graduation credit would be awarded for special education classes. *Id.* Nor did it provide for accommodations or modification of the Adult Student's grades in his general education classes. Exhibits D6, S4.

50. On March 2, 2013, the District issued an emergency expulsion to the Adult Student for leaving campus and suspicion of marijuana use. Exhibit D7, page 1. The Adult Student could return, and the expulsion be changed to a suspension, if he obtained a drug and alcohol assessment. (Kimmerling, Tr. 164-65; J. Jones, Tr. 645-46) For this reason, Ms. Kimmerling believed that he would only be gone from school for a day or two. (Kimmerling, Tr. 164-65)

51. On March 7, 2013, while the Adult Student was suspended, the Parent sent an email to a number of District employees, asking to meet with them and summarizing her prior attempts

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during the school year to deal with the Adult Student's attendance and grade issues. Exhibit S7.

52. Once the Adult Student obtained a drug and alcohol assessment, his expulsion was converted to a suspension and he was allowed to return to school on March 19, 2013. (Exhibit D7, page 2) He was suspended for twelve school days. (Kimmerling, Tr. 165)

53. The Parent appealed the Adult Student's emergency expulsion t, and a hearing was held on March 22, 2013. Exhibit S82. As a result, the wording of the reason for the emergency expulsion/suspension was changed.⁴ *Id.* This was not an appeal to the District, not to OSPI or OAH.

54. On March 27, 2013, the Parent wrote to Ms. Seipt with questions about what the Adult Student needed to complete in order to graduate. Exhibit D9.

55. Ms. Seipt responded by email the next day, explaining that the Adult Student had completed his math testing requirements. Ms. Seipt forwarded the Parent's email to Ms. Kimmerling and Ms. Lubken to address her other questions. Exhibit D9.

56. The District had used the Adult Student's Woodcock Johnson scores from the February 2013 reevaluation as the scores on the LDA. Exhibit D8. The Adult Student "passed" the LRE with a 4.1 grade equivalency in math calculations, a 4.8 grade equivalency in applied problems, and a 5.3 grade equivalency in qualitative concepts. *Id.*

57. Ms. Kimmerling wrote to the Parent on April 10, 2013, explaining that the Adult Student had scheduled his student-led conference and that he would have the opportunity to stay after school with her every Thursday for a study hall to improve his grades. Exhibit D9.

58. The Adult Student did not ever attend study hall after school with Ms. Kimmerling. (Kimmerling, Tr. 158) The Parent believed it would not help him understand or complete the assignments he had missed while he was suspended. (Parent, Tr. 391)

59. On April 17, 2013, Ms. Kimmerling emailed the Adult Student's teachers. Exhibit S66. She informed them that the special education director had been looking into how the Adult Student was doing and if he was on track for graduation. *Id.* She asked them to remind him how important it is for him to attend class and to let him know when they are available to provide him extra assistance. *Id.*

60. The Adult Student's French teacher, Ms. Brownfield, responded that the Adult Student was not on track in French as he had missed a lot of class during his suspension and had not turned in his binder. Exhibit S66. The teacher noted that the Adult Student constantly talked with another student during class and needed to listen, to not disrupt class, to take all oral tests, and to complete his binder. *Id.*

⁴ The wording was later changed again, although the record is not clear as to when or why.

61. Ms. Monroe responded, stating that in order to pass her class, the Adult Student would need to attend daily and do math, not other classwork, while he was there. *Id.* She noted that, at that point, he would not pass the class, and that he had only been to class two or three times since spring break and that he had arrived at least half an hour late. *Id.*

62. On April 17, 2013, an IEP team request for special education tutoring was signed, authorizing one hour of tutoring per week for the Adult Student for two weeks. Exhibit D11, S56. There is no record evidence of an IEP meeting or manifestation determination (MD) meeting being held before this request was made. The amount of tutoring was designed to replace the special education classes the Adult Student missed once he had been expelled for ten consecutive school days. (Kimmerling, Tr. 167) This is the only support offered to the Adult Student related to his expulsion and suspension. (Kimmerling, Tr. 183) The Adult Student did participate in the tutoring and did not recall knowing that it had been offered. (Kimmerling, Tr. 167; Adult Student, Tr. 333)

63. Ms. Kimmerling conducted an MD meeting with the Adult Student on April 18, 2013. Exhibits D10, S77. They determined that the conduct leading to the expulsion and suspension was not a manifestation of the Adult Student's disability. *Id.*

64. On April 18, 2013, an interim grade report showed that the Adult Student was not passing Mathematics 2, French 4, or World Issues. Exhibit S27. It noted that absences and/or tardies were affecting the Adult Student's achievement in his math class. *Id.*

65. On April 25, 2013, the Adult Student completed his senior presentation, a graduation requirement. Exhibit D20, page 4.

66. On April 29, 2013, Ms. Monroe included the Adult Student on a list of seniors who were in danger of failing her class. Exhibit S62. She noted that he had been told he needed to be in class, but was still not showing up much. *Id.*

67. On May 6, 2013, Ms. Brownfield, the French teacher, emailed Ms. Kimmerling and Ms. Lubken, informing them that the Adult Student was not passing her class and that there were things he could do to get his grade up. Exhibit S63. She asked them to talk to him about "focusing" so he could get enough done to pass. *Id.* The next day, Ms. Kimmerling emailed the Parent telling her the Adult Student was not passing French and letting her know there was a study hall available every day after school. Exhibit D12.

68. On May 8, 2013, Ms. Kimmerling conducted a second MD meeting related to the Student's expulsion/suspension in March because she had learned that the Parent had power of attorney for the Adult Student. Exhibits D13; S73; Kimmerling, Tr. 167. This time the meeting was attended by Ms. Kimmerling; the Parent; the Adult Student; Ms. Shapow, the Adult Student's attorney; Ms. Lubken; Clifford Aziz, a general education English teacher, and the dean of students. Exhibits D13, S27.

69. It was determined, as a result of the meeting, that the Adult Student's conduct was not a manifestation of his disability, although the Parent disagreed. Exhibits D13, S27; Kimmerling, Tr. 168.

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70. It was agreed at this meeting that instead of attending his first period special education math class with Ms. Monroe, the Adult Student would begin attending Ms. Kimmerling's first period class. Exhibits D13, S73. The Parent agreed so the Adult Student could work on his missing assignments, and the Adult Student agreed as well. (Parent, Tr. 169; Adult Student, Tr. 336)

71. At the MD meeting, the Parent pointed out problems with the Adult Student's IEP and it was agreed that another meeting would be set to discuss them. (Parent, Tr. 420)

72. The Adult Student began attending Ms. Kimmerling's first-period class on May 9, 2013, and attended until the last day of school for seniors, missing only one day. (Kimmerling, Tr. 182; Adult Student testimony) For at least the first couple weeks, Ms. Kimmerling was in close contact with the Parent to let her know whether the Adult Student arrived on time. Exhibit D14; Kimmerling Tr. 191-92; Adult Student, Tr. 339-40). Ms. Kimmerling worked on study skills with the Adult Student and he completed work for other classes. (Kimmerling, Tr. 138) The Adult Student received an elective credit as a study skills class for his participation in her class. Exhibits D23, S25; Kimmerling, Tr. 173.

