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**MAILED**  
**FEB 10 2016**  
**SEATTLE-OAH**

February 10, 2016

Adult Student

[REDACTED]

Karen Finigan, Director of Special Education Services  
 Renton School District  
 300 SW 7<sup>th</sup> St  
 Renton, WA 98057

Parents

[REDACTED]

David Hokit, Attorney at Law  
 Curran Law Firm  
 PO Box 140  
 Kent, WA 98035

**In re: Renton School District**  
**OSPI Cause No. 2015-SE-0050**  
**OAH Docket No. 05-2015-OSPI-00093**

Dear Parties:

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

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

Sincerely,

*Anne F. Senter*

Anne Senter  
 Administrative Law Judge

RECEIVED

FEB 15 2016

SUPERINTENDENT OF PUBLIC INSTRUCTION  
 ADMINISTRATIVE RESOURCE SERVICES

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

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

MAILED  
FEB 10 2016  
SEATTLE-OAH

IN THE MATTER OF:

OSPI CAUSE NO. 2015-SE-0050

RENTON SCHOOL DISTRICT

OAH DOCKET NO. 05-2015-OSPI-00093

**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 Seattle, Washington, on November 18 - 20, 2015. The Parents of the Adult Student whose education is at issue,<sup>1</sup> who are also his legal guardians, appeared and represented themselves. The Renton School District (the District) was represented by David Hokit, attorney at law. Karen Finigan, District director of special education, also appeared.

**STATEMENT OF THE CASE**

The Parents filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on May 19, 2015. The Complaint was assigned Cause No. 2015-SE-0050 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered May 19, 2015, which assigned the matter to ALJ Anne Senter. The Complaint was amended, at the Parents' request, on May 28, 2015. The District filed its Response to the Complaint, as amended, on June 5, 2015.

The District filed a motion to dismiss the Parents' Complaint on the grounds that the Adult Student lived at a residential school outside the District during all time periods at issue in the Complaint so the District had no obligation to serve him. The Parents filed a motion requesting that the District continue to serve the Student at his residential school as a stay-put placement. Following briefing and oral argument on the motions on July 27, 2015, the District's motion, treated as one for summary judgment, was granted in part. The claims and remedies related to the District's ongoing obligation to serve the Adult Student were dismissed because the District had no such ongoing obligation since the Adult Student resides outside the District. The District's motion was also denied in part. The claims and remedies arising during the time period in which the District provided special education services to the Adult Student at his residential school were not dismissed. The Parents' request for ongoing services at the residential school as stay-put services was denied because the District was no longer obligated to serve the Adult Student. The order on the motions was entered August 25, 2015.

Prehearing conferences were held on May 28, June 19, August 25, and November 3, 2015. Prehearing orders were entered June 1 and 19, September 9 and 25, and November 4, 2015.

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

As set forth in the Order Setting Due Date for Post-Hearing Briefs, the parties agreed to file post-hearing briefs by postmarking them by January 8, 2016. The Parents' post-hearing brief was received on January 8, 2016. The District's post-hearing brief was postmarked on January 8, 2016, and received on January 11, 2016. Thus, both briefs were timely submitted.

### Due Date for Written Decision

As set forth in the Second Prehearing Order, the due date for a written decision in this matter was continued, at the District's request, to thirty (30) days after the close of the record. As the record closed with the receipt of the District's post-hearing brief on January 11, 2016, the due date for the written decision is **February 10, 2016**.

### Evidence Relied Upon

#### Exhibits Admitted:

District's Exhibits: D1 - D52; and

Parents' Exhibits: P1 - P10; P12 - P23.

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

The Adult Student's Mother;  
Denise Oetinger, Fircrest residential habilitation administrator (former);  
Karen Finigan, District director of special education;  
Gwendolyn Estes-Zuehlke, District assistant director of special education;  
Kelsey Johansen (formerly Farr), Northwest School of Innovative Learning program supervisor;  
Anne Beach, District speech and language pathologist;  
Barbara Perry, District speech and language pathologist; and  
Adam Wallas, Overlake Specialty School (Overlake) manager.

### ISSUES

As set forth in the Fifth 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 Adult Student a free appropriate public education (FAPE) by:
  - i. Failing to implement the Adult Student's individualized education program (IEP) by:
    - A. Not providing tutoring services between the date the services at Overlake ended and October 23, 2014;
    - B. Not providing speech therapy services between the date services at Overlake ended and April 20, 2015;
    - C. Not providing 1:1 support from the time services at Overlake ended;

- D. Not communicating the Adult Student's progress toward his IEP goals from the time services at Overlake ended;
  - ii. Failing to provide an appropriate IEP on March 12, 2014, by not including physical education;
  - iii. Failing to provide communication from the teacher to the Parents from the date services at Overlake ended until approximately May or June 2015;
- b. And, whether the Adult Student is entitled to his requested remedies:
- i. Compensatory education:
    - A. Tutoring services;
    - B. Speech therapy services, using a log to determine when services are provided;
    - C. Adaptive PE services;
    - D. Classes at the Burnett Center or similar opportunities for socialization and community and vocational skills;
  - ii. And/or other equitable remedies, as appropriate.

