73147-5

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Division I
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NO. 73147-5

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

JAMES HOPKINS, JR.,

Plaintiff-Appellant,

v.

SEATTLE PUBLIC SCHOOL DISTRICT NO. 1,

Defendant-Respondent.

BRIEF OF RESPONDENT SEATTLE PUBLIC SCHOOL DISTRICT NO. 1

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I. INTRODUCTION

This is a negligence action against Seattle Public School District No. 1 (the "District") brought by James Hopkins, Jr. ("Hopkins"). Hopkins was injured in June 2006 when another student, E.E., intentionally punched him in the boys' locker room after a physical education class at Aki Kurose Middle School.[1] E.E. was a disabled student in special education at the time of the assault.

The case was tried to a jury in January 2015. The jury returned a verdict for the District, answering "no" to the first question on the special verdict form that asked whether the District negligently breached its duty of ordinary care to prevent E.E. from assaulting Hopkins. *See* Clerk's Papers ("CP") 1694-95. *See also* CP 1669, 1672-74 (the trial court's instruction numbers 5, 8-10, which are attached as an Appendix to the Brief of Appellant Hopkins).

Hopkins appeals the jury's verdict and requests a new trial, claiming the trial court's jury instructions were erroneous. The jury's verdict should be affirmed because the trial court properly instructed the jury on: (1) the District's duty to use ordinary care to protect Hopkins from harm; (2) Hopkins' duty to use ordinary care for his own safety; and (3) the District's duty to "mainstream" E.E. in the general education

[1] As required by federal and state confidentiality laws, the name of the non-party student is redacted to initials.

environment to the maximum extent appropriate. Hopkins' request for a new trial should be denied.

II. ASSIGNMENTS OF ERROR

The District does not assign error to any of the trial court's rulings or the jury's verdict.

III. ISSUES ON APPEAL

1. Did the trial court properly instruct the jury that the District owed a duty of ordinary care to prevent E.E. from assaulting others by using the standard Washington Pattern Jury Instructions for explaining the duty of ordinary care applicable in negligence cases, rather than using Hopkins' proposed instructions on the duty of ordinary care that were slanted, argumentative and incomplete statements of the law?

2. Did the trial court properly use the standard Washington Pattern Jury Instructions to instruct the jury on contributory negligence when substantial evidence showed Hopkins may have provoked E.E.'s assault by calling E.E. a "bitch" after they bumped into one another, and Washington law provides that children six years old or older may be contributorily negligent while attending school?

3. Did the trial court properly instruct the jury on the District's duty to educate students with disabilities in the general education environment to the maximum extent appropriate in accordance

with federal and state law, which undisputedly was a correct statement of applicable law supported by substantial evidence, and central to the District's theory of the case?

IV. STATEMENT OF THE CASE

A. Material Facts[2]

1. E.E.'s History as a Student in the Seattle School District

When E.E. was in kindergarten and first grade, he engaged in occasional incidents of disruptive or minor assaultive behavior that mostly occurred on school buses while being supervised by the bus driver. Vernon RP (A) (1/29/2015) 147-51.[3] These disruptive behaviors continued when E.E. entered second grade in 1999. *Id.* at 159-60. To address these

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[2] In his statement of the case, Hopkins improperly relies on evidence presented in his pre-trial motion for partial summary judgment. On appeal, evidence before a trial court on summary judgment is irrelevant after a jury trial on the merits. *Johnson v. Rothstein,* 52 Wn. App. 303, 305-306, 759 P.2d 471 (1988). Accordingly, the District cites to the testimony and evidence admitted during trial.

[3] Due to both parties arranging for transcription of various portions of the trial, the Report of Proceedings ("RP") was prepared by two different court reporters. Hopkins used Flygare & Associates ("Flygare") to transcribe portions of the trial, and the District used Vernon & Associates ("Vernon") to transcribe other portions (due to Flygare's higher cost). Both court reporters used a page numbering system that starts each day of the proceedings at page 1. Accordingly, the District cites to the RP by first identifying the court reporter - - *i.e.,* Flygare RP, or Vernon RP - - followed by the date of the cited transcript, then the page number - - *e.g.,* Flygare RP (1/22/2015) 122-33.