73. The Adult Student had approximately 60 days of unexcused absences in Ms. Monroe's first-period math class at the point he transferred to Ms. Kimmerling's class. Exhibit D26; Monroe, Tr. 213. Many of these absences were for days on which the Adult Student attended class but arrived more than ten minutes late. (Monroe, Tr. 218; Adult Student, Tr. 337)

74. On May 30, 2013, Ms. Kimmerling and Ms. Lubken signed off on a High School and Beyond Plan, a graduation requirement for the Adult Student. Exhibit D20. It stated that the Adult Student planned to attend Spokane College to obtain a two-year degree and then transfer to a university and that he was not sure of his area of career interest. *Id.* The Adult Student does not recall Ms. Kimmerling or Ms. Lubken going through many of the areas on the form with him, including financial preparation for college. *Id.*

75. A reevaluation of the Adult Student was conducted at the Parent's request, culminating in a reevaluation group meeting on May 31, 2013. Exhibit D16. The Parent provided the District with documentation that the Adult Student had a diagnosis of ADHD. Exhibit D16, page 1. There is no evidence that any District employee (other than the basketball coach) previously knew of this diagnosis.

76. As part of the reevaluation, Ms. Seipt emailed the Adult Student's teachers and asked what they were seeing in class. Exhibit S59. Mr. Aziz stated that the Adult Student refused to stop using his iPod and cell phone in class and talked excessively, which were major distractions. Exhibit S59. He stated that, "as a result," the Adult Student's work had no "substance or quality," and that his current grade was a D. *Id.* Ms. Brownfield responded that the Adult Student showed a minimum amount of engagement, just enough to get by, and only after a lot of prompting. Exhibit S67. Mr. Levens responded that the Adult Student was a nice kid, friendly, and he meant well, but that he spent time not working and would rather sit and visit. Exhibit S64. Similarly, Mr. Ford responded that the Adult Student was a nice kid but that he was easily distracted by his friends and the temptation to play with his phone or listen to music. Exhibit D69. He noted that the Adult Student would adjust when called on to change his behavior but that it did not "stick" for long. *Id.*

77. The Adult Student's eligibility category was changed to "other health impairment." Exhibits D16, page 1; S6, page 3. Based on the Adult Student's "history of off-task behaviors and being distractible," his diagnosis of ADHD, and the input from his general education teachers, it was recommended that the Adult Student receive SDI in the area of study skills in addition to math. Exhibits D16, pages 2, 4; S6, pages 3, 6. It was noted that he might benefit from study skills training in on-task behavior, task/homework completion, and organization/planning skills. *Id.*

78. The Parent, who attended the evaluation review meeting on the Adult Student's behalf, had no objections to the evaluation and had not wanted him assessed in any other areas. (Parent, Tr. 448)

79. A second IEP was developed during the Student's senior year, this one dated May 31, 2013. Exhibits D17, S5. Under this IEP, the Student's special education services in math were reduced to 27 minutes five times per week, and special education services in study skills were added for 28 minutes five times per week. Exhibits D17, page 11; S5, page 11.

80. The IEP notes that the Student was moved from special education math to study skills as a result of a decision made in the MD meeting. Exhibits D17, page 4; S5, page 4.

81. The IEP contains one math goal:

By 2/27/2014, when given Math calculation and math reasoning problems [the Adult Student] will correctly solve improving calculation and math reasoning skills from Attending 1/5 days and completing class work to Attending 5/5 days and completing class work as measured by Curriculum (sic) based assessments.

Exhibits D17, page 8; S5, page 8.

82. The May 2013 IEP contains the same transition goals as the February 2013 IEP and the same services related to the first goal. Exhibits D17, page 7; S5, page 7. The services for the second goal are changed to delete the reference to attending the VADIS seminar and add that the Adult Student will identify three people to use as a reference. *Id.* It does not say anything about whether graduation requirements would be met through special education classes nor does it provide for accommodations or modifications in the Adult Student's grades in his general education classes. Exhibits D17, S5.

83. The Adult Student's special education math and study skills services were delivered to him by Ms. Kimmerling one-on-one during what otherwise would have been her planning period, not in a classroom with other students. (Kimmerling testimony)

84. The Adult Student's report card for the second semester of his senior year stated that some of his grades were based on a "modified curriculum." Exhibit S26. He received a pass, rather than a letter grade, in his World Issues class. *Id.*

85. The Adult Student's average in his World Issues class was 64.34%, which is the equivalent of a D. Exhibit D18; B. Jones, Tr. 614. Mr. Jones believed that he had the option of accommodating all special education students by passing them with 50%, rather than the 60% typically required. (B. Jones, Tr. 614). This only applied to a student's final grade. (B. Jones, Tr. 622-23) The Adult Student would have passed with his 64.34% regardless, so this

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accommodation would not have applied to him. (B. Jones, Tr. 615.) Mr. Jones also understood that he could grade any special education student by pass/fail rather than a letter grade. (B. Jones, Tr. 614) He did not recall why he gave the Adult Student a pass rather than a letter grade. (B. Jones, Tr. 614)

86. On June 6, 2013, Ms. Lubken cleared the Adult Student for graduation, stating that he met all requirements. Exhibit D20.

87. The Adult Student graduated in June 2013, earning a certificate of individual achievement. Exhibits D23, S25. The last day of school for seniors that year was June 7, 2013. (Kimmerling testimony)

College and career services at Foss

88. A number of career and college preparation services are available at Foss through the career center and the College Bound program, including the ability to take practice college placement tests, visits from college representatives, academic advising, and seminars on financial aid, completing college applications, writing personal essays and other subjects. (Kimmerling, Tr. 153; Lubken, Tr. 521)

89. The Adult Student did not know that some of these services were available and took advantage of very few of them. (Adult Student testimony) He attended one College Bound seminar at which one of the subjects was how to fill out a community college application. (Adult Student, Tr. 299)

90. The Adult Student participated in Career Cruising, a program offered for one hour each year in his English class. (Adult Student, Tr. 295) This is a computer program that guides students through career interest surveys and helps them develop a four-year plan for their high school classes. Exhibit D19; Kimmerling, Tr. 159. No one went over this material with the Adult Student once he completed it. (Adult Student, Tr. 295)

Graduation and state testing requirements

91. District Policy No. 2410 addresses high school graduation requirements. Exhibit S20. For students entering high school in the 2009–20010 school year, the policy requires three mathematics credits and six mathematics classes. Exhibit S20, page 2. It states that they must be "mathematics core courses," without defining which classes constitute core courses. *Id.* The policy further states:

For the purpose of this policy, credit shall be in compliance with state regulations. A student who qualifies for Special Education services shall satisfy those competency requirements which are incorporated into the Individualized Education Program (IEP).

Id. at page 3.