#### FINDINGS OF FACT

1. The Adult Student was 19 years old at the time of the hearing.
2. The Adult Student previously lived in the District with his Parents and received special education and related services, beginning with Birth to Three Services in 1998. Exhibit D4, p.1. He currently receives services under the Autism eligibility category. *Id.*
3. The District conducted a reevaluation of the Adult Student in June 2011, which included a motor skills evaluation. Exhibit D5, pp. 1, 18-22. The motor skills evaluator concluded:

Statement of the Apparent Significance of the Findings as Related to the Suspected Disability(ies) and Instructional Program: Based on the results of these assessments and professional judgment of the evaluator, it is recommended that occupational therapy services be discontinued at this time. [The Adult Student's] self-care skills are functional for the school environment. He currently demonstrates the fine motor skills necessary to successfully participate in and perform his school-related fine motor activities. [The Adult Student] displays a number of fine motor strengths within his current school environment and does not appear to be significantly limited by motor or sensory system difficulties. [The Adult Student] may benefit from some of the recommended sensory processing-related strategies which can be implemented within the classroom setting.

*Id.* at 18-22. The evaluation team recommended that the Adult Student did not need adapted physical education (PE). *Id.* at 24.

4. The District placed the Adult Student at Overlake Specialty School (Overlake) in the fall of 2012. Exhibit D4, p. 4. Overlake is an out-of-District day school that provides specially designed instruction (SDI) for academics, communication, adaptive behavior, and social skills for students with emotional and behavior disabilities. Exhibit D9, p. 14. The Adult Student continued to live at home with his Parents, and the District provided transportation from his home to Overlake each day. Exhibit D8, p.12.

5. An IEP was developed for the Adult Student by Overlake on March 13, 2014. Exhibit D8. At the time, the June 2011 reevaluation was the most recent. *Id.* at 1. The IEP noted that the Adult Student did not have "motor concerns" and it did not provide for adaptive PE. *Id.* at 8. With respect to PE in general, the IEP provided:

Recreational therapy is provided in lieu of Physical Education, and includes life skills, social skills, and physical activities. Off-site outings to swim, visit parks and the library, and special trips to attractions such as the zoo, aquarium, etc. are available to [the Adult Student] pending his ability to be consistently safe and to consistently follow directions while at school.

*Id.* at 13.

6. At Overlake, the Adult Student received instruction in a classroom with other special education students. Wallas, Tr. 434.<sup>2</sup> A teacher provided oversight, guidance, and curriculum for the class, and the Adult Student also had one-on-one and, sometimes, two-on-one support from an instructional assistant and/or paraeducator, depending on his behavior. Wallas, Tr. 435-36. The instructional assistant and/or paraeducator delivered individualized instruction to the Adult Student, pre-taught social skills, and helped to manage specialized incentive programs, such as visual charts and planners to provide structure for his day and to keep him on track. Wallas, Tr. 437.

7. In approximately June 2014, the Adult Student moved to Fircrest Habilitation Center, a residential facility managed by the State of Washington. Exhibit D6; Oetinger, Tr. 294. Fircrest serves individuals who have not been successful in other placements or who are not suitable for living in the community. Oetinger, Tr. 295. The Adult Student resided in the short-term or crisis unit because the goal was to stabilize him and then move him back to a community setting. Oetinger, Tr. 295. The Adult Student's Parents, not the District, were responsible for his move to Fircrest. Exhibit D6; Estes-Zuehlke, Tr. 533. The Adult Student continued to attend school at Overlake, and the District provided transportation between Fircrest and Overlake. Oetinger, Tr. 288-89.

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<sup>22</sup> Citations to witness testimony identify the witness's last name and the page or pages of the transcript on which the testimony is found.

8. Overlake created a new IEP for the Adult Student, dated August 15, 2014, following a District reevaluation in June of that year. Exhibits D4, D9. The IEP provided for SDI in reading, written language, math, social/emotional/behavior, and adaptive behavior for a total of 1800 minutes per week. Exhibit D9 at 12. It also provided for 30 minutes per week of communication services to be provided by a speech language pathologist (SLP) concurrently with the SDI. *Id.* Additionally, it provided for a one-on-one paraeducator for 1800 minutes per week as a concurrent service. *Id.* The IEP provided that the Parents would be informed of the Adult Student's progress toward meeting his annual goals through written progress recorded on IEP goal pages, which would be sent home quarterly. *Id.* at 16. It did not state on what dates the quarterly reports would be sent. *Id.*