Unfortunately, Vernon & Associates created two transcripts of the proceedings that occurred on January 29, 2015, both of which are labeled "Volume II" and both of which use a page numbering system that starts anew at page 1. The first transcript for January 29, 2015 consists of 166 pages that end at 2:36 p.m. that day, which will be cited as Vernon RP (A) (1/29/2015) followed by the page number. The second Vernon transcript for January 29, 2015 consists of 112 pages that begins at 2:36 p.m. and continues to the close of proceedings that day, which will be cited as Vernon RP (B) (1/29/2015) followed by the page number.

behaviors, the District developed an Individualized Education Plan ("IEP") for E.E., placing him in a self-contained class for reading, writing and behavioral counseling, while "mainstreaming" him in the general education environment for math. *Id.* at 159-162.

By the beginning of his third grade year, E.E.'s behaviors had improved to the point where he was mainstreaming for about half of his classes, but he continued to receive weekly behavioral counseling. Vernon RP (A) (1/29/2015) 162-63. Academic testing showed he was performing in the low average range compared to other third graders. *Id.* at 163.

In fourth grade, when E.E. was ten years old, he was mainstreamed in the general education environment for all of his classes, including physical education ("P.E."), except for 120 minutes per week of behavioral counseling to address his impulsive behaviors. Vernon RP (B) (1/29/2015) 8-10. Academic testing showed his skills had improved to the average to high average range. *Id.* at 8-9.

Fifth grade found E.E. at age eleven still being mainstreamed for all of his classes. Vernon RP (B) (1/29/2015) 11-13. In an ongoing effort to reduce his impulsivity, E.E. also received 150 minutes per week of behavioral counseling from a special education teacher. *Id.*

After entering sixth grade in 2003, a functional behavior assessment showed E.E. continued to be impulsive and often rushed through his school

work. Vernon RP (B) (1/29/2015) 13-15. However, his behavior had improved to the point where concerns about his prior history of assaulting others, destroying property, defying authority, or being self-injurious had diminished. *Id.* He continued to be mainstreamed for all classes while also receiving 100 minutes per week of special education counseling. *Id.* at 13.

In 2004, E.E. entered Asa Mercer Middle School as a 13-year-old seventh grader. Vernon RP (B) (1/29/2015) 15-16. His November 2004 IEP noted he was "overall a friendly, polite and respectful young man with both peers and adults." *Id.* at 16. Yet, there remained concerns related to "his ability to focus on classwork, talking out, impulse control, and taking responsibility for his own actions and consequences that followed his actions." *Id.* E.E. continued to be mainstreamed, including for P.E., while also receiving 300 minutes per week of special education instruction and counseling. *Id.* at 15, 17.

The District arranged a psychological examination of E.E. in January 2005 while he was still in seventh grade. Vernon RP (B) (1/29/2015) 18. This evaluation was precipitated by the fact that E.E. had been disruptive in class five times in the past year, and received a short term suspension in December 2004 for fighting and a long term suspension in January 2005 for an assault. *Id.* at 18-19. Following this evaluation and as a result of the January 2005 assault, E.E. was assigned to an Alternative Education

Services program at Marshall Middle School for up to 45 days. *Id.* at 19-21.

Upon his return in late February 2005 to the general education environment at Mercer Middle School, E.E.'s IEP was amended to add an aversive intervention plan to be used if E.E. engaged in future dangerous behavior that year. Vernon RP (B) (1/29/2015) 21-23. The plan was that if E.E. engaged in behaviors dangerous to himself, others, or property, trained staff would be permitted to place E.E. in "time outs" for up to 10 minutes or physical restraints for no more than 15 seconds. *Id.*

At the end of his seventh grade year, the Mercer Middle School psychologist and special education staff noted E.E.'s behaviors had changed for the worse that year, he had been living with his mother at a shelter, his mother was in "rehabilitation" and E.E. had run away from home three times for up to two weeks at a time resulting in his absence from school for 35 days that year. Vernon RP (B) (1/29/2015) 23-27. On June 21, 2005, the last day of school, E.E. punched another student and that student's father, giving each a black eye. Flygare RP (1/22/2015) 121-22.

At age fourteen, E.E. transferred to Aki Kurose Middle School for eighth grade. Vernon RP (B) (1/29/2015) 27-29. A few weeks after school started in September 2005, E.E. was suspended because he put another male student in a headlock. *Id.* As a result of this incident, the Aki Kurose staff notified E.E. and his mother that a change of placement to a self-contained

classroom would again be appropriate. *Id.* On October 26, 2005, while on suspension, E.E. was observed off school grounds assaulting another student at a McDonald's restaurant. Vernon RP (A) (1/29/2015) 156-57.