92. Ms. Lubken, the Adult Student's counselor, believed that he had all the credits necessary to graduate. She believed that she could count any of the Adult Student's special education math classes toward his mathematics requirements to graduate. (Lubken, Tr. 485, 490, 491, 493, 496, 499)

93. District Policy No. 2410 states that students must have a total of 1.0 fitness credit and that required courses are PE 1 and PE core courses. S50, page 2. It states that 0.5 PE credits may be "earned" by participating at the varsity or junior varsity level in any of the interscholastic sports that are sanctioned by the WIAA or included on a district-approved list. *Id.* District Regulation 2410R provides that physical education "waiver" requests may be granted for students who participate in other activities, including District athletics. Exhibit S76, page 2.

94. The Adult Student received 0.5 fitness credits for taking Individual Team Sports. (Lubken, Tr. 501) He played basketball for both Wilson and Foss. (Adult Student testimony) Accordingly, he would have been eligible for a waiver of a fitness credit under the District's policy. Ms. Lubken testified that it was possible the Adult Student's other fitness credit could have been waived, but she did not testify that it had been waived. (Lubken, Tr. 523) The only evidence that the Adult Student received a waiver was hearsay testimony of Vice Principal Jones, who testified that Ms. Lubken told him that the Adult Student had been granted a waiver after she reviewed her notes. (J. Jones testimony) As Ms. Lubken had already testified at the hearing, without providing this information, the Adult Student was not able to cross examine her on this subject. For that reason, no finding is made based Mr. Jones's hearsay testimony.

95. The practice⁵ for state testing is that a student attempts a particular test and, if the student does not pass that test, the next test is administered. (Kimmerling, Tr. 135). If a student does not pass the HSPE at the basic level, he or she next takes the DAPE, and then the LDA. (Kimmerling, Tr. 134-35) Ms. Kimmerling's understanding was that the Adult Student was eligible for the HSPE Basic in math, but did not pass it, so he was then eligible for the DAPE, but did not pass it, so he became eligible to take the LDA. (Kimmerling, Tr. 136) The Adult Student had achieved the basic level on the math HSPE though, so he should have been considered to have passed it without need to take the DAPE or the LDA.

96. Jonathon Bell, the District's assistant director of student services, testified that a representative of OSPI had stated in a meeting in the spring of 2013 that OSPI had changed its prior position and that a student may qualify to take the HSPE at the basic level in a subject for which he does not qualify for special education. (Bell, Tr. 695.) As this statement is uncorroborated hearsay and there is no evidence as to when this change in position was made, no finding is made to this effect. Mr. Bell acknowledged that a determination a student would pass the HSPE in this manner would need to be noted in the student's IEP. (Bell, Tr. 700)

After graduation

97. Since graduation, the Adult Student has unsuccessfully applied for several jobs, including at Nordstrom, the YMCA, Sports Authority, and Just Sports. (Adult Student, Tr. 307, 350) He had problems filling out applications and sometimes had to ask his Mother for help, but does not believe he needs support to get a job. (Adult Student, Tr. 350-351)

98. The Adult Student has applied for community colleges online and has been accepted to numerous schools, including Spokane Falls Community College. (Adult Student, Tr. 349, 359)

⁵ It is not clear whether this is a District practice, a Foss practice, or Ms. Kimmerling's practice.

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He was offered basketball scholarships to play at that school and at Bremerton Community College. (Adult Student, 349-50; Mother, Tr. 417)

99. The Adult Student attempted to apply to Washington State University, but found the application too difficult to complete. (Adult Student, Tr. 359-60) He did not know how to complete a personal statement or how to go about getting recommendations. (Adult Student, Tr. 360)

100. In late August 2013, the Adult Student took COMPASS tests in reading, writing, and math at a local community college. Exhibits D27, S22, S23. These tests determine whether students are prepared to take college-level classes in Washington community colleges or whether they will need to take remedial classes first.⁶ (Aron testimony)

101. Based on the Adult Student's COMPASS tests, it was recommended for each of the three subjects, that he begin with Level 81 classes, which are remedial classes. Exhibits D27, S21-S23.

102. The Adult Student had not taken computer tests like the COMPASS tests before and thinks he would perform better if he took them again. (Adult Student, Tr. 353) He did not retake the tests though. *Id.*

103. The Adult Student did not start community college in the fall of 2013, although he had been accepted to schools and offered scholarships, because he did not feel prepared. (Adult Student, Tr. 368)

104. In November 2013, the Adult Student was evaluated by Kelly Morgan, MS, CCC-SLP, at Group Health. Exhibit D28, S24. He was referred to Ms. Morgan for a "language and learning evaluation" by his physician due to concerns about his attention and learning abilities. *Id.* at 1. As Ms. Morgan did not testify and little is known about her credentials, her report is given very limited weight.

105. Ms. Morgan screened the Adult Student's attention, executive function, memory, and visual processing speed to identify areas that might interfere with his language and learning. *Id.* at 3. She concluded that he presented with significant executive function concerns, as well as mild processing speed concerns and weaknesses in short term memory abilities. *Id.* at 5. She noted he would likely benefit from continued intervention in these areas, which might include a study skills course and counseling or behavioral support as needed. *Id.* at 6.

106. Ms. Morgan assessed the Adult Student's auditory comprehension and verbal expression and concluded that his overall language abilities are within the low average range, although she noted weaknesses in his ability to understand and produce complex sentences and vocabulary. *Id.* at 7.

⁶ Many Foss students, even those who are not eligible for special education, have to take remedial math classes before they qualify for college-level classes. (Lubken, Tr. 528-29)

107. Ms. Morgan assessed the Adult Student in reading. *Id.* at 8. She noted that his broad reading cluster score placed him in the low average range when compared to his same aged peers with respect to reading achievement, including decoding, speed, and the ability to comprehend connected discourse. *Id.* She further noted that his basic reading skills cluster score placed him within the average range when compared to his same-aged peers with respect to reading sight words, phonics, and structural analysis. *Id.* Ms. Morgan concluded that his reading abilities are generally within the average range, although she noted weaknesses with comprehension, and determined that he would likely benefit from instruction on compensatory strategies to improve comprehension as well as reading practice. *Id.*

108. Ms. Morgan assessed the Adult Student in writing. *Id.* His broad written language cluster score placed him in the low average range compared to his same age peers and his written expression cluster score placed him in the moderately deficient range compared to his same-aged peers. *Id.* at 9. She concluded that the Adult Student presented with mild to moderate written language deficits, and that he would benefit from specialized instruction and from consistent use of an academic support center and writing center in college. *Id.*

109. Ms. Morgan's general impressions were that the Adult Student presented with language and learning abilities that are generally within the average to low average range and that no language-based learning disability was identified. *Id.* page 9. However, she noted concerns with executive function and processing speed consistent with his diagnosis of ADHD. *Id.* She noted that the Adult Student was considering college, and that he would benefit from the implementation of a 504 plan and support through the academic support center and writing center.

110. In December 2013, Brooks Academy prepared an educational proposal and an educational consultation related to the Adult Student. Exhibits D30, S79. These documents are given very limited weight as their author, Dr. Melodee Loshbaugh, Ed. D, MAT, did not testify and little is known about her credentials.