9. The IEP's adverse impact statement noted that the Adult Student requires one-on-one support in order to maintain safety and provide him with the support he needs to access his instruction. Exhibit D9, p. 3. With respect to present levels of functional performance in adaptive skills, the IEP stated that the Adult Student is sometimes physically unsafe with his body, sometimes pushing, hitting, and kicking staff. *Id.* at 7. It stated that, in a learning environment, he will throw pencils and books at staff to avoid doing task demands, and that he will frequently try to run from the school building. *Id.* It noted that these actions put the Adult Student and others in dangerous situations and that he requires a one-on-one staff-to-student ratio to maintain safety for himself and others. *Id.* The portion of the IEP addressing the effect of the Adult Student's disability on his involvement and progress in the general education curriculum and appropriate activities also stated that he needs one-on-one adult support due to the frequency and intensity of his behaviors, including physical aggression, elopement, property destruction, severe disruption, and active/passive resistance. *Id.* at 8.

10. The Adult Student had a number of behavioral problems at Overlake, including incidents in which staff were injured. Wallas, Tr. 438. On approximately September 30, 2014, Overlake suspended the Adult Student. Exhibit D20, p. 3; Estes-Zuehlke, Tr. 391. Attempts were made to set a meeting to determine the result of the suspension and whether Overlake could continue to meet the Adult Student's needs. Exhibits D19, D20; Estes-Zuehlke, Tr. 391-92. On approximately October 7, 2014, Overlake determined that it could no longer provide services for the Adult Student and ended its contract with the District to serve the Adult Student. Exhibits P17, p. 28, D21, D22; Estes-Zuehlke, Tr. 399; Wallas, Tr. 439. The reasons Overlake chose to end the contract included the degree of unsafe behavior he was exhibiting and the Parents' refusal to allow communications between Overlake and Fircrest, which Overlake believed was important in managing the Adult Student's behavior problems. Estes-Zuehlke, Tr. 399; Wallas, Tr. 438-40.

11. After the Adult Student could no longer attend Overlake, the District began two parallel processes to serve him. It set up a program to provide immediate services for him while it considered an appropriate long-term placement. Estes-Zuehlke, Tr. 392. With respect to the immediate services, the District developed an on-site educational program for the Adult Student at Fircrest. Exhibit P17, pp. 10-11; Estes-Zuehlke. Fircrest provided one-on-one supervision for the Adult Student during the day. Exhibit D6; Oetinger, Tr. 283-84. Thus, a Fircrest employee would have direct contact with the Adult Student at all times an education program would be taking place, either by line of sight or within arms' reach, depending on his needs at the time. Oetinger, Tr. 284-85. The purpose of the one-on-one staffing was to ensure safety for the Adult Student and others given his behavior issues and to support the Adult Student in engaging in other activity. Oetinger, Tr. 286-87.

12. Karen Finigan, District director of special education, interviewed and hired a special education teacher, Debbie Jackson, to work with the Adult Student at Fircrest. Exhibit P17, pp. 10-11. She also placed a request with an organization called Community Care to assign a paraeducator for the Student. Exhibit P17, p. 11. She expected that academic instruction would begin on October 20, 2014. Exhibit P17, p. 11. However, because Ms. Jackson had not completed a background check and fingerprinting, educational programming started on October 23, 2014. Exhibit P17, pp. 9-10.

13. On November 2, 2014, the Mother sent an email to Ms. Finigan, Ms. Jackson, Ms. Estes-Zuehlke, and Denise Oetinger, Fircrest residential habilitation administrator, stating that she had not yet received daily communication about the Adult Student's day. Exhibit P17, p. 8. She also asked when the Adult Student's paraeducator would start. Exhibit P17, p. 9.

14. Ms. Finigan responded in an email the same day, stating that she would have Ms. Jackson, Ms. Estes-Zuehlke, or herself create a schedule of the Adult Student's time and IEP work as well as academic and behavioral goals data sheets to be emailed to the Parents with the Adult Student's progress. Exhibit P17, p. 8. She stated that she had emailed the Community Care office again and would give the Parents an update the next day. *Id.*

15. Ms. Finigan learned in a phone call on November 3, 2014, that Community Care would not provide services at facilities like Fircrest. Exhibit P17, p. 7. She passed this information on to the Parents and told them that she would next contact Fircrest to see if an arrangement could be worked out for one-on-one support for the Adult Student. *Id.*

16. On November 3, 2014, the Father sent a responsive email to Ms. Finigan. Exhibit P17, p. 6. He expressed his displeasure that it had taken three weeks to determine that Community Care would not be able to provide a paraeducator. *Id.* He also expressed concerns about using Fircrest staff as the Adult Student's one-on-one. *Id.* He stated that he did not know if Fircrest staff was trained to assist a teacher in providing educational material, and he wanted to know who would pay the staff person as he felt it would be inappropriate for the state, rather than the District, to pay. *Id.* Additionally, he stated that it was important, for consistency, that the one-on-one be the same person all the time. *Id.* The Father also stated that the Adult Student had not received educational services from September 30 to October 23, 2014, and that he was owed approximately four weeks of services. *Id.* at 7. He asked the District to share its plan for making up that time and stated that it could be in the form of District-funded extracurricular activities. *Id.*

