BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
DENISE JUNEAU
STATE OF MONTANA

IN THE MATTER OF [STUDENT])	**OSPI 2015-01**
)	
)	**MEMORANDUM**
)	**OPINION, FINDINGS OF**
)	**FACT, CONCLUSION OF**
)	**LAW AND ORDER**
)	

ISSUES AND STATEMENT OF THE CASE

Petitioners, the parents of [STUDENT], allege that the *** School District's (District) refusal to provide their daughter, [STUDENT], with the services of a dedicated one-on-one paraeducator (aide) as a condition to re-enrolling her in school within the District amounts to a deprivation of FAPE. Respondent District denies that a one-on-one aide is educationally necessary for [STUDENT] to receive FAPE.

PROCEDURAL HISTORY

On March 3, 2015, the Office of Public Instruction received a due process complaint from [Petitioner's attorney] on behalf of *** the parents of [STUDENT] in which they seek an impartial due process hearing on behalf of [STUDENT] The complaint alleges that for [STUDENT] who was homeschooled during the 2013-14 and 2014-15 school years to be re-enrolled in school within the (District) her Individualized Education Program (IEP) must provide her with a dedicated one-to-one aide. The District through its couns, [District's attorney], filed its response on March 13, 2015, in which it admitted that it had denied [STUDENT]'s parents request for a one-on-aide on the ground that one was not educationally necessary for [STUDENT] to receive FAPE.

Pursuant to §10.16.3509(1)(b), A.R.M. the Superintendent of Public Instruction appointed the undersigned as the impartial due process hearings officer for this proceeding. The parties were unable to reach a resolution during the 30-day resolution period provided for in 34 CFR §300.510

and §10.16.3508A, A.R.M. Following the close of the resolution period on April 2, 2015, the undersigned conducted a prehearing conference with counsel on April 9, 2015, and issued a scheduling order setting forth deadlines for the completion of discovery, filing briefs, exchanging witness lists and exhibits and setting a hearing date. At the request of counsel for the petitioners the hearing originally scheduled to begin on Wednesday, April 20, 2015, was continued to Monday, June 16, 2015. Again at the request of counsel for the petitioners the hearing was continued to Tuesday, September 15, 2015. The hearing took place on September 15-16, 2015.

Counsel agreed to submit their respective proposed findings of fact, conclusions of law and post hearing briefs on October 30, 2015, and did so. Counsel waived the 45-day period for rendering a final decision herein pursuant to 34 CFR §300.515 and 10.16.3523, ARM.

BACKGROUND

[STUDENT] attended preschool and the first and second grade at *** Elementary School [Elementary School]. As a child eligible for special education and related services under the Individual with Disabilities Act (IDEA) [STUDENT] had an IEP in place for each of the years she attended [the Elementary School] none of which called for a one-on-one aide. Because of their disagreement with the school over [Elementary School] the issue of a one-on-one aide [STUDENT]'s parents removed her from school there and homeschooled her for the third and fourth grades and so far this school year for the fifth grade. Hearing transcript at p. 205-206 (T + page number.)

[STUDENT]'s MEDICAL HISTORY

Until November of 2011, [STUDENT] had a diagnosis of cerebral palsy. At that point her diagnosis changed to one of alternating hemiplegia of childhood (AHC). The diagnosis was initially made by [DOCTOR 1]of Billings, Montana, and subsequently confirmed by [DOCTOR 2] of the University of Utah School of Medicine. Exhibits R-12, R-40. According to [DOCTOR 2]'s

deposition testimony taken on August 21, 2015, and played at the hearing AHC is characterized by episodes of unilateral or bilateral weakness. He said there can also be quadriplegic episodes of weakness where the entire body is not functioning with possible difficulty in swallowing, protecting an airway and being able to breathe safely. T-127. He testified that one of the hallmarks of AHC is developmental delay of varying degrees. T-165.

[DOCTOR 2] testified that [STUDENT]'s parents reported to him that in [STUDENT]'s case environmental stimulus was a strong trigger to her having an episode. He said that environmental stimulus is commonly reported as a trigger in children with AHC and include water exposure, fluorescent lighting and flash photography. T-128-129. A paper on AHC prepared by the National Organization of Rare Disorders (NORD) sets out a more detailed list of environmental triggers that can precede a hemiplegic episode including, among others, certain physical activities such as exercise, water exposure including bathing, swimming or showering, bright sunlight or fluorescent bulbs. The paper also lists certain emotional situations such as stress, anxiety or fright as reported triggers and that many episodes occur with no identifiable trigger. Exhibit R-25.

In a neurological consultation report dated July 25, 2013, [DOCTOR 2] said, "(t)riggers remain the same for ([STUDENT]) in regard to her episodes. In addition to over-stimulating environment through school, she also has a fairly predictable response to swimming. With aggressive days of swimming, she will typically have a severe episode 24 hours after." Exhibit R-66.

[DOCTOR 2] wrote a letter dated May 20, 2013, saying, "it is medically necessary" for [STUDENT] to have "direct supervision" by someone who is familiar with her symptoms both in and outside of the classroom. Exhibit R-48. He acknowledged writing the letter at the request of [STUDENT]'s mother, ***, in support of her goal of having [Elementary School] provide, "a direct kind of aide there to assist ([STUDENT])." T-158-159. He wrote a second letter dated May 24,

2013, in which he added a new sentence to the second paragraph of his May 20, 2013, letter saying: "A 1 to 1 aid is the best solution to provide this kind of supervision for ([STUDENT])." Exhibit R-49. He acknowledged writing that letter based on [MOTHER] reporting to him that [STUDENT] did better when she had a one-on-one aide. T-162. He later wrote a third letter dated September 25, 2013, saying "the stabilizing effect of a dedicated one-on-one is critical for ([STUDENT])" in order to "provide necessary help when an episode occurs" and "may help in preventing a potentially catastrophic episode from happening at all." He acknowledged writing this letter at [MOTHER]'s request as well. Exhibit R-69. T-164. But in his deposition testimony in response to a question from the District's counsel he said this:

> District's Counsel: So if there were multiple people present with her, with ([STUDENT]), that were trained to recognize her signs and symptoms, this addresses your concerns?
> [DOCTOR 2]: Yes. Well, if there is a person or multiple people that can effectively reduce the likelihood of an event happening and deal with an event when it does happen, that's a reasonable solution. T-174.