111. Ms. Loshbaugh reviewed the Adult Student's academic record and concluded that he requires 300 hours of instruction in math, a minimum of 200 hours of reading instruction, 150 hours of organizational skills instruction, and 150 hours of transitional services, for a total of 800 hours of one-on-one tutoring or direct instruction in order to "prepare him for his career path." Exhibits D30, S79.

112. In January 2014, Len Aron, M.Ed., Director of Special Education Services at Yellow Wood Academy, conducted a record review and prepared a recommendation for the Adult Student. Exhibit S72. Mr. Aron opined that the Adult Student was not adequately prepared by the District to attend college or to seek employment. *Id.* at 2. He agreed with Dr. Loshbaugh's review of the Adult Student's educational records and her recommendation for intensive one-to-one support in transition services and educational preparation. *Id.* at 3. He recommended that the Adult Student be provided one-to-one tutoring for five days per week for a six month period in math, reading, writing, and executive functioning for 50-minute sessions for each subject, with transition services to be incorporated with executive functioning because there is significant interplay between the two subject areas. *Id.* Mr. Aron opined that these services would increase the Adult Student's academic skills so that he could attain "the minimal levels" on a

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college placement test such as the COMPASS and build his transition skills so that he could be adequately prepared to seek and secure employment. *Id.*

Facts related to compensatory education

113. When determining the appropriate amount of one-on-one instruction for a student, the District uses a service model that twenty minutes of one-on-one instruction is the equivalent of one hour of classroom instruction. (Bell, Tr. 697)

114. There were approximately 79 school weeks between April 4, 2011, the beginning of the statute of limitation period in this case, and the implementation of the May 2013 IEP. Exhibit D31.

115. There were approximately 30 school weeks between the implementation of the May 2013 IEP and the date of this order. Exhibit D31.

116. There were approximately 12 school weeks between the implementation of the February 2013 IEP and the May 2013 IEP. Exhibit D31.

117. There were approximately 29 school weeks between the Adult Student's graduation and the date of this order. Exhibit D31.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. OAH has jurisdiction over the parties and subject matter of this action for OSPI as authorized by 20 U.S.C. §1401 *et seq.* (Individuals with Disabilities Education Improvement Act (IDEA)), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) §300 *et seq.*, and Chapter 392-172A Washington Administrative Code (WAC).

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

The IDEA

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

First, had the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met,

the state has complied with the obligations imposed by Congress and the courts can require no more.

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

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

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

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

Graduating the Student

5. Substantive standards for high school graduation are set by state law, including school district policies, not the IDEA. *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994). Graduation of a student from special education with a regular education diploma is a change of placement. WAC 392-172A-02000. Accordingly, the decision to graduate a student is subject to the IDEA's procedural safeguard provisions, including access to due process hearing procedures, and a student or his parents may ask a hearing officer to determine whether it was appropriate to graduate the child. *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994).

6. The Adult Student argues that he was improperly graduated because he had not met Washington State or Tacoma School District standards necessary for high school graduation. Specifically, he argues that he did not meet necessary standards for mathematics credits or health and fitness credits, or pass a reading assessment required for a certificate of individual achievement.

Mathematics credits

7. WAC 180-51-066 sets forth the minimum high school graduation requirements for students entering the ninth grade on or after July 1, 2009, through June 30, 2012. It states that students must have three mathematics credits, which *must* include algebra I or integrated mathematics I; geometry or integrated mathematics II; and algebra 2 or integrated mathematics III. WAC 180-51-066(1)(b)(i). Several exceptions apply, but there is no evidence that any of them would apply to the Adult Student's situation.⁷

2. A student may elect to pursue a third credit of high-school level mathematics, other than algebra 2 or integrated mathematics if the choice is based on a career-oriented program of study identified in the

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8. WAC 180-51-115 addresses procedures for granting high school graduation credits for students with special educational needs. It states that students shall not be denied the opportunity to earn a high school diploma solely because of limitations on their ability. WAC 180-51-115(1). Districts shall adopt written policies and procedures for meeting the unique limitations of each student. *Id.* Such procedures may include exemption from any requirement in WAC chapter 180-51 if the requirement impedes the student's progress toward graduation and there is a direct relationship between the failure to meet the requirement and the student's limitation. WAC 180-51-115(1)(c).

9. Here, the Adult Student only obtained two mathematics credits in the specific classes required by WAC 180-51-066. He obtained additional mathematics credits in special education classes, but his IEP did not specify that he would meet his graduation requirements through such classes. Indeed, the only IEPs that addressed the subject specified that his special education classes would only count toward elective credits. Accordingly, the Adult Student did not have the appropriate mathematics credits to meet the Washington State and corresponding District graduation requirements.

Health and fitness credits

10. WAC 180-51-066(e) states that students must have two health and fitness credits in order to graduate. Students may be excused from the physical portion of the fitness requirements under RCW 28A.230.050. RCW 28A.230.050 provides that students may be excused from participating in physical education because of participation in directed athletics, among other things.

11. WAC 392-415-070 sets forth the mandatory contents of high school transcripts. It provides that they must contain "credits attempted and earned." WAC 392-412-070(1)(a)(vii). It does not similarly require that it show that any required courses were waived. See WAC 392-415-070.

12. Because the Adult Student was eligible for a waiver of a health and fitness credit under both state law and District regulation and because such a waiver need not be documented on a student's transcript, the Adult Student has not proven that the Adult Student did not obtain the required number of health and fitness credits to graduate.

student's high school and beyond plan. WAC 180-51-066(1)(b)(ii). Additionally, equivalent career and technical education (CTE) mathematics courses meeting certain requirements can be taken for credit instead of any of the required mathematics courses if they are listed on the student's transcript using the equivalent academic high school department and course title. WAC 180-51-066(1)(b)(iv). Special provisions apply to students who successfully completed algebra I or integrated mathematics I before ninth grade or otherwise demonstrated competency in those classes pursuant to a written district policy but do not receive credit for them. WAC 180-51-066(v), (vi).

Reading assessment

13. A certificate of individual achievement is available to special education students who are not appropriately assessed by the Washington high school assessment system. RCW 28A.155.045. The certificate may be earned using multiple alternate ways to demonstrate skills and abilities "commensurate with their [IEPs]." *Id.* The determination of whether the high school assessment system is appropriate for a student shall be made by the student's IEP team. *Id.* OSPI is responsible to develop guidelines for determining which students should not be required to participate in the high school assessment system and which types of assessments are appropriate. *Id.*

14. OSPI has provided guidance on this subject in an information sheet entitled How Students in Special Education Participate in State Testing. Exhibit D22. One of the acceptable testing options, according to OSPI, is for the student to take the HSPE at grade level and "the IEP teams may adjust passing criteria from "Proficient" (Level 3) to "Basic" (Level 2). *Id.* at page 1. Thus, a student with an IEP would "pass" the HSPE for purposes of graduation if he passed at the basic level, even though a general education student would not pass at that level.