17. On November 4, 2014, Ms. Finigan received an email from the program manager at Community Care, declining the request to provide one-on-one support for the Adult Student at Fircrest because he already received one-on-one care and support there. Exhibit P17, p. 5. She stated that the organization does not provide on-site support at non-Community Care sites that are staffed, such as group homes. *Id.*

18. On November 5, 2014, Piril Akman of Fircrest, sent an email to the Parents, Ms. Oetinger, Ms. Finigan, and other District staff, stating that Fircrest staff could not be used for any "educational teaching" because they are not trained or qualified to render such services. Exhibit P17, p. 6.

19. On November 6, 2014, Ms. Estes-Zuehlke sent an email to Ms. Oetinger, summarizing her understanding of a phone conversation between them: 1) Fircrest might be able to provide a one-on-one paraeducator that would be paid by the District; 2) the position could be filled by staff not otherwise working at Fircrest during those hours, and 3) Fircrest had provided this resource in the past in other situations. Exhibit P17, p. 4. Ms. Estes-Zuehlke asked Ms. Oetinger to begin the process of identifying staff and availability right away and stated that she would also continue to seek staffing through the District's human resources system. *Id.* She stated that the function of the position would be to provide behavioral support to the Adult Student as Ms. Jackson would continue to plan, implement, and collect data on all educational instruction. *Id.*

20. The District revised the Adult Student's IEP on December 12, 2014. Exhibit D10. The stated purpose of the revision was that his location and frequency of special education services had changed as he was no longer attending Overlake and was instead "being served individualized instruction at the group home [where] he is currently residing with a certified teacher and a 1:1 Paraeducator." *Id.* at 1. The IEP provided for 1500 minutes per week of services including 30 minutes of communication services from an SLP and SDI in adaptive behavior, math, reading, social emotional/behavioral skills, and written language. *Id.* at 15.

21. The IEP stated the following under supplementary aids and services:

[The Adult Student] requires [one-on-one] paraeducator assistance to provide prompts and assistance during entire instructional day [sic] including SDI (special education) in order for him to be successful. The paraeducator also provides prompts and attends to safety measures during transitional times, and to/from transportation. Para educator [sic] support is necessary for community based instruction and a second paraeducator may be required on community outings.

*Id.*

22. Under "consideration for least restrictive environment," the IEP stated that the Adult Student's SDI would be "delivered in his group home, by a certified teacher and a 1:1 Paraeducator." *Id.* at 16. Under options considered and rejected, the IEP stated that the Adult Student's schooling was currently in his group home in a structured environment for five hours per day where he would be served by "his Special Education teacher, and at least 1 other staff member." *Id.*

23. Although the IEP revision is dated December 12, 2014, the IEP stated that the start date for these services was October 23, 2014. *Id.* The IEP stated that progress reports would be issued at least as often as report cards are issued to parents of students not receiving special education services. *Id.* at 11.

24. Under present levels of educational performance, the IEP included the following with respect to reading:

1:1 Paraeducator:

[The Adult Student] requires 1:1 Paraeducator support throughout the school day to provide prompts and assistance during entire instructional day [sic] including SDI (special education) in order for him to be successful. The paraeducator also



provides prompts and attends to safety measures during transitional times, and to/from transportation. Para educator [sic] support is necessary for community based instruction and a second paraeducator may be required on community outings.

*Id.* at 5. This same language was repeated four times under present levels of educational performance with respect to math, written language, adaptive behavior, and "social, emotional & behavioral." *Id.* at 6-9. Under present levels of educational performance with respect to adaptive behavior, the IEP also carried forward the language from Overlake's March 2014 IEP about the Adult Student requiring a one-one-one staff-to-student ratio in order to maintain safety for the Adult Student and others. *Id.* at 7.

25. The District subsequently found another educational placement for the Adult Student at Northwest School of Innovative Learning (NWSOIL). Exhibit D28; Estes-Zuehlke, Tr. 339. The Adult Student and the Parents toured the facility, and the Adult Student began attending the school, for approximately two partial days, on approximately March 3, 2015. Exhibits D28, D30, p. 1; Johansen, Tr. 356; Mother; Estes-Zuehlke, Tr. 400.

26. NWSOIL discharged the Adult Student as of Friday, March 6, 2015, because of the Parents' partial noncompliance with its intake process. Exhibit P17, p. 52-53; Estes-Zuehlke, Tr. 342-33; Johansen, Tr. 349-51, 354. See also Exhibits D32-37. The Parents had initially refused to sign some documents before ultimately signing them and raised a number of questions about other documents that were not resolved before NWSOIL discharged the Adult Student. Exhibits D32, D33, D34, D35, D36, D37.