[DOCTOR 2] also acknowledged that he had concerns about [STUDENT] becoming independent and the effect a one-on-one aide might have as to that concern. T-190-191. [DOCTOR 2] also wrote a letter dated September 4, 2012, advising that it was "medically necessary" for [STUDENT] to consume 500 ml of fluid during the school day which the District complied with. The letter also said that, "([STUDENT]'s) parents are choosing to proceed with a shortened school day due to her disability." Exhibit R-15. He testified that the parents were shortening [STUDENT]'s day "of their own accord" but that he would favor a shortened day if it would help [STUDENT] to reduce episodes while recognizing the detriment to [STUDENT]'s education that a shortened day would pose. T-152-153.

THE PETITIONERS' CASE

The petitioners' case as testified to by [STUDENT]'s mother, [MOTHER], is that during the

last two school years during which [STUDENT] has been homeschooled she has had fewer hemiplegic episodes because she has had a fulltime aide with her during the week and a respite provider with her on Saturdays. [MOTHER] contrasted [STUDENT]'s home situation with that when she was in school, where, she said, "the interventions weren't quick enough. And so if it goes on too long and you can't get that intervention, you're going to have an episode." T-205. [MOTHER] said at school [STUDENT] had to share an aide with another student who has a "significant diagnosis" which caused [STUDENT] to often being left to her own devices. T-206. She testified about the lingering effects on [STUDENT] at home of what she characterized as "chaos" at school. As an example she testified that when she would come to pick up [STUDENT] after school she would find [STUDENT] having to scramble to get her backpack, or to figure out where her belongings were or to turn in a library book or pick one up. The "chaos" at school, [MOTHER] testified, would trigger a bigger episode that would have been the case had [STUDENT] had a one-on-aide at school to assist her and to recognize her signs and symptoms before they triggered a bigger episode. T. 206-207. She acknowledged that [STUDENT] had supervision in the first and second grades, although, she said, "(i)t definitely wasn't one-on-one." T-207.

[MOTHER] also acknowledged shortening [STUDENT]'s school day during the second grade because she "was having too many signs and symptoms, and they'd lead into major episodes." T-207-208. According to her [STUDENT]'s signs and symptoms have been better addressed at home because there was someone, "who is highly trained to recognize those signs and symptoms and … to help her out of that situation where she doesn't have a major episode." T-208. [MOTHER] testified on cross-examination that she felt school aides were not sufficiently trained and because they were called on to supervise multiple children at the same time they were not sufficiently attuned to recognize [STUDENT]'s signs and symptoms. T-223-24. Even so

[MOTHER] wants [STUDENT] "to be able to attend school, to be safe, get the best education she can get and make friends…because she misses her friends." She makes it a condition to [STUDENT] returning to school, however, that she be provided with a one-on-one aide. T-216-217.

[MOTHER] conceded that while [STUDENT] attended [Elementary School] there were times when she had testy exchanges with members of the school staff to the point where she was not allowed to be in [STUDENT]'s classroom with her. T-225-226. She acknowledged that there were times when she or her mother would call the school to arrange for [STUDENT] to leave early. T-228. She also acknowledged that the letter [DOCTOR 2] wrote to the school expressing support for the parents' decision to shorten [STUDENT]'s school day was done at her behest. Exhibit R-15. T-228-29.

[MOTHER]'s husband, ***, confirmed [MOTHER]'s testimony that [STUDENT] "desperately wants to be in school." T-244. He acknowledged that [DOCTOR 2] "never said, absolutely, positively one-on-one or no go. He is saying one-on-one is, by, far the most beneficial for [STUDENT]…." T-245.

***, an employee of the Montana Independent Living Project worked with [STUDENT] five days a week seven hours a day homeschooling her. She testified that she was able to quickly recognize the signs and symptoms that could lead to [STUDENT] having an episode and to act quickly to prevent one from occurring. T-27-28. She testified that since she has been working with [STUDENT] she has only had three major episodes. T-29. She recounted an incident while [STUDENT] was swimming as a result of which she had a major episode. T 40-41. Exhibit R-54. She testified to another major episode [STUDENT] had just prior to the pool episode where she fell off a couch at home. Exhibit R-51. T-41.

***, [STUDENT]'s grandmother, testified that she provides respite care to [STUDENT] on

Friday evenings and Saturday mornings also through the Montana Independent Living Project. On occasion she would pick [STUDENT] up from school where she testified she had found [STUDENT] unattended sitting under the coat rack all by herself and on another occasion with an aide present having episode and believed that she had had others at school. T-58-60.

*** testified that she is [STUDENT]'s case manager through the Medicaid waiver program which operated through the *** County Health Department. That program together with the regular State Plan Medicaid program provides funding for the services *** and *** provide to [STUDENT]'s parents to assist [STUDENT] with activities of daily living and respite care. T-95, 102.

THE DISTRICT'S CASE

*** was [STUDENT]'s first grade teacher at [Elementary School] during the 2011-2012 school year. [FIRST GRADE TEACHER] testified that [STUDENT] was under "direct supervision" with an adult with her at all times. T -259. She testified that it was during that year and "after a doctor's visit" that she was told that the doctor thought it would be best for [STUDENT] to do a late start and a shortened school day. T-260. The result, [FIRST GRADE TEACHER] said, was that [STUDENT] missed a lot of academics and that she would not want to leave school at the shortened pickup time. T-260-261. [FIRST GRADE TEACHER] said that there were two aides as well as herself available to provide support for the four special needs children in her classroom. T-262. She also said [STUDENT] did better in a small group with direct supervision that being alone with a one-on-one aide. T-268.

As an example of the tension that existed between [MOTHER] and [Elementary School] staff [Elementary School] nurse, ***, cited an instance where [MOTHER] threatened to sue the District because [NURSE] asked for a note from [STUDENT]'s doctor as to the amount of fluid

[STUDENT] should have to drink. T-283. She also testified to [MOTHER]'s initial resistance to her drafting an Individual Confidential Healthcare Plan (healthcare plan) for [STUDENT] although she later agreed to have [NURSSE] prepare one which [MOTHER] then edited and in April, 2013, signed along with [NURSE] and [DOCTOR 2]. Exhibit R-40. T-285-289. [NURSE] gave it as her opinion that there was no medical need for [STUDENT] to have a one-on-one aide at school but rather she needed direct supervision which, [NURSE] said, she was receiving at the time [MOTHER] pulled her out of school. T-301. She noted that [STUDENT]'s healthcare plan did not call for a one-one-one aid and that Dr. Seeney's letter saying that a one-on-one aide is the "best solution" did not mean to her that it was the "only solution." T-324. She said that an IEP team is not required to implement a doctor's recommendation although the team must take it into consideration. T-324. She said [STUDENT] never had an episode at school although she occasionally showed signs or symptoms; that when she did show signs and symptoms the staff would get her to relax, stay with her and call [MOTHER] which [MOTHER] had instructed them to do. T-325-26. She explained that the school does not provide a one-on-one aide for a child with a health issue because of the requirement that the child must be placed in the least restrictive environment. "We can't keep that child from experiencing an academic environment," she said. T-326. She said there was never any circumstance where staff members were not able to attend to [STUDENT] because they were busy with another child. T-327-328.