15. The OSPI guidance includes the following:

Who determines how a student participates in the state assessment system?

The IEP team, which includes a student's parents or guardians, decides what assessment to use based on the student's needs in each content area. The assessment used may vary by content area. . . . These decisions, as well as any decisions about accommodations for the student, are made during the annual IEP team meeting, or, if the IEP team agrees, during a meeting closer to the testing period. *All decisions must be documented in the student's IEP.*

Id. at page 1 (emphasis added). The OSPI guidance does not address whether the option of adjusting the passing criteria for the HSPE to basic is available to assess an area in which the student does not receive specially designed instruction. *See Id.*

16. Here, the District allowed the Adult Student to "pass" the HSPE in reading even though he only achieved the Basic level (Level 2) and his IEP team had not determined that the Adult Student should be accommodated in this manner.⁸ Accordingly, he did not meet the graduation requirement of passing the HSPE in reading.

17. The District graduated the Adult Student even though he had not met the graduation requirements of earning the appropriate mathematics credits and passing the HSPE in reading.

⁸ It is not decided here whether a student may take an alternate assessment in an area in which he does not qualify for special education or receive special education services as it is not necessary for the resolution of this case.

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Exiting the Adult Student from special education when he graduated

18. A student determined eligible for special education services remains eligible until one of the following occurs:

- (a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education;
- (b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, *and* the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. . . . ; or
- (c) The student . . . has reached the age of twenty-one. . . . ; or
- (d) The student stops receiving special education services based on a parent's written revocation

WAC 392-172A-02000 (emphasis added). See also 34 CFR §300.102(a)(3)

19. Here, there is no evidence of a determination that the Adult Student was no longer eligible for special education after a reevaluation, that the Adult Student reached the age of 21, or that THE Adult Student or his Parent revoked his special education services. Thus, the Student was only properly exited from special education if he met the high school graduation requirements *and* graduated with a "regular high school diploma." *Id.*

20. The Adult Student argues that the diploma awarded him is not the "type of regular diploma that serves to terminate his eligibility under the IDEA" and that it is more akin to an alternative diploma than a regular diploma. The WAC expressly states that neither a certificate of high school completion nor a general educational development credential constitute a "regular diploma," but does not state that a certificate of individual achievement is likewise not a regular diploma. See WAC 392-172A-02000(2)(b). And OSPI has provided guidance on the matter in the form of an information sheet entitled How Students in Special Education Participate in State Testing. Ex. D22. There, OSPI specifically states that a student earning a certificate of individual achievement gets a "regular" diploma. *Id.* at 2. Therefore, the Adult Student has not met his burden to prove that he did not receive a "regular high school diploma."

21. As concluded above, however, the Adult Student did not meet the high school graduation requirements. Because a student "remains eligible" for special education services until he has both met the graduation requirements "and" graduated, it is concluded that the Adult Student remains eligible for special education until he otherwise meets the requirements of WAC 392-172A-02000(2). Thus, the District violated the IDEA by exiting the Adult Student from special education when he graduated as he had not met the graduation requirements.

Making changes to the Student's program outside the IEP process

Changing the Student's grade in his World Issues class to pass/fail and modifying the curriculum in that class

22. IEPs must include a statement of the program modifications or supports to enable the student to make progress in the general education curriculum. WAC 392-172A-03090(d). See also 34 CFR § 300.320.

23. The Adult Student argues that he should not have been graded using a pass/fail or an alternate grading system because these accommodations may have inflated his grade, masking masking flags that the school psychologist would have looked for when assessing him. Additionally, he argues that, if the accommodations had been addressed in an IEP meeting, then concerns about his program could have been addressed earlier.

24. The failure to document these accommodations in the Adult Student's IEP is a violation of the IDEA. Not all procedural errors result in a denial of FAPE. *LM v. Capistrano Unified Sch. Dist.*, 533 F.3d 1261 (9th Cir. 2008). Procedural inadequacies constitute a denial of FAPE when they result in the loss of educational opportunity or seriously infringe on the parent's opportunity to participate in the IEP formation process. *Id.*; WAC 392-172A-05105(2). Because the Adult Student's average grade in the class was over 60%, he would have passed despite his teacher's practice of passing special education students so long as score over 50%. Thus, this accommodation had no effect on him. Additionally, there is no evidence that the pass/fail grade had any negative effect on the Adult Student either. Because the teacher only applied his passing-at-50% policy to the final grade, and because there is no evidence that he decided to issue the pass/fail final grade prior to the end of the semester, there is no evidence that these practices prevented the Adult Student from receiving additional services or assistance earlier in the year. Accordingly, the Adult Student has not proven a denial of FAPE related to this violation.

"Dropping" the Student from special education math to study skills

25. As found above, the Adult Student and the Parent agreed at the MD meeting that the Adult Student would transfer from Ms. Monroe's special education math class to Ms. Kimmerling's study skills class, and that agreement was memorialized in the May 2013 IEP. Accordingly, the Adult Student has not proven a violation with respect to the change from special education math to study skills.

EVALUATION ISSUES

February 2013 reevaluation

26. When conducting evaluations, districts must ensure that a child is assessed in "all areas related to the suspected disability." WAC 392-172A-03020(3)(e); 34 § CFR 300.304(c)(4). But a district need not evaluate in areas in which it does not suspect a disability. *See, e.g., Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C. 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (2008). The failure to evaluate a student in all areas of suspected disability is a procedural violation. *N.B. & C.B. v. Hellgate Elementary Sch. Dist.*, 108 LRP 51033, 50 IDELR 241 (9th Cir. 2008). An evaluation must also be "sufficiently comprehensive" to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. WAC 392-172A-03020(g); 34 CFR § 300.304(c)(6)

Lack of focus, attention, organization, and study skills

27. Concerns about the Adult Student's problems with organization, study skills, and lack of focus and attention have existed since he was in elementary school. They were expressly

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noted in his prior triennial evaluation, although no services were recommended, and his teachers were observing continuing problems in these areas during his senior year. Accordingly, the District should have suspected a disability and assessed the Adult Student in these areas as part of his February 2013 evaluation.

Absenteeism

28. A functional behavior assessment (FBA) is required when a student's behavior impedes his learning or that of others. *Seattle Sch. Dist.*, 109 LRP 13847 (SEA WA 2009); See also, Department of Education, Analysis of Comments and Changes to IDEA Regulations, 71 Fed. Reg. 46721 (2006). It is not required that the behavior be related to or caused by the student's disability.

29. The frequency of the Adult Student's absenteeism was impeding his learning at the time of his February 2013 reevaluation. The Parent and Ms. Monroe had both raised this issue earlier in the year, and their attempts to resolve it had not been successful. Accordingly, the reevaluation should have included an assessment to determine the reason(s) for the Adult Student's absences in order to attempt to correct the Student's behavior and facilitate his learning.