27. On Monday, March 9, 2015, Ms. Estes-Zuehlke notified the Parents by email that the District would begin evaluating other programming options for the Adult Student and asked them to provide their availability for an IEP meeting. Exhibit P17, p. 52.

28. On March 13, 2015, Ms. Estes-Zuehlke notified the Parents and others by email that she had been exploring educational options for the Adult Student that would focus on vocational settings to provide training and skill development that would align with Division of Vocational Rehabilitation (DVR) post-secondary opportunities. Exhibit P17, p. 55. She had reached out to Renton's DVR coordinator and talked with Ms. Oetinger about vocational programming at Fircrest. *Id.*

29. Ms. Oetinger responded to this email on March 16, 2015, stating that Fircrest's Adult Training Program (ATP) was an option that would allow the Adult Student to develop work skills, fill his day with meaningful activity, and earn money. Exhibit P17, p. 55. The Mother responded by email that that sounded great. *Id.* The Father stated in an email on March 17, 2015, that Ms. Estes-Zuehlke should remember, when arranging staffing, that the Adult Student's IEP called for a one-on-one in addition to a teacher/vocational trainer. Exhibit P17, p. 54.

30. The District revised the Adult Student's IEP again at a meeting on March 20, 2015. Exhibit D11. The IEP identified the following purpose for the revision:

Since his discharge from Overlake Specialty School in November 2014, [the Adult Student] has been receiving home based instruction at his residential

placement at Fircrest. This instruction has been provided 1:1 by a special certified teacher contracted by the Renton SD.

In January 2015 there was agreement for [the Adult Student] to attend NW SOIL, [sic] as an appropriate educational placement. This placement was discharged due to the inability to comply with the intake requirement. [The Adult Student] was in attendance for 2 school days.

During the IEP meeting on 3/20/2015, it was determined that [the Adult Student's] program would focus on his Vocational skill development.

These service minutes will be provided under the Adaptive Behavior services.

His program will consist of vocational programming with the ATP workshop on site at Fircrest and continued 1:1 academic instruction by special education teacher and para educator [sic] provided by the School District.

[The Adult Student] will be enrolled in the Community Care Spring Break, at district expense, as was the case for both the Winter and Mid-Winter breaks. These camps are provided in response to the delay of educational programming between his Overlake discharge and establishment of 1:1 instruction.

[The Adult Student] also qualifies for SLP services, which have not occurred this year due to difficulty in consistent educational placement.

SLP services will be provided at an enhanced weekly rate to ensure 18 hours of services (30 minutes 1X weekly for 36 weeks/school year) occur for the school year.

*Id.* at 1.

31. The IEP provided for 1500 minutes per week of services including 30 minutes of communication. *Id.* at 15. Under supplementary aids and services, the IEP stated:

[The Adult Student] requires a one to one paraeducator to provide safety support for himself and others as well as prompts for compliance and response to instruction. The level of support has diminished in his current residential setting of instruction.

*Id.* at 16. Under "consideration for least restrictive environment," the IEP stated that the Adult Student's SDI would be "delivered in his group home, by a certified teacher and a 1:1 Paraeducator." *Id.* Under other options considered and rejected, it stated that the Adult Student's schooling is in a group home in a structured environment where he is served by his special education teacher "and at least 1 other staff member." *Id.* The IEP stated, when describing the extent to which the Adult Student will not participate with nondisabled students in the general education classroom, that he "will be served in a 2:1 Teacher to Student ratio in his current group home setting." *Id.*

32. This IEP also stated that the District will report progress at least as often as report cards are issued to parents of students not receiving special education by report card and written progress report. *Id.* at 11.

33. The IEP brought forward the language in the present levels of educational performance about the Adult Student's need for one-on-one paraeducator support throughout the school day to provide prompts and assistance and for safety. *Id.* at 5-10.

34. On March 23, 2015, Ms. Estes-Zuehlke sent an email to a number of people, including the Parents, following a meeting with the Parents to develop a new plan for the Adult Student's education. Exhibit P17, p. 41. It stated that Ms. Jackson would return to provide educational services beginning the next day, March 24, 2015, and the Adult Student would split his day between academic services provided by Ms. Jackson and Fircrest's ATP program. *Id.* She stated that the District would begin the process of hiring a paraeducator to work with the Adult Student during those times so that Fircrest staff would not be required during the school day. *Id.*

35. On April 15, 2015, the Mother District and Fircrest staff in an email whether the Adult Student had received education services on the prior Monday and Tuesday. Exhibit P17, p. 48. Ms. Oetinger asked Ms. Estes-Zuehlke, in an email the same day, to remind Ms. Jackson to send the daily reports to the Parents. *Id.*