*** was [STUDENT]'s homeroom teacher in the second grade during the 2012-2013 school year. During that year [STUDENT] arrived at school at 10:00 a.m. and left at 1:30 p.m. thereby allowing for only 70 minutes of instruction for her on average. T-331. [SECOND GRADE TEACHER] outlined [STUDENT]'s day and demonstrated how little of it constituted direct academic instruction. T-331-333. She testified that [STUDENT] was never left unattended in the school setting; that she was never left alone at the coat rack but like other second graders she liked

to hide behind her coat and peek through it. She also observed that [STUDENT] often did not want to leave school early and wanted to stay and be with her friends. T-334-335. She also testified that in one-on-one settings [STUDENT] was not academically productive, would refuse to do her work and did not enjoy it whereas in small groups she took a leadership role and was much more engaged. T-335-336. She said in IEP meetings [MOTHER] would often push for a one-on-one aide even though the IEP team would make it clear to her that educationally that was not in [STUDENT]'s best interest. T-335-336. At a transition meeting preparatory to [STUDENT] entering the third [SECOND GRADE TEACHER] testified that [MOTHER] continued to push for a one-on-one aide. Exhibit R-46. T-337. She said in the fifteen years she has worked in the District there has never been a one-on-aide assigned to disabled students. T-338. She said she disagreed with [DOCTOR 2]'s May 24, 2013, letter in which he said a one-on-one aide is the best solution for providing direct supervision to [STUDENT] T-340-341. She also disagreed with his September 29, 2015, letter in which he says that, "([STUDENT]'s) overall safety and development would be best served with continuous one-on-one support." Exhibit R-69. She said there was no input from [Elementary School] staff into the opinions [DOCTOR 2] expressed. T-342.

The aide primarily responsible for [STUDENT] in the second grade, [AIDE], testified that there was never a time when another student distracted her from paying attention to [STUDENT]; that she was with [STUDENT] at all times including on the playground. T-357. She testified that school aides were trained in the signs and symptoms to look for and that when she did observe them she always called [MOTHER] T-358-359. She also testified she never observed [STUDENT] having a major episode at school. T-366.

***, Principal at [Elementary School], testified that her relationship with [STUDENT]'s parents starting in 2008 was fine but grew progressively more hostile and difficult over time. T-380. Among the exhibits offered by the District are a number of emails attesting to the difficult

nature of [PRINCIPAL'S] relationship with [MOTHER] See *e.g.* Exhibits R-3, R-8, R-10, R-11, R-18, R-26 and R-33. [PRINCIPAL] testified that at an IEP meeting preparatory to [STUDENT] entering the third grade [MOTHER] and [FATHER] declined to sign the proposed IEP because it didn't include a one-on-one aide for [STUDENT] Exhibit 68. T-406-407. [PRINCIPAL] T-407-08. She testified that [Elementary School] staff provided [STUDENT] with adult supervision throughout the day. "She always had an adult near her, beyond just the teacher," [PRINICPAL] said. T-384.

Assistant Special Education Coordinator for the District, ***, described an IEP team's obligation with respect to a recommendation from a doctor. He said, "They need to take it under consideration and have a discussion as a team and talk about least-restrictive environment, how this is going to be provided, and make these decisions at that time." T-427. He noted that in [DOCTOR 2]'s June 3, 2013, letter asking the District to excuse [STUDENT]'s absences due to increase in her AHC related symptoms he did not say that it was medically necessary for [STUDENT] to have a one-on-one aide. Exhibit R-62. T-428. He gave it as his opinion that providing [STUDENT] with direct supervision as opposed to a one-on-one aide was not educationally detrimental to her and that it was not necessary for her to have a one-on-one aide. T-429.

The special education administrator for the District, ***, with 22 years of special education experience, testified that in no circumstance in the past has a student in the District been assigned a one-on-one aide. She said a one-on-one aide would be necessary "if a student was in danger of hurting themselves or others;" or, "if it was … educationally necessary for that child to benefit from services and there was no other way." She testified [STUDENT] did not meet any of those criteria. T-439-440. She cast doubt on some information [MOTHER] provided to the District with respect to [STUDENT] T-441. She discussed [MOTHER]'s refusal on occasion to communicate with or

have any contact with members of the [Elementary School] staff. T-446. She testified that she did not believe a one-on-one aide was the best solution for [STUDENT] T-455. She said that an IEP team gives a lot of weight to a letter from a doctor because the team needs to know if a child has medical needs because it is the school's goal to keep the child in the school environment. T-459. She said that the term "one-on-one" means to her, "(t)hat (it) would be the same person with that student throughout the day." She said the problem with that from the school's perspective is that,

> … during the school day, paraeducators take breaks, they take lunches, they're out sick, they take vacations. And so having that one person be gone is a detriment, that's why we have direct supervision. So direct supervision would mean that we're cross-training everybody because when you have a child that has medical needs, you need to be able to have people that are going to step in at any time who are well-trained and can take care of that child. T-459-60.

[PRINCIPAL] testified that by providing [STUDENT] with "direct supervision" the District was meeting her "medically necessary" needs as set out in her IEP and in her health care plan. T-461. She further testified that when [DOCTOR 2] opined that a one-on-one aide is the "best solution" to prevent [STUDENT] from having symptoms or an episode at school he was not saying that a one-on-one was "medically necessary" but only that it is the "best solution." Exhibits 48 & 49. T-459. Accordingly she testified that providing [STUDENT] with "direct supervision" although not a one-on-one aide conforms to what is "educationally necessary" for [STUDENT] under IDEA. T-460-61. She also testified that IDEA does not require a school to provide a special needs child with "the best possible solution." T-477.