Reading comprehension and written language

30. The Adult Student's prior triennial evaluation had expressed significant concerns about his reading and writing, although the team did not recommend services in those areas at that time. In the meantime, the Adult Student was only able to pass the reading HSPE at the basic level, and his March 2011 IEP stated that he might need academic support in reading and writing related to his transition goal of attending college. At least one of his teachers his senior year expressed concerns about the Adult Student's writing ability. Accordingly, the Adult Student should have been assessed in these areas as part of the February 2013 evaluation.

Using a group of qualified people

An evaluation is to be conducted by a group of qualified professionals. WAC 392-172A-03020. See also 34 CFR § 300.304.

31. The Adult Student has not met his burden of proving that any professional involved with the February 2013 was not qualified.

Considering information from a variety of sources

32. An evaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. WAC 392-172A-03020. See also 34 CFR § 300.304.

33. Here, the evaluation did not include gathering information from the Adult Student's teachers or his Parent. By failing to consider information from these sources, Ms. Seipt did not learn about the Adult Student's significant attendance problems or his problems with focus, attention, and organization. This was a procedural evaluation of the IDEA.

May 2013 reevaluation

34. The District failed again to evaluate the Adult Student in reading or writing in the May 2013 evaluation. As there is no evidence of improvement in this area since the February 2013, the failure to evaluate in these areas constitutes a procedural violation as it did with the February 2013 reevaluation.

35. The District also failed to assess the Adult Student with respect to his attendance issues in the May 2013 reevaluation. As his attendance had dramatically improved once he began attending Ms. Kimmerling's first period class and was not then impeding his learning, the failure to assess at that time was not a violation.

36. There is no evidence of a violation with respect to the May 2013 reevaluation related to using a group of qualified professionals or considering information from a variety of sources.

Child find/Failure to evaluate the Adult Student before the February 2013 reevaluation

37. The Adult Student argues that the District violated its child find duty by failing to identify him as requiring special education in reading, focus, organization, study skills, and related behaviors. Cases vary as to whether allegations that a school district has failed to evaluate additional areas in which a student receiving special education may need services should be considered under the district's child-find obligation or its obligation to evaluate a student. Under either standard, the Adult Student has not demonstrated a violation of the IDEA.

38. Under its child find duty, a district must conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students in need of special education and related services. WAC 392-172A-02040(1). See also 34 CFR § 300.111.

39. Under its duty to evaluate, a district must conduct a reevaluation if it determines that the educational or related services needs, including improved academic achievement and functional performance, of a student warrant a reevaluation. WAC 392-172A-03015(1); 34 CFR § 300.303(a)(1)-(2). As set forth above, the evaluation must be "sufficiently comprehensive" to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student is determined eligible.

40. In arguing that the District should have identified the Adult Student as needing additional special education services prior to the February 2013 reevaluation, the Adult Student relies on information he contends the District has known going back to his elementary school years. As this information was known to the District at the time of the triennial evaluation in 2010, which was outside the statute of limitations period, using it as the basis for a determination that the District should have reevaluated the student or identified him as needing services within the statute of limitations period would be an improper attempt to circumvent the statute. Accordingly, the District can only be found to have improperly failed to reevaluate the Adult Student or to identify him as being in need of special education services based on information unknown to the District prior to October 4, 2011, the beginning of the statute of limitations period.

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Reading

41. The Adult Student has not presented sufficient evidence arising between October 4, 2011, and the February 2013 reevaluation, to place the District on notice of any earlier need to reevaluate the Adult Student's reading.

Focus/Organization/Study skills/Behavior

42. Nor has the Adult Student presented specific evidence with respect to his attention, organization, study skills, and related behavioral issues within the statute of limitations period that would have triggered the District's obligation to reevaluate or identify the Adult Student with respect to these concerns prior to his triennial evaluation in February 2013.

IEP Issues⁹

Present levels of performance and annual goals

43. An IEP must contain a statement of a student's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1). Present levels must contain baseline measurements for goals. *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013). And, if the present levels are based on test scores, they must explain the meaning of the scores in layman's terms. *Seattle Sch. Dist.*, 2010-SE-0127 (SEA WA 2001).

44. An IEP must also contain a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum and meet each of the student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2). There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

45. The March 2012 IEP does not include appropriate present levels of performance. The statement that the Adult Student's disability impacts his ability to be successful in general education math without SDI does not provide an adequate baseline measurement from which to develop goals. And the March 2012 IEP fails to provide any math goal whatsoever.

⁹ The Adult Student elicited testimony on numerous procedural issues related to the development of IEPs, including whether his Mother was invited to IEP meetings before he turned 18, whether the District advised the family of the transfer of rights at age 18, and whether he attended IEP meetings after he turned 18 or was just asked to sign IEPs. Because these allegations were not included in the statement of the issues, they are not addressed.

46. The February 2013 IEP's present levels of performance includes the grade equivalencies from the annual TOMA assessment and its subscores. This provides minimally adequate baselines from which math goals could be formulated. However, the only math goal is not measureable, as it only states that the Student will improve from an unidentified grade equivalency (presumably that found in the present levels) to an unidentified grade equivalency. As there is no way to determine what skills the goal was designed to address and whether the goal was met, it is not appropriate.

47. The math goal in the May 2013 IEP is not an appropriate, measureable goal with respect to math, the one area in which the Student was to receive specially designed instruction. While it purports to be a math goal, it only measures the Student's attendance, not his math skills.¹⁰

48. Because the March 2012, February 2013, and May 2013 IEPs all lacked appropriate present levels of performance and/or annual math goals, they were not reasonably calculated to confer an educational benefit on the Adult Student and thereby denied him a FAPE.

Statements regarding assessments

49. When an IEP team determines that a student must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, the IEP must include a statement of why the student cannot participate in the regular assessment and why the particular alternate assessment is appropriate for the student. WAC 392-172A-03090(1)(f)(ii); 34 CFR § 300.320(a)(6)(ii).

50. The March 2012 IEP's statement that the Student had not passed the math HSPE basic level and was now eligible for the DAPE explains, however briefly, the District's rationale, and therefore complies with the requirement to provide a statement.¹¹

51. The February 2013 contains no statement of why the Adult Student would take the LRE and therefore violates the IDEA. However, as the Adult Student actually achieved the basic level on the math HSPE, there is no denial of FAPE with respect to this violation.

Addressing the Student's academic needs in the May 2013 IEP

52. Other than the annual math goal, addressed above, evidence to support this allegation cannot be found in the record. Accordingly, the Adult Student has not proven a violation in this regard.

¹⁰ The Adult Student also argued that his IEP failed to include benchmarks or short-term objectives. As the annual math goals in each of the three IEPs have been determined to be inappropriate, the failure to include benchmarks or short-term objectives is not separately considered.

¹¹ The Adult Student also argues that the District should have offered additional SDI to provide the Student the opportunity to pass the HSPE at the basic level. As this portion of the Adult Student's argument was not included in the issue statement, it is not considered. Moreover, the Adult Student did achieve the Level 2 Basic proficiency level on the math HSPE, although this was not treated as passing.