36. On April 20, 2015, Ms. Estes-Zuehlke emailed the Father providing an update on the Adult Student's educational programming. She stated that programming would continue, unless a change of residence occurred, until June 2015. Exhibit P17, p.2. With respect to SLP services, she stated that the Adult Student qualified for services that had not been provided due to unstable educational placements. *Id.* She stated that, beginning that week, he would receive such services from 1:30 to 2:15 p.m. on Wednesdays and Fridays. *Id.* She noted that he qualified for 30 minutes weekly, but would receive 90 minutes for the remainder of the school year because of the delay in services. *Id.* With respect to paraeducator support, she stated that she continued to struggle to provide a staff person or substitute willing to provide one-on-one paraeducator support at Fircrest. *Id.* She stated that Community Care does not provide staff for residential facilities, the request for staffing was ongoing, and she would update the team when staff was identified. *Id.* With respect to communication, she stated that Ms. Jackson sends detailed emails of the Adult Student's school day and to let the District know if there is additional information the Parents wished to receive. *Id.* She also stated that the Parents could communicate directly with Ms. Jackson by email as well. *Id.*

37. The Father emailed Ms. Estes-Zuehlke the same day, stating among other things:

Also for a 1on1 support, we feel as if the RSD is not trying hard enough to find someone for the provision of this service, a service that is clearly called for in [the Adult Student's] IEP. Please be aware that shortly when I have the time, I will start the analysis to determine how many hours of this service [the Adult Student] is owed based on when he should have started receiving this service in accordance with the agreed upon IEP. The RSD would not even be looking into a 1on1 for [the Adult Student] until we raised the issue at our last meeting. The hours of service owed to [the Adult Student] will continue to accumulate until a 1on1 is in place – therefore we would like to find out from you when such an individual will be in place.

Exhibit P17, p. 1-2.

38. On April 21, 2015, Ms. Estes-Zuehlke responded to the Father's email, stating, among other things:

We have and will continue to seek staffing for the 1:1, despite our inability to date secure this hire. [sic] Despite this hire [sic], [the Adult Student] has received his FAPE in the presence of a teacher and a support staff member. The employer of that support staff is not a compensatory finding. [The Adult Student] has and does receive the staffing as defined in his current IEP.

Again, we will continue with ongoing District actions to hire staff for this position.

Exhibit P17, p. 1.

39. On April 21, 2015, the District issued a prior written notice (PWN) stating that the Adult Student's SLP services would begin at Fircrest the following day. Exhibit D14. It stated that the services would be enhanced to "a weekly service model of 90 minutes (2X @ 45 minutes each) due to an absence of services earlier in the school year." *Id.*

40. On April 23, 2016, the Mother asked the Father why they were not getting emails from Ms. Jackson. Exhibit P17, p. 46. Ms. Oetinger was forwarding emails from Ms. Jackson to the Parents during this time period. *See id.*

41. Barbara Perry was present at Fircrest for a total of 780 minutes between April 22 and June 17, 2015, to provide SLP services to the Adult Student. Exhibit D17; Perry, Tr. 377-81.

42. The District held an IEP meeting on June 18, 2015, to determine whether the Adult Student would receive extended school year (ESY) services during the summer. Exhibit D12. The IEP document created as a result of that meeting stated that the revisions would start on July 6, 2015. *Id.* at 1. However, there is no change in services set forth in the IEP, which stated that the IEP team determined that the Adult Student was *not* eligible for ESY services. *Id.* at 14. Nonetheless, the District issued a PWN on July 1, 2015, stating that the Adult Student qualified for ESY services in the areas of math, reading, written language, adaptive behavior, and communication, and that these services would be provided from July 6, through August 13, 2015, on Monday through Thursday from 9:00 a.m. to noon at Fircrest. *Id.*

43. Anne Beach was present at Fircrest for a total of 360 minutes between July 18, 2015, and August 12, 2015, to provide SLP services to the Adult Student. Exhibit D18; Beach, Tr. 361-62.

44. In the District, report cards are issued to general education students after each semester in January and June. Estes-Zuehlke, Tr. 469. The District did not issue a progress report to the Parents in January 2015. Estes Zuehlke, Tr. 470. Ms. Estes-Zuehlke believed this was because his services had been so disjointed that there was not enough consistent programming to generate a progress report. *Id.* The District generated IEP progress reports for the Adult Student in June and August 2015. Exhibit D52; Estes-Zuehlke, Tr. 471-72. Ms. Estes-Zuehlke testified that "typically" progress reports are sent home or mailed to parents. Estes-Zuehlke, Tr. 472. It is her "belief" that would have happened with respect to the Adult Student's progress reports but she is not the person who would have sent them. Estes-Zuehlke, Tr. 472; 495. The Mother testified that she received no reports about the Adult Student's progress on his IEP goals during the time he was receiving his instruction at Fircrest. Mother, Tr. 100-104, 191, 543. Because of the Mother's testimony that the Parents did not receive progress reports and the District's failure to provide evidence, other than hearsay, that

such reports were provided to the Parents, it is determined that it is more likely than not that the District did not provide progress reports to the Parents after the Adult Student stopped attending Overlake.