Dr. ***, the District's expert witness, opined that assigning a one-on-one aide to a child with special needs would be considered a "very restrictive placement" under IDEA. She said that courts generally uphold one-on-one supervision but that the "assignment of personnel, what individual or individuals will do . . . is the prerogative of the school district." T-485. She opined that under *(Bd. of Educ. v.) Rowley* (458 U.S. 176 (1982) "a public school district is required to

provide to provide an IEP that is reasonably calculated to provide educational benefit. It is not the most appropriate program. It is an appropriate program." T-488. She testified that an IEP team is required to consider medical recommendations from doctors and if a doctor says something is "medically necessary" the IEP team is obligated to follow it. However, here she finds nothing in [DOCTOR 2]'s letters or in [STUDENT]'s healthcare plan that calls for a one-on-one aide as "medically necessary." Instead, she said, those letters call for "direct supervision" which the District provided to. T-491-492. In her opinion [STUDENT]'s IEP for the third grade offered her FAPE. T-493. She also noted that having a one-on-one aide could lead to a "learned helplessness" because a child can develop unnecessary dependence on the adult supervisor. T-496.

DISCUSSION

As the evidence shows there has been a long history of tension between [STUDENT]'s parents, notably [MOTHER], and the [Elementary School] and District staffs over their demand that [STUDENT] be assigned a dedicated one-on-one aide. In furtherance of that demand they solicited a series of letters from [DOCTOR 2] which, in their view, should have required the District to meet that demand. However they were never able to get [DOCTOR 2] to say that nor did he testify to that effect in his deposition. To the contrary he testified that if [STUDENT] has "a person or multiple people" able to reduce the likelihood of an episode and deal with one if it occurred that would be a "reasonable solution." T-174.

[DOCTOR 2]'s testimony supports the District's position that by providing [STUDENT] with "direct supervision" meaning providing her with one or more aides trained to recognize her signs and symptoms and able to deal with them as opposed to providing her with a dedicated one-on-aide it has met its obligation under the IDEA to provide [STUDENT] with FAPE.

It is not unusual to see disagreements between parents and a school over some aspect of a special needs child's IEP because parents naturally want the very best for that child. And so here

[STUDENT]'s parents see themselves as advocates for their special needs child. T-217-218. Schools, however, are only required under *Rowley* and its progeny to provide a special needs child with an IEP that provides the child with educational benefit. The record shows that when [STUDENT] attended first and second grades at [Elementary School] she made measurable gains in the educational curriculum and received FAPE. Exhibits R-23, R-30, R-36, R-63.

CONCLUSION

I conclude that the District's refusal to provide [STUDENT] with a dedicated one-on-one aide when she attended [Elementary School] or engaged in school activities outside of the classroom did not deprive her of FAPE. I further conclude that based on the accommodations the District provided to [STUDENT] when she attended [Elementary School] and the transition plan the [Elementary School] staff had prepared for her entry into the third grade she would again have received FAPE. If [STUDENT]'s parents elect to again enroll her at [Elementary School] and she is provided with accommodations, including direct supervision, comparable to what has been provided for her in her previous IEPs she will again receive FAPE.

From the foregoing discussion I make the following

FINDINGS OF FACT

1. [STUDENT] is currently a ten-year-old student residing in the District who qualifies for special education and related services under the Individuals with Disabilities Education Act (IDEA) Exhibit R-68. Due Process Hrg. Req. ¶ 1 (Mar. 2, 2015); Resp. Due Process Hrg. Req. ¶ 1 (Mar. 13, 2015).

2. At the time [STUDENT] started preschool, she had a diagnosis of cerebral palsy. Test. [MOTHER] T-2.

3. In November of 2011, [STUDENT] was diagnosed with a condition known as alternating hemiplegia of childhood (AHC). Test. [MOTHER] T-221. Test. [DOCTOR 2] T-125-

126.

4. AHC is characterized by episodes of weakness, either one-sided or both-sided, or plegia. Test. [DOCTOR 2] T-126. It is not uncommon for a child with AHC to experience developmental delays. Test. [DOCTOR 2] T-165.

5. AHC is episodic and can be triggered by stress and fatigue, weather changes, water exposure, fluorescent lighting, flashes, or other environmental stimuli. Exhihit R-40. Test. [DOCTOR 2] T-128-129. Episodes can last minutes to hours to days. Exhibit R-40.

6. It is not possible to prevent all episodes. If an episode begins, the appropriate action is to remove the trigger or the child from the environment to minimize it. Test. [DOCTOR 2] T-168. Exposure to triggers during the recovery from an episode could be harmful and trigger another episode. Test. [DOCTOR 2] T-172.

7. In severe cases, an individual may experience a "quadriplegic episode" where the individual's "entire body is not functioning" and may experience difficulties with breathing, feeding, and secretions. Test. [DOCTOR 2] T-127, 141.

8. [STUDENT] has not experienced issues with breathing or feeding. Test. [DOCTOR 2] T-150.

9. [STUDENT] has a "mild . . . phenotype or physical appearance of the disorder." Test. [DOCTOR 2] T-148.

10. [STUDENT] may exhibit certain signs and symptoms which indicate an episode may be forthcoming. These signs and symptoms include leg dragging, weakness in legs, turned-in foot, fisting or clubbing of the arm, complaints of tingling, slurred speech, change of color, instability, and fatigue. Exhibit R-40.

11. It is recommended that children with AHC avoid known triggers. Test. ***T-38; Test. ***T-74; Test. [DOCTOR 2] T-169; Test. ***T-292.

12. [STUDENT] started kindergarten at the District's [Elementary School] Elementary School. Her older sister attended the same school. Test. *** T-379-380.

13. ***, who has 29 years experience in education as a teacher and administrator, is the principal at [Elementary School]. Test. ***T-376.

14. Since [STUDENT] began kindergarten there has been tension between [MOTHER] and the [Elementary School] staff. Test. ***T-380-381, 395. At times, she has refused to have contact with [Elementary School] staff. Exhibits R-8, R-10. Test. *** T-386. Test.***. T-446-447.

15. [STUDENT] has had an IEP in place since she began attending [Elementary School] School. Exhibit R-16. [STUDENT] did not have a one-to-one aide in kindergarten or first grade. Exhibit R-16. Test. *** T-384. In first grade, she did best in a small group setting. Test. *** T-254, 260.