These two assaults in one month caused the District to perform another functional behavior assessment and to update E.E.'s IEP by changing his placement from the general education environment to a more restrictive self-contained classroom for all classes, except P.E. where E.E. had not demonstrated any behavioral problems over the years. Vernon RP (B) (1/29/2015) 31-34, 36-37, 40. *See also* Vernon RP (1/26/2015) 31-32 (testimony of P.E. teacher Mike Kaiser noting E.E. had no behavioral issues in P.E. and was a "pleasure to have in class"); Flygare RP (1/22/2015) 148 (Hopkins' standard of care expert's testimony admitting E.E. had no history of problems in P.E. class). The self-contained classroom consisted of a special education teacher, two adult para-educators, and a total of eight or nine students. Vernon RP (A) (1/29/2015) 157-58.

In January 2006, while under close supervision in the self-contained classroom, E.E. pushed a student who had closed a window E.E. had opened. Vernon RP (A) (1/29/2015) 157-58; Vernon RP (B) (1/29/2015) 33. Following that January 2006 incident, E.E. began receiving medication for Attention Deficit Hyperactivity Disorder. Vernon RP (B) (1/29/2015) 33.

At the time of the June 2006 assault of Hopkins, E.E. continued to be

in the self-contained classroom for all classes, except P.E. *See id.* at 33-37. The evidence showed the frequency and severity of E.E.'s assaultive behaviors were relatively mild in comparison to other Emotionally Behaviorally Disabled ("EBD") students in special education. Vernon RP (B) (1/29/2015) 38-39. Before the June 2006 assault on Hopkins, the most serious injury E.E. had inflicted was giving two individuals a black eye. Flygare RP (1/22/2015) 147-48; Vernon RP (B) (1/29/2015) 31.

2. E.E.'s Assault on Hopkins

Hopkins told an investigating police officer on the day of the assault that he and E.E. were walking toward each other, E.E. told Hopkins to move out of his way, then E.E. hit him from behind after they passed each other. CP 284-85. When confronted with this police report at trial, Hopkins testified the officer misunderstood his description of the incident. Vernon RP (A) (1/29/2015) 43-46.

Hopkins also spoke with P.E. teacher Mike Kaiser on the day of the incident. He admitted to Mr. Kaiser that he and E.E. bumped into each other as they were passing in the locker room, Hopkins called E.E. a "bitch," then E.E. turned around and suddenly punched him once to the back of the head. Vernon RP (1/26/2015) 37-44. E.E. provided a similar description of the incident to Mr. Kaiser. *Id.* at 38. The police report concerning the incident notes that another student in the locker room heard Hopkins call E.E. a

"bitch" after they bumped into each other. CP 284-85. There was no dispute at trial that E.E.'s single punch was a sudden, impulsive act. Flygare RP (1/22/2015) 155-56 (Hopkins' expert Judith Billings' testimony).

3. Evidence Supporting the Jury's Verdict That the District Acted Reasonably in Trying to Prevent E.E. From Assaulting Hopkins

Hopkins' standard of care expert, Judith Billings, agreed the District acted reasonably by amending E.E.'s IEP in the fall of 2005 and placing him in a self-contained classroom for all classes, except P.E. Flygare RP (1/22/2015) 138, 150-51, 153. Since there was no dispute that the IEP in effect in June 2006 was reasonable plan, Hopkins argued the District negligently implemented the IEP by failing to have an adult nearby to adequately "monitor" E.E. as he entered the boys' locker room on June 7, 2006. Flygare RP (1/22/2015) 39, 41 (Hopkins' opening statement); Flygare RP (2/2/2015) 88-92, 98, 101, 108-09 (Hopkins' closing argument).