45. While the Adult Student received his education at Fircrest, the District kept weekly data sheets designed to track the Adult Student's progress toward his IEP goals as well as daily point sheets related to his behavior. Exhibit D50; Estes-Zuehlke, Tr. 313. The Mother testified that she did not receive any of these documents. Mother, Tr. 106. However, District exhibits show that data sheets were emailed to the Parents in November and December 2014. Exhibits D26, D27, D48. Ms. Estes-Zuehlke believed that the data sheets were mailed to the Parents in batches by someone in her office, but there is no record evidence of this for time periods after December 2014. Estes-Zuehlke, Tr. 476. It is found that the data sheets were provided to the Parents for November and December 2014, but not later.

46. Ms. Jackson sent daily or near-daily emails to the Parents. Exhibit D50. The purpose of the emails was to inform the Parents of the Adult Student's daily interactions and activities. Estes-Zuehlke, Tr. 483. At some point, the Parents complained that they were not receiving the emails, so Ms. Oetinger forwarded her emails from Ms. Jackson to the Parents. Estes-Zuehlke, Tr. 488. Ms. Estes-Zuehlke confirmed the Parents' email addresses and Ms. Jackson started sending emails to the Father's home email rather than his work email. Estes-Zuehlke.

47. On July 3, 2015, Ms. Finigan notified the Parents that, after the ESY services ended on August 13, 2015, the District would no longer provide educational services for the Adult Student while he resides outside the District. Exhibit D47.

48. At the time of the hearing, the Adult Student continued to reside at Fircrest and was receiving his special education and related services from the Shoreline School District, where Fircrest is located. Mother, Tr. 544.

49. The District provided compensatory services to the Adult Student for the gap in instructional services between his discharge from Overlake and the date instruction began at Fircrest. Estes-Zuehlke, Tr. 407-08; Mother, Tr. 543. The District paid for the Adult Student to attend three four- or five-day camps during school breaks and provided transportation and one-on-one support for him to attend. Estes-Zuehlke, Tr. 412-13; Mother, Tr. 543. The Adult Student attended the camps, although he chose not to go every day. Mother, Tr. 543. The Mother agreed that the camps were appropriate to compensate for the gap in the Adult Student's services after he attended Overlake. Mother, Tr. 544.

50. To address the gap in SLP services, Ms. Estes-Zuehlke determined that the Adult Student would have been entitled to a total of 18 hours of SLP services in the school year, by multiplying 36 weeks of school by the 30 minutes per week set forth in his IEP. Estes-Zuehlke, Tr. 417. She then looked at the services he missed and enhanced the service model to provide 90 minutes per week of SLP services, rather than the 30 minutes required in the IEP, so he would get the total amount of services called for in the IEP by the end of the school year. Estes-Zuehlke, Tr. 417. In addition to the SLP services the Adult Student received while he was still at Overlake, he was offered 19 hours of services by Ms. Beach and Ms. Perry. Exhibits D17, D18; Perry, Tr. 377-81; Beach, Tr. 361-62.

51. Ms. Estes-Zuehlke believes that the Adult Student did not need a one-on-one paraeducator at Fircrest in order to receive benefit from his educational program because Ms. Jackson worked with him one-on-one and could immediately respond to his educational needs and because his behavioral support was provided by Fircrest staff who also served him one-on-one. Estes-Zuehlke, Tr. 461. In retrospect, she believes the paraeducator support should have been removed from the March 2015 IEP because the Adult Student no longer required the service. Estes-Zuehlke, Tr. 462-63.

## CONCLUSIONS OF LAW

### Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the 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 *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

*Id.* at 206-207 (footnotes omitted).

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 educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and

under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" [FAPE] as defined by the Act.

*Id.* at 188-189.

5. A district is not required to provide a "potential-maximizing" education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01. A district must provide a student with a "meaningful benefit" in order to satisfy the FAPE requirement. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9<sup>th</sup> Cir. 2014).

#### Implementation of the IEPs

6. Material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9<sup>th</sup> Cir. 2007). On the other hand, minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.*

"[S]pecial education and related services" need only be provided "*in conformity with*" the IEP. [20 USC §1401(9).] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

\* \* \*

We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.

*Id.* at 821 and 822 (italics in original):

#### *Tutoring*

7. The District failed to provide any educational services for the Adult Student from the time that Overlake determined it would no longer provide those services on or about October 7, 2014, until Ms. Jackson started providing them on October 23, 2014, a nearly three-week period. This was a material failure to implement the IEP and, therefore, a violation of the IDEA.

#### *Speech Therapy Services*

8. The District failed to provide any SLP services for the Adult Student from the time that Overlake determined it would no longer provide those services on or about October 7, 2014, until Ms. Perry started to provide them on April 22, 2015. This was a material failure to implement the IEP and, therefore, a violation of the IDEA.