16. While in first grade, [STUDENT] began attending a shortened school day based upon statements by her parents that this was ordered by her doctor. Test. *** T-260. [STUDENT] become upset when she had to leave school early. Test. *** 260-261. Test. *** T-335.

17. ***, the [Elementary School] School nurse, attempted to create a health plan at the beginning of [STUDENT]'s second grade year, but [MOTHER] rejected the offer. Test. *** T-278-279.

18. While at [Elementary School], [STUDENT] was instructed in a combination of one-to-one and small group settings. Exhibit R-22. Test. *** T-269. Test. *** T-387.

19. When she attended [Elementary School], including during second grade, [STUDENT] had direct adult supervision with an adult near the teacher monitoring her. Exhibits R-22, R-24, R-27, R-52. Test. *** T-259; Test. *** T-334; Test. *** T-356 -357, 364; Test. *** T-384, 390-391, 393

20. School staff discussed assisting [STUDENT] with avoiding triggers, particularly stress and fatigue. Test. *** T-294-295.

21. While at school, [Elementary School] staff attempted to limit [STUDENT]'s exposure to artificial lighting. Test. *** T-409. [Elementary School] staff did not observe that [STUDENT] exhibited AHC-related symptoms after exposure to artificial lighting. Test. *** T-419.

22. In January 2013, the Parents voluntarily withheld [STUDENT] from [Elementary School] due to disagreements with the school about supervision. Exhibit R-26. Test. *** T-394.

23. In April 2013, the Parents finally consented to the school nurse developing a health plan for [STUDENT] Exhibit R-40. Test. *** T-285. A health plan is developed to address the health-related needs of a student in an educational setting. Test. *** T-487, 499.

24. The health plan addressed a plan of action to implement if [STUDENT] experienced a significant AHC episode and how to address other symptom-related behaviors. Exhibit R-40. Test. *** T-399.

25. [MOTHER] reviewed the health care plan developed by [NURSE] and made revisions to it before presenting it to [STUDENT]'s neurologist, [DOCTOR 2], for his approval. Test. *** Tt-289. [DOCTOR 2] approved and signed the plan Exhibit R-40. Test. [DOCTOR 2] T-154; Test. *** T-289.

26. With the exception of the diagnosis of paroxysmal non-kinesgenic dyskinesia, [DOCTOR 2] supports the health plan as accurate and reasonable and agrees that it provides appropriate interventions. Exhibit R-40. Test. [DOCTOR 2] T-155, 156-157.

27. Aside from when she is having an episode, [DOCTOR 2] did not advise that the Parents to keep [STUDENT] out of school or shorten her day. Test. [DOCTOR 2] T-152, 157.

28. [DOCTOR 2] believes that [STUDENT] needs support in school to help reduce her

episodes by having a person or multiple persons trained to recognize her symptoms, minimizing or avoiding her exposure to triggers, and removing her to another setting. Test. [DOCTOR 2] T-174.

29. [DOCTOR 2] did not consult with [Elementary School] staff prior to issuing his letters nor did he request any information from school staff members. Test. [DOCTOR 2] T-160, 171, 189; Test. *** T-403. [DOCTOR 2] never observed [STUDENT] while she was at [Elementary School]. Test. [DOCTOR 2]. T-189.

30. At the request of [MOTHER] [DOCTOR 2] wrote the letter dated May 20, 2013, calling for direct supervision of [STUDENT] His intention was to insure that there was someone available to care for [STUDENT] during an episode. Exhibit R-48. T-158. His statements were based upon [MOTHER]'s reports to him. Test. [DOCTOR 2] T-160. He wanted to support the Parents. Test. [DOCTOR 2] T-160.

31. At [MOTHER]'s request [DOCTOR 2] wrote another letter dated May 24, 2013, this time calling for a one-on-one aide for [STUDENT] Exhibit R-49. Test. [DOCTOR 2] T-162.

32. [MOTHER] requested that *** , the genetic counselor with whom [STUDENT]'s parents had most of their communications, provide clarification in that letter that [STUDENT] needed one-to-one support as a medical requirement. Exhibit R-55. Test. [DOCTOR 2] T-162.

33. At [MOTHER]'s request [DOCTOR 2] wrote a third letter dated September 25, 2013, this time calling for a one-on-one aide for [STUDENT] Test. [DOCTOR 2] T-164. He wrote the letter to support the parents who felt they were not getting support from school for a one-on-one aide. Exhibit R-69. Test. [DOCTOR 2] T-164.

34. [DOCTOR 2] based the statements he made in the September 25, 2013, letter based on reports from [STUDENT]'s parents. Exhibit R-69. Test. [DOCTOR 2] T-164-166, 170. He was not personally aware of what occurred in the school environment or the support [STUDENT] received at school. Test. [DOCTOR 2] T-164-165, 180. Test. ***, T-473. He was not aware that

[STUDENT]'s parents kept her out of school due to conflicts with the school. Test. *** T-165.

35. [DOCTOR 2] did not consult with [Elementary School] staff prior prior to issuing his letters nor did he request any information from school staff members. Test. [DOCTOR 2] T-160, 171, 189. Test. *** T-403.

36. There is no evidence that [STUDENT] suffered educational detriment by not having one-to-one assistance. Test. *** T-402; Test. *** T-429; Test. *** T-468; Test. *** T-489. [DOCTOR 2] had not seen any information from the District that [STUDENT] suffered any educational detriment. Test. [DOCTOR 2] T-191-192.

37. [STUDENT] was not limited to adult supervision only when she needed it; she had adult supervision at all times. Test. *** T-342; Test. *** T-402-03; Test. *** T-428.

38. There is no evidence that [STUDENT]'s safety or well-being was threatened when she attended [Elementary School]. Test. *** T-341; Test. *** T-373; Test. *** T-440, 449.

39. There is no evidence that, without one-to-one assistance, repeated AHC-related episodes would occur. Test. *** T-441

40. School staff did not observe that [STUDENT] experienced an increase in AHC episode-related symptoms when she was not in a one-to-one setting. Test. *** T-391.

41. [DOCTOR 2] recommended direct supervision as medically necessary; he did not state that one-to-one assistance was medically necessary. Exhibits R-48, R-49, R-69. Test. *** T-245; Test. *** T-401, 402; Test. *** T-456-57; Test. *** T-491.