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DISCIPLINE ISSUES

Not holding the manifestation determination meeting within ten school days

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

54. The District here did not hold an MD meeting within ten days of the decision to expel the Student. The District's expectation that the Student would return to school with a drug or alcohol assessment before the ten days expired does not excuse its failure to timely hold the meeting. This is a procedural violation of the IDEA.

55. Because it was ultimately determined that the Student's conduct leading to his expulsion was not a manifestation of his disability and the Adult Student is not here challenging that determination, the failure to timely hold the meeting did not deny the Student a FAPE.

Not providing special education to allow progress in general and special education during the Student's suspension

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

57. Here, the District failed to provide any educational services on the eleventh and twelfth days of the Student's expulsion, which was later converted to a long-term suspension. This failure constituted a procedural violation of the IDEA. The District later offered the Student two hours of tutoring to make up for this failure. The District calculated the amount of tutoring by considering the amount of special education minutes the Student missed on each of those days. It also offered additional after-school tutoring to help the Adult Student catch up with his work, although it did not specifically identify this service as relating to his disciplinary removal. The Adult Student failed to participate in any of these offered services.

58. The Adult Student has not demonstrated that the District's failure to provide educational services on days 11 and 12 of his expulsion denied him a FAPE, given that the District later offered services for this purpose. The Adult Student has not proven what other or additional services were necessary to enable him to progress in the general education curriculum and to progress toward meeting the goals set out in his IEP.

Failing to evaluate the Adult Student before the disciplinary change of placement

59. There is no requirement in the special education discipline procedures that a student eligible for special education services be evaluated before a disciplinary removal that constitutes a change of placement. See WAC 392-172A-05140 through 392-172A-05175; 34 CFR § 300.530. Nor has the Adult Student provided any authority or argument to support his position on this issue. Accordingly, he has not met his burden of proving a violation in this regard.

Transition services

60. IEPs must include, beginning not later than the first IEP to be in effect when a student turns 18, "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. WAC 392-172A-03090(1)(j). See also 34 CFR § 300.320. They must also include the transition services, including courses of study, needed to assist the student in reaching those goals. *Id.*

61. Transition services are "a coordinated set of activities for a student eligible for special education that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education and employment." WAC 392-172A-01190. See also 34 CFR 300.43. They must be based on the student's individual needs, taking into account the student's strengths, preferences and interests, and include instruction related services, community experiences, the development of employment and other post-school adult living objectives. *Id.*

62. The Adult Student argues that the transition goals were generic and not individually tailored to his unique needs.¹² He did consistently express a goal of attending college after graduation, however, and was less interested in attaining any immediate employment. While his goals were general, they were consistent with his expressed interests.

63. The services identified in his IEPs, had they been provided to the Student, would have advanced him toward those goals.

64. The District failed to follow up on the possibility it identified that the Adult Student might need supports in reading and writing to reach his transition goal of attending college. Once raised, there is no evidence that the District pursued this concern. The failure was exacerbated by the District's failure to assess the Adult Student in these areas in his February 2013 triennial evaluation. The District also failed to consider how the Adult Student's needs in math would affect his ability to meet his goal of attending college. This failure was similarly exacerbated by the District's failure to provide annual math goals.

65. It is not appropriate to place the burden for delivering IEP services on students or their parents. *Yankton Sch. Dist. v. Schramm*, 900 F.Supp. 1182 (D.S.D. 1995). That career and employment services were available to the Adult Student through his advisory sessions, the career services center, and the College Bound program does not excuse the District's failure to provide the services to the Adult Student through his IEP. The District did not identify career services or College Bound staff as being responsible for providing the services, notify those staff of any responsibilities in that regard, or follow up with them or the Adult Student to see if the services were delivered. More importantly, the Adult Student did not access the services, so their availability to him did not cure the District's failure to provide them as transition services.

¹²The Adult Student also argues that the March 2011 IEP failed to contain transitional services in the area of employment. As that IEP was developed outside the statute of limitations period, that argument is not considered.

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66. The District has violated the IDEA and denied the Adult Student a FAPE by failing to determine whether transition services were needed with respect to identified concerns about the Adult Student's reading, writing, and math skills and by failing to deliver the services identified in the IEPs.

REMEDIES

Rescinding graduation

67. The IDEA is silent about whether an ALJ has the authority to rescind the award of a regular diploma. Some cases suggest that rescinding a diploma may be an appropriate remedy so long as the rescission would not interfere with the student's current educational program. See *Stock v. Massachusetts Hosp. Sch.*, 555 IDELR 550 (D. Mass. 1984), *cert den.*, 110 LRP 47175 (U.S. 1985); *Espanola Public Schs.*, 105 LRP 44611 (SEA NM 2003).

68. The Adult Student here has not expressly requested that his graduation be rescinded and doing so would potentially hinder his ability to pursue college classes in a timely matter. For those reasons, the Adult Student's graduation is not rescinded.

Eligibility for special education and related services

69. As set forth above, the Adult Student remains eligible for special education and related services, despite his graduation, because he did not graduate *and* meet all graduation requirements. Cases from other jurisdictions holding that the award of a diploma precludes an ALJ from extending special education eligibility do not apply because Washington's rules, unlike the federal regulations, contain the requirement that a student must both graduate and meet all graduation requirements. Cf. *Dracut Sch. Committee v. Bureau of Special Educ. Appeals*, 110 LRP 50313 (D. Mass. 2010).

Compensatory Education

70. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from the special education services the school district should have provided in the first place." *Reid v. Dist. of Columbia*, 401 F.3d 516, 524, 43 IDELR 32 (D.C. Cir. 2005). It is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. Flexibility rather than rigidity is called for. *Id.* at 523-24. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497, 21 IDELR 723 (9th Cir. 1994).

Math

71. The District shall provide compensatory education in math because of the failure to have appropriate math goals in the Adult Student's IEPs throughout the statute of limitations period and because it improperly exited him from special education upon his graduation. The amount of compensatory education shall not be reduced based on the Adult Student's failure to attend his special education math class, as argued by the District, because the District should have

taken steps to assess the Adult Student's attendance problems and to attempt to correct his behavior.

72. Pursuant to the relevant IEPs, the Adult Student was entitled to 55 minutes per day (275 minutes per week) of special education instruction in math prior to the May 2013 IEP and 27 minutes per day (135 minutes per week) afterwards. Between October 4, 2011, the beginning of the statute of limitations period and the implementation of the May 2013 IEP, there were approximately 79 school weeks. Thus, the Adult Student was entitled to approximately 212 hours of instruction during this time period (79 weeks x 275 minutes per week = 12,725 minutes divided by 60 minutes = 362 hours (rounded)). Students are generally able to progress more rapidly with one-on-one instruction rather than receiving instruction in a classroom with other students. An hour-for-hour award, without evidence to support such, would not be appropriate. The District uses – and the ALJ adopts – a formula of under which 20 minutes of one-on-one instruction is equal to one hour of classroom instruction. Accordingly, 119 hours of one-on-one math instruction, including assessment to determine what instruction is appropriate, is awarded to compensate the Adult Student for the time period before the implementation of the May 2013 IEP (362 hours x .33 = 119 hours (rounded)).