### *One-on-one Support*

9. Although the District attempted to obtain a paraeducator to work with the Adult Student at Fircrest, it was not successful. This was not a material failure to implement the IEP because the Adult Student continued to receive all the services a paraeducator would have provided. Ms. Jackson, a certificated special education teacher, worked with him one-on-one, so he received the prompts and individualized instruction that a paraeducator would have provided. And Fircrest staff provided the behavioral support for his safety and that of others. Accordingly, the District's failure to provide an additional person with the specific title and credentials of a paraeducator was only a minor failure to implement the IEP and, therefore, was not a violation of the IDEA.

### *Progress Toward IEP Goals*

10. The Parents proved that the District failed to provide them progress reports as required by the Adult Student's IEP. However, they received data sheets in, at a minimum, November and December 2014, and were in near-daily contact with the Adult Student's teacher the entire time he was educated at Fircrest. Accordingly, because they had so much information about the Adult Student's education, the failure to provide formal progress reports was only a minor failure to implement the Adult Student's IEP and, therefore, not a violation of the IDEA.

### Physical Education

11. The Parents argue that the Adult Student's March 2014 IEP should have included adaptive and/or general education PE.

### *Adaptive PE*

12. The evaluation of the Adult Student prior to the March 2014 IEP did not recommend that the Adult Student receive adaptive PE, and the Parents have not challenged that evaluation or provided any evidence, other than his receipt of it in the past, to the contrary. Accordingly, the Parents have not met their burden of providing that the IEP was inappropriate because it did not provide for adaptive PE.

### *General education PE*

13. "Physical education services, specially designed if necessary, must be made available to every student receiving FAPE." WAC 392-172A-02030(1). See also 34 CFR §300.108. Each student eligible for special education services "must be afforded the opportunity to participate in the general physical education program available to students who are not disabled." WAC 392-172A-02030(2). An exception exists when a student is enrolled full time in a separate facility, as the Adult Student was at Overlake at the time of the March 2014 IEP. WAC 392-172A-02030(2)(a). When a special education student is enrolled in a separate facility, the school district must ensure that he will be provided with "appropriate physical education services." WAC 392-172A-02030(4).

14. The Adult Student's March 2014 IEP provided that the Adult Student would receive "recreation therapy" at Overlake, including physical activities and off-site outings to swim and visit parks, "in lieu of" PE. The Parents have not demonstrated that these were not "appropriate



physical education services" for the Adult Student and, therefore, have not proven a violation of the IDEA.

#### Communication Between Parents and Teacher

15. There is no requirement in the IDEA that school districts must communicate more frequently with parents than provided in a student's IEP. Even if there were, Ms. Jackson provided near-daily communication about the Adult Student to the Parents and, when there were interruptions in this communication, the District worked to fix them. Accordingly, the Parents have not met their burden of proving a violation of the IDEA with respect to communication with the teacher.

#### Remedies

##### *Compensatory Education*

16. 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. 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).

17. The District has already provided compensatory education for the District's failure to provide educational services between the time the Adult Student stopped attending school at Overlake and when he began educational services with Ms. Jackson in the form of camps. The Parents agree that this compensation was appropriate. Accordingly, no further compensatory education is warranted with respect to the failure to provide educational services during that time period.

18. Likewise, the District has already provided compensatory education for its failure to provide SLP services between the time the Adult Student stopped attending school at Overlake and when Ms. Perry started providing services. The District did so by providing enhanced weekly services thereafter. Accordingly, no further compensatory education is warranted with respect to SLP services.

19. For the reasons stated above, the Adult Student's other requested remedies are denied.

#### Other Issues

20. The Parents raised a number of arguments in their Post-Hearing Brief that were not included in their Due Process Hearing Request or in the statement of the issues for the hearing: that it was a misuse of state funds for a Fircrest employee to provide services required by the Adult Student's IEP; that the District failed to amend the Adult Student's IEP based on his changing situation at Fircrest; and that the District failed to implement a recommendation contained in the Adult Student's evaluation. Because these issues were not raised in the Due Process Hearing Request or in the statement of the issues, they are not considered. See WAC

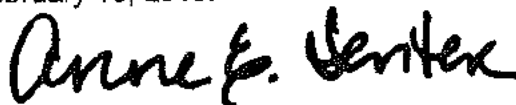
392-172A-05100(3); 34 CFR §300.511(d). Additionally, the Parents argue that the Adult Student should have received PE when he was at Fircrest. Because the statement of the issues with respect to PE only related to an IEP in effect at a different time, the question of whether the Adult Student should have received PE at Fircrest is also not considered.

21. The District argued that Parents' actions caused Overlake and NWSOIL to refuse to serve the Adult Student and, therefore, the District is not responsible for any lapses in services. Because no remedy is awarded with respect to the gaps in services, this argument is not considered.

### ORDER

The Adult Student is not entitled to relief on any of the claims in the Due Process Hearing Request.

Signed at Seattle, Washington on February 10, 2016.




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. 

Adult Student



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