42. [DOCTOR 2] testified that it would be a reasonable solution for the District to address [STUDENT]'s needs with multiple trained individuals present who could effectively reduce the likelihood of an episode occurring or address an episode if one did occur. Test. [DOCTOR 2] T-174, 175.

43. The District provided [STUDENT] with direct supervision as recommended by

[DOCTOR 2]. Exhibit R-52. Test. *** T-340; Test. *** T-399; Test. *** T-426-427; Test. *** T-451, 457; Test. *** T-492.

44 The District trained school staff members who had regular contact with [STUDENT] during the school day about her AHC-related signs and symptoms. Test. *** T-280-281, 285, 294; Test. *** T-339, 343; Test. *** T-359, 362; Test. *** T-395-96, 398-399; Test. *** T-453-54.

45. School staff observed [STUDENT] occasionally showing minor signs and symptoms at school. She was observed as tired and would sometimes drag her leg. Test. *** T-325; Test. *** T-358; Test. *** T-396. Some staff msmbers who had regular contact with [STUDENT] never observed any sympstoms. Test. *** T-285.

46. The [Elementary School] staff would address these symptoms by staying with [STUDENT], get her to a quiet spot, gettimg her to relax, contacting her mother and getting her ready to be picked up. Test. *** T-325; Test. *** T-339; Test. *** T-358, 365-66. Staff members were vigilant about following this process. Test. *** T-339.

47. [STUDENT]'s symptoms occurred in both small group and one-to-one settings. Test. *** T-396. [STUDENT] never experienced a significant episode at school. Test. *** T-325; Test. *** T-358-359; Test. *** T-397.

48. Even under the supervision of her mother, [STUDENT] has experienced at least one major episode at home where she fell off the couch and hit her chin and throat. Exhibit R-51. Test. [MOTHER] T-239.

49. Despite water exposure being a trigger for an AHC-episode, [STUDENT]'s parents have permitted her to swim on a weekly basis. Test. *** T-38:6.

50. [MOTHER] has permitted [STUDENT] to participate in triggering activities on a daily basis despite the advice of [DOCTOR 2] to avoid exposing [STUDENT] to triggers. Test. *** T-223, 242.

51. [STUDENT] does not have one-to-one assistance in all settings. [MOTHER] has supervised both of her children without additional assistance. Test. *** T-352.

52. [DOCTOR 2] believes that a one-to-one aide could be one or several individuals assigned to provide support. Test. [DOCTOR 2] T-170.

53. During her time at [Elementary School], [STUDENT] performed better in a small group setting than in a one-to-one setting. Exhibit R-46. Test. *** T-261, 268; Test. *** T-297-310. Test. *** T-335-336, 342-43. [MOTHER] was unhappy when this information was shared with her. Test. *** T-297; Test. *** T-336-37.

54. *** , who was [STUDENT]'s second grade teacher, observed that [STUDENT] did not progress academically in a one-to-one setting and often refused to do her work. Test. *** T-335. In small group settings, however, [STUDENT] was engaged and took a leadership role and was more productive. Test.*** T-336. ***, a paraeducator with over fifteen years experience working with special education students, also observed that [STUDENT] thrived in small group settings but resisted work in a one-to-one setting. Test. *** T-361.

55. [Elementary School] staff members were capable of addressing [STUDENT]'s medical needs in the school environment even when they supervised more than one student at one time. Test. *** T-326; Test. *** T-344-45; Test. *** T-358; Test. *** T-494. A trained aide or paraprofessional is able to provide appropriate supervision for a small group of students and can still identify whether [STUDENT] is exhibiting symptoms even with the presence of these other students. Test. *** T-315.

56. [STUDENT]'s medical needs were addressed in the school environment. Exhibits R-27, R-36. Test. *** T-300.

57. [STUDENT] made progress and received educational benefit while she attended [Elementary School]. Exhibits R-23, R-30, R-36, R-63. Test. *** T-403.

58. [STUDENT]'s parents voluntarily withheld [STUDENT] from school at the end of her second grade year. Exhibit R-53. Test. *** T-404; Test. *** T-457.

59. When the District receives information from a physician, they convene an IEP team meeting to consider the information provided and consider the least restrictive environment. Exhibits R-53, R-57. Test. *** T-324; Test. *** T-427, 430; Test. *** T-458-459; Test. *** T-490-491, 492. Likewise, the District listens to concerns by parents and tries to address them during the IEP process. Test. *** T-467-468, 476; Test. *** T-489.

60. After the District received [DOCTOR 2]'s letters of May 20 and May 24, 2013, they attempted to convene an IEP team meeting so that the IEP team could consider [DOCTOR 2]'s opinions. The parents refused to meet with the District at that time. Test. *** T-404-405.

61. The parents finally agreed to an IEP team meeting in the fall of 2013, when [STUDENT] should have been in the third grade. Test. *** T-405.

62. At the first meeting on September 27, 2013, [Elementary School] staff shared information about [STUDENT]'s success in small group settings. Test. *** T-406-407. The team discussed the impact of a one-to-one setting versus direct supervision on the least restrictive environment. Test. *** T-425. The Parents did not seem open to the information shared by staff members about [STUDENT]'s ability to succeed in small group settings and indicated that they were seeking one-to-one assistance only. Test. *** T-406-407. The Parents did not agree to the proposed IEP in that meeting. Test. *** T-407; Test. *** T-425.

63. A second IEP team meeting was held on October 24, 2013. Exhibit R-68. Test. *** T-407; Test. *** T-425. This meeting was short due to the parents' objection to the implementation of any IEP at [Elementary School]. Exhibits R-67, R-68, R-71. Test. *** T-407-408; Test. *** T-425. They declared "we're done" and walked out of the meeting shortly after it began. Exhibit R-67.

64. After the meeting, the District sent written notice to the Parents with its proposed IEP and an explanation, including the bases for its proposals in that IEP. Exhibit R-71.

65. The IEP proposed by the District provided direct supervision for [STUDENT], but the parents rejected this IEP. Exhibits R-68, R-72. Test. *** T-425-26, 427.

66. According to *** , a recognized expert in special education with 40 years experience, direct support and supervision by aides or paraprofessionals is considered to be a supplementary aid or service. Exhibit R-88. Test. *** T-479-480,483, 484.

67. The District applies the least restrictive environment for special education students in a manner to avoid unnecessarily removing them from general education classrooms or isolating them from their peers. Test. *** T-378-379; Test. *** T-423.