73. Between the implementation of the May 2013 IEP and the date of this order, there are approximately 30 school weeks. Thus, the Adult Student would have been entitled to 68 hours of special education instruction during this time (30 weeks x 135 minutes per week = 4,050 minutes divided by 60 minutes = 68 hours (rounded)). Because this instruction was to take place in Ms. Kimmerling's classroom during her planning time when other students were not present, it is not reduced for one-on-one instruction. Accordingly, the Adult Student is awarded 60 hours of one-on-one math instruction to compensate for the time period between the implementation of the May 2013 IEP and the date of this order.

74. The Adult Student is awarded a total of 179 hours of one-on-one instruction in math (119 hours + 60 hours = 179 hours).

Reading

75. Although the Adult Student has proven a violation based on the District's failed to evaluate him with respect to reading, he has not met his burden of proving that he would have been eligible for special education services for reading and, if so, what amount of services would have been appropriate. Accordingly, it cannot be determine whether a compensatory award is appropriate. In the alternative, the District shall conduct an appropriate reevaluation with respect to the Adult Student's reading abilities and then follow the procedures set forth in the IDEA with respect to the development of an appropriate IEP.

Study and organization skills

76. The District shall provide compensatory education in study and organization skills for the time period between the implementation of the February 2013 IEP, when the Adult Student should have started receiving services if he had been earlier evaluated and when the Adult Student began instruction in study skills in May 2013. Additionally, it shall provide compensatory education in this area from the date of the Adult Student's graduation, when it improperly exited the Adult Student from special education, to the date of this decision.

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77. There were approximately 12 school weeks between the implementation of the February 2013 IEP and the implementation of the May 2013 IEP. And there were approximately 29 school weeks between the Adult Student's graduation in June 2013 and the date of this order. Thus, the Adult Student is entitled to be compensation for 41 weeks of services (12 weeks + 29 weeks = 41 weeks). The Adult Student should have been provided 140 minutes per week of services (28 minutes per day x 5 days per week = 140 minutes per week) based on the amount determined appropriate in the May 2013 IEP. This is a total of 96 hours (41 weeks x 140 minutes per week = 5,740 minutes divided by 60 minutes = 96 hours (rounded)). Because Ms. Kimmerling was to provide the study skills instruction to the Adult Student one-on-one during her free period, these minutes are not further reduced. Accordingly, 96 hours of study skills and organization instruction is awarded.

Transition services

78. The District shall provide the Adult Student, as compensatory education, assistance in completing the tasks set forth as transition services in the March 2012, February 2013, and May 2013 IEPs:¹³ research and obtain information from at least three different four-year colleges that have programs in sports medicine (or a different program if the Adult Student has since changed his area of interest); complete a resume and obtain three letters of recommendation to keep in a portfolio to use while applying for jobs; complete financial aid forms and college applications for at least three colleges of interest; and practice filling out job applications. These services shall be provided during the time set forth above for study and organization skills because, as opined by Mr. Aron, there is interplay between these two areas.

79. Additionally, because the District identified that the Adult Student may need supports in reading and writing to further his transition goals, the IEP team shall conduct appropriate assessments to determine whether and what such supports are appropriate. The IEP team shall then follow the procedures set forth in the IDEA to develop an appropriate IEP. Any such services would not be considered compensatory education.

80. The compensatory services ordered above shall be provided by fully certificated District staff with the education, training, and experience to provide such instruction. The compensatory education may be delivered at any time during the calendar year following the entry of this decision, at the duration and frequency determined appropriate by the Adult Student, his Parent (if she continues to have a power of attorney for the Adult Student), and the District. Once such a schedule is set, the Adult Student shall, except in an emergency, give notice 24 hours in advance of a scheduled session. Without such notice and in the absence of an emergency, that session will count towards the compensatory education award. The instruction shall take place at the District office where the hearing was held unless the Adult Student, the Parent (if she continues to have power of attorney for the Adult Student), and the District agree otherwise.

¹³ Attendance at a VADIS seminar is not required as compensatory education as there is no evidence as to what that is or whether one will be available in the upcoming year.

Prospective placement at community college for pre-college courses

81. The Adult Student seeks a prospective placement at a community college, as a transitional service, to develop the skills necessary to function in a community college academic setting. The Adult Student does not explain what courses he would take or what skills he would learn.

82. Because the District has not yet considered whether the Adult Student requires supports in reading and writing in order to advance his transition goals or what other services in math, reading, study skills and organization, and/or transition services the Adult Student needs prospectively, it is premature to order a prospective placement.

83. The Adult Student's IEP team shall meet and determine, after appropriate assessments, whether amendments to the Adult Student's IEP are appropriate to serve him prospectively.

Reimbursement

84. The Adult Student seeks reimbursement for Mr. Aron's record review and report of his recommendations. Because Mr. Aron's services were provided as an expert witness or consultant with respect to the due process hearing, reimbursement is not appropriate. *Arlington Cent. Sch. Dist. v. Murphy*, 548 U.S. 291, 300 (2006). Accordingly, reimbursement is denied.

ORDER

1. The District violated the IDEA and denied the Adult Student a FAPE by exiting the Adult Student from special education upon his graduation when he did not meet all graduation requirements.
2. The District violated the IDEA and denied the Adult Student a FAPE by failing to evaluate the Adult Student in the areas of reading, writing, and behavior (attendance), and with respect to issues with lack of focus, attention, organization, and study skills in February 2013.
3. The District violated the IDEA and denied the Adult Student a FAPE by failing to include appropriate present levels of performance and/or annual math goals in his March 2012, February 2013, and May 2013 IEPs.
4. The District violated the IDEA and denied the Adult Student a FAPE by failing to provide the Adult Student with the transition services identified in his March 2012, February 2013, and May 2013 IEPs and by failing to determine whether he needed supports in reading and writing as additional transition services.
5. The District did not otherwise deny the Adult Student a FAPE.
6. The District shall provide the Adult Student with the following compensatory education services: 179 hours of one-one-one instruction in math and 96 of one-one-one instruction in study skills and organization, including assistance with transaction activities, to be delivered as set forth above.

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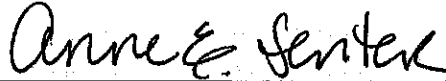
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7. The Adult Student remains eligible for special education and related services.
8. The District shall evaluate the adult student in reading and writing and provide any appropriate services, including transition services, prospectively as required by the IDEA.
9. The Adult Student's remaining remedies are denied.

Signed at Seattle, Washington on April 12, 2014.



Anne Senter
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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

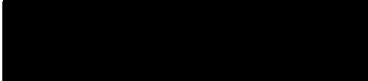
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Adult Student



Jennifer Traufler, Executive Director, Student Services
Tacoma School District
601 S. 8th Street, Tacoma, WA 98405
PO Box 1357
Tacoma, WA 98401-1357

Parent



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Angela M. Shapow, Attorney at Law
1037 NE 65th Street, #235
Seattle, WA 98115

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

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