68. Although the understanding of one-to-one support carries different meanings, it is considered to be a restrictive placement. Test. *** T-484-485.

69. Adult support can result in the developmental effect of learned dependency or learned helplessness where the child develops an "unnecessary dependence" on the adult providing the support. Test. *** T-495-96. It can also limit opportunities for peer interaction as students act differently in the presence of an adult. Test. *** T-496-97.

70. The District aims to assist special education students in developing independence skills. Test. *** T-445-446.

71. [STUDENT]'s parents believe it is important for her to gain independence. Test. *** T-71-12. [DOCTOR 2] is also concerned about [STUDENT] becoming independent. Test. [DOCTOR 2] T-190.

72. School districts are not required to provide the best option for students with disabilities. Test. *** 488.

73. District personnel, who were familiar with their obligations under the IDEA and

were familiar with [STUDENT] and her educational needs, did not believe that one-to-one assistance was appropriate for her or necessary in order for her to benefit from the special education and related services provided. Test.*** T-261; Test. *** T-300-301, 310; Test. *** T-341, 345; Test. *** T-429; Test. *** T-454, 466. The proposed IEP offered an appropriate level of adult support based upon her needs. Test. *** T-497.

74. The IEP proposed in October, 2013 provided [STUDENT] with FAPE. Test. *** T-407; Test. *** T-466; Test. *** T-493-494. The IEP addressed the required components and provided for appropriate goals with services based upon those goals. Test. *** T-494. The IEP contained appropriate supplementary aids and services that provided for direct adult support and supervision based upon [STUDENT]'s individual needs. Test. *** T-494-495.

75. [STUDENT] is currently homeschooled and does not have regular access to nondisabled peers. Test. [MOTHER] T-230-231. Her parents have voluntarily withheld her from school because of their disagreements with the District. Exhibit R-70. Test. *** T-405.

76. [STUDENT] has had at least three major episodes while in a one-to-one setting with her private care worker ***. Test. *** T-39; Test. [MOTHER] T-214.

From the foregoing Findings of Fact the undersigned I make the following

CONCLUSIONS OF LAW

1. Under the IDEA and implementing regulations, the Montana Superintendent of Public Instruction has jurisdiction to hold an impartial due process hearing with respect to complaints about the identification, evaluation, or educational placement of an eligible child with a disability or the provision of a free appropriate public education to that child. 20 U.S.C. § 1415(b)(6), (f); see also 34 C.F.R. 300.507; Admin. R. Mont. 10.16.3508 and 10.60.102.

2. The Hearing Officer has jurisdiction to hear and decide the issues that the Petitioners here have presented regarding violations of the IDEA.

3. The scope of the administrative hearing pursuant to 20 U.S.C. § 1415 is limited to the "complaint" raised to obtain the hearing. *County of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1465 (9th Cir. 1996).

4. The party seeking relief bears the burden of persuasion under the IDEA. *E.M. v. Parjaro Valley Unified Sch. Dist*., 758 F.3d 1162, 1171 (9th Cir. 2014).

5. Congress enacted the Education of Handicapped Act, which was later renamed and revised as the Individuals with Disabilities Education Act, "to ensure that all children with disabilities are provided 'a free appropriate public education [FAPE] which emphasizes special education and related services designed to meet their unique needs [and] to assure that the rights of [such] children and their parents or guardians are protected.'" *Forest Grove Sch. Dist. v. T. A*., 557 U.S. 230, 239 (2009).

6. The term FAPE under the IDEA means "special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required [by the provisions of the IDEA]." *J.L. v. Mercer Island Sch. Dist*., 592 F.3d 938, 947 (9th Cir. 2010)

7. An allegation that a student was denied FAPE involves a two-step process: first, there must be a determination whether the district "complied with the procedures set forth in [the IDEA];" and second, there must be a determination whether the student's IEP was "reasonably calculated to enable the child to receive educational benefits." *N.B. v. Hellgate Elem. Sch. Dist*., 541 F.3d 1202, 1207 (9th Cir. 2008).

8. Not all procedural violations result in the denial of FAPE. *R.B. v. Napa Valley Unified Sch. Dist*., 496 F.3d 932, 938 (9th Cir. 2007). Only those procedural inadequacies that

"result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, or that caused a deprivation of educational benefits" can constitute a denial of FAPE. *N.B.*, 541 F.3d at 1207.

9. Where a school district refuses a placement requested by a parent, it shall provide prior written notice to include:

a. A description of the action refused by the district;

b. An explanation of why it refused to take the action and a description of the evaluation procedures, assessments, record, or report it used as the basis for its refusal;

c. A statement that the parents have protection under the IDEA procedural safeguards and the means by which a copy of the procedural safeguards can be obtained;

d. Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA;

e. A description of other options considered by the IEP team and why those were rejected; and

f. A description of factors relevant to the district's refusal. 20 U.S.C. § 1415(c)(1).

10. The adequacy of a prior written notice does not result in a denial of FAPE unless it "seriously" infringes on the parents' opportunity to participate in the IEP process. *See, e.g., Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047, 1054 (9th Cir. 2012).

11. There is no evidence of any procedural violations. The District considered the information provided by Petitioners, including the information presented by [DOCTOR 2]. Findings of Fact (FoF) ¶¶ 10, 20-21, 23-25, 41, 43-44, 46, 59-65. Although they rejected attempts to meet, Petitioners were provided several opportunities to participate in the IEP process. FoF ¶¶ 60-63.

The District provided prior written notice informing them of the basis of their decisions as required by the law. FoF ¶ 64.

12. A substantive denial of FAPE can result only where the student's IEP is not "reasonably calculated to enable the child to receive educational benefits." *Anchorage Sch. Dist*., 689 F.3d at 1057. "Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful." *J.L*., 592 F.3d at 947. Put simply, school districts must "confer some educational benefit upon the handicapped child." *Id*. at 947, 951, n. 10 (emphasis added).

13. The "educational benefit" standard is satisfied where a school district provides "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Bd. of Educ. v. Rowley*, 458 U.S. 176, 203 (1982).

14. The IDEA requires states to provide a "basic floor of opportunity" to disabled students. *Id*. at 201. It does not require school districts to provide potential-maximizing education. *Id*. at 197, n. 21, 198.

15. Simply because a school district provides services to one child to receive FAPE does not mean that the same services are required for another child to receive FAPE. Rather, FAPE "must be tailored to the unique needs of each individual child." *Amanda J. v. Clark County Sch. Dist*., 267 F.3d 877, 894 (9th Cir. 2001). "Each child has different needs, different skills, and a different time frame for effective treatment." *Id*.

16. The expertise of school districts in educational methods should be given due weight in considering an IEP's compliance with the IDEA. *Ms. S. ex rel. G v. Vashon Island Sch. Dis*t., 337 F.3d 1115, 1133 (9th Cir. 2003).

17. "IDEA requires great deference to the views of the school system rather than those of even the most well-meaning parent." *A.S. and W.S. v. Trumbull Board of Education*, 414 F. Supp. 2d 152, 182 (D.Conn. 2006) (*citing A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 328 (4th Cir. 2004)).

18. An IEP team must "consider" the concerns of the parents "for enhancing the education of their child," evaluation results, and "the academic, developmental, and functional needs of the child." 20 U.S.C. § 1414(d)(3)(A); *see also K.M. v. Tustin Unified Sch. Dist*., 725 F.3d 1088, 1095 (9th Cir. 2013).

19. Consideration, however, does not equate to adoption of recommendations of outside providers. While an IEP team needs to consider the results of outside evaluations, it does not need to adopt all recommendations from these evaluations. *M.M. v. Lancaster County Sch*., 702 F.3d 479, 487 (8th Cir. 2012).

20. Paraprofessional assistance or assistance by an aide is a "supplementary aid or service." Supplementary aids and services are "aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate." 34 C.F.R. 300.42.

21. A school district is not obligated to provide a one-to-one aide "simply because it was ordered by a physician" where the physician is not fully aware of the school's processes and school staff members attest that the student's educational and health needs are satisfied with supervision in small group settings. *Benton Sch. Dist*., 113 LRP 17149, *5-6 (Ark. SEA Oct. 26, 2012).

22. Even where a parent believes one-to-one assistance is necessary for his or her child, a school district does not have to provide a one-to-one aide if not required for the student to receive FAPE. *Id. at *6; see also Killeen Independent Sch. Dist.,* 39 IDELR 21 (FAPE did not require provision of one-to-one aide for student because teacher could address instructional and behavioral

needs without aide assistance and it was not necessary for the student's academic, behavioral, or supervisory needs).

23. The IDEA does not require a school district "to have foresight as to all the potential dangers" a student with medical needs may encounter nor foresight as to the dangers she may face. *Benton Sch. Dist*., 113 LRP 17149 at *10. Rather, a school district is required to take "appropriate action" in developing an IEP and taking other action, such as developing a health care plan and training staff, to address a student's needs in school. *Id*. at *9-10.

24. The testimony of a student's private physician is not entitled to more weight than school staff members who are able to consistently observe a student in the educational environment. *Christopher M. v. Corpus Christi Indep. Sch. Dist*., 933 F.2d 1285, 1292 (5th Cir. 1991).

25. While a physician's diagnosis should be considered by the IEP and the physician can offer input for the IEP team to make an informed decision, "a physician cannot simply prescribe special education." *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 616 F.3d 632, 640-641 (7th Cir. 2010). Rather, the IDEA "dictates a full review by an IEP team composed of parents, regular education teachers, special education teachers, and a representative of the local educational agency." *Id*. at 641.

26. An IEP that promotes "learned helplessness" and dependence can be substantively deficient under the IDEA. *See A.C. ex rel. M.C. v. Bd. of Educ*., 553 F.3d 165, 173 (2nd Cir. 2009).

27. The IDEA also requires that a student be educated in the least restrictive environment. This means that, to the maximum extent appropriate, students with disabilities are educated with non-disabled students. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. 300.114(a)(2).

28. The IDEA reflects a "strong preference for children with disabilities to be educated, to the maximum extent appropriate, together with their non-disabled peers." *A.C*., 553 F.3d at 173.

29. Whether a student is placed in the least restrictive environment depends on: (1) the academic benefits of placement in a regular education setting, with any supplementary aides and services that might be appropriate; (2) the non-academic benefits of regular education placement, such as language and behavior models provided by non-disabled students; (3) the negative effects the student's presence may have on the teacher and other students; and (4) the cost of educating the student in a regular education environment. *Ms. S. ex rel. G*, 337 F.3d at 1136-37.

30. "An IEP need not conform to a parent's wishes in order to be sufficient or appropriate." *Virginia S. v. Dep't of Educ*., 2007 U.S. Dist. LEXIS 1518, 44 (D. Haw. Jan. 8, 2007).

31. A school district is not required to treat an underlying disability or treat "other non-learning related symptoms*."* *Forest Grove Sch. Dist. v. T.A*., 675 F.Supp.2d 1063, 1068 (D. Or. 2009). Rather, the school district's obligation is to "remedy the learning related symptoms" of a disability. Id.

32. The actions of a school district cannot be judged in hindsight. Rather, an IEP "is a snapshot, not a retrospective." *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). It "must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." *Id*. In other words, the appropriateness of each IEP must be determined independently and judged on its own merits. See also *Anchorage Sch. Dist*., 689 F.3d at 1058.

33. As long as the IEP takes into account what was and was not objectively reasonable when it was drafted, it need not be perfect. *G.M. v. Saddleback Valley Unified Sch. Dist*., 583 Fed. Appx. 702, 703 (9th Cir. 2014) *(citing Adams,* 195 F.3d at 1149).

34. Petitioners have not sustained their burden that [STUDENT] was not provided FAPE and requires one-to-one support to receive FAPE. The District provided direct supervision as recommended by her physician. FoF ¶¶ 18-19, 43-44. Although one-to-one support may be

preferred by [STUDENT]'s parents and may provide the best option for [STUDENT], the IEP proposed in October 2013 provides FAPE without one-to-one support. FoF ¶¶ 53-54, 55-57, 73-74. One-to-one support is not medically necessary for [STUDENT] to attend school. FoF ¶¶ 41, 55. One-to-one support is not the least restrictive environment for [STUDENT] and would promote dependence rather than independence. FoF ¶¶ 53-54, 67-74. [STUDENT]'s current performance in her home-school is irrelevant to the determination of whether the District provided and offered FAPE. *Adams,* 195 F.3d at 1149.

From the foregoing Findings of Fact and Conclusions of Law I make the following

ORDER

Judgment is entered in favor of the District.

Dated this 11th day of December, 2015.

/S/ Ross W. Cannon
Ross W. Cannon
Hearing Officer