At the time of the June 2006 assault, E.E.'s IEP and Behavioral Intervention Plan ("BIP") required E.E. to be "monitored" before school, after school, and during school. Vernon RP (1/26/2015) 13-14.[4] *See also* attached Appendix A at p. 14 (*i.e.,* Ex. 229, which is E.E.'s IEP, including the BIP, in effect in June 2006). The District's standard of care expert and author of the IEP, Maureen Davis, explained that "monitoring" is a term of

[4] Citation to RP 13 refers to where trial exhibit 229 was identified. Citation to RP 14 refers to where trial exhibit 229 was admitted into evidence.

art in the special education environment which refers to completing a point sheet to provide positive reinforcement. Vernon RP (A) (1/29/2015) 163-64. Use of this kind of "monitoring" "takes the randomization out of behavior and you can give a number to how well the student is doing within the classroom on a scale of one to five." *Id.* In accordance with this explanation, E.E.'s BIP stated that monitoring should consist of daily checklists and point sheets. *See* Ex. 229 in Appendix A, p. 14.

With respect to Hopkins' "monitoring" argument, Ms. Billings agreed that one-on-one supervision of E.E. during P.E. class was not appropriate or necessary. Flygare RP (1/22/2015) at 139-40. Ms. Billings testified that "monitoring" E.E. from a distance of about halfway across the gym would have been appropriate. Flygare RP (1/22/2015) at 144-45. The evidence showed Ms. Billings' standard was met: Mike Kaiser, E.E.'s P.E. teacher, was about 25 yards away from E.E. at the time of the assault, or a third to halfway across the gym. Vernon RP (1/26/2015) 34-35.

Ms. Billings conceded that even if an adult was monitoring E.E. from 15 feet away in the boys' locker room, with his focus solely on E.E. to the exclusion of all other students, there would not have been enough time for an adult to cross that 15 feet of distance and physically prevent E.E.'s sudden, impulsive punch. *Id.* at 156-57. *See also* Vernon RP (B) (1/29/2015) 37-38 (concurring testimony from Maureen Davis). In light of this undisputed fact,

Ms. Billings opined that the mere presence of an adult in the locker room would have prevented E.E. from acting impulsively. Flygare RP (1/22/2015) 131-32, 157. This speculative opinion was rebutted by evidence demonstrating E.E. had a history of engaging in impulsive and assaultive behaviors when adults were nearby and watching him. *E.g., id.* at 157-58; Vernon RP (A) (1/29/2015) 147-57; Vernon RP (B) (1/29/2015) 37-38.

Hopkins also argued the District breached its duty of ordinary care by failing to inform Mr. Kaiser, the P.E. teacher, of E.E.'s history of assaultive behavior. Flygare RP (1/22/2015) 130-31, 152-53. Yet, the evidence showed Mr. Kaiser knew E.E. was classified as an EBD student, knew he was receiving special education, and that Mr. Kaiser reviewed a copy of E.E.'s IEP, which described E.E.'s history of assaultive behavior. Flygare RP (1/22/2015) 185-86, 189-91; Vernon RP (1/26/2015) 24-27; Vernon RP (B) (1/29/2015) 37.

Consistent with Washington Pattern Instruction 10.01, the jury was instructed that negligence is defined as "the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances." CP 1673. After hearing the above-summarized evidence, the jury concluded the District was

not negligent in trying to prevent E.E. from suddenly and impulsively assaulting Hopkins. CP 1694.

B. Procedural History

1. Hopkins' Complaint, Pre-trial Motion for Partial Summary Judgment, Motions *in Limine* and Directed Verdict Motion

Hopkins filed this action in November 2013, alleging the District negligently failed to prevent E.E.'s assault. CP 1-4. The District denied liability and asserted affirmative defenses, including comparative fault based on Hopkins' partial responsibility for provoking E.E.'s assault by calling him a "bitch" after they bumped into one another. CP 5-10.

Hopkins moved for partial summary judgment in November 2014, seeking a directed verdict on liability and dismissal of the District's affirmative defenses. CP 17-36. The trial court denied Hopkins' motion on liability, concluding there were genuine issues of material fact for a jury to decide concerning whether the District breached the duty of reasonable care, or proximately caused E.E.'s assault on Hopkins. Flygare RP (12/5/2014) 41-42; CP 372-74. The court also found material questions of fact precluded dismissal of the comparative fault defense, but dismissed some of the District's other affirmative defenses (none of which are pertinent to this appeal). *See id.*

Pre-trial, Hopkins moved *in limine* to prohibit the District from

arguing federal or state law required the District to educate E.E., to the maximum extent appropriate, in the general education environment. Flygare RP (1/21/2015) 51-56. The trial court denied the motion. *Id.* at 54-56.

Hopkins also moved *in limine* to prohibit the District from arguing Hopkins was contributorily negligent, relying on *Christensen v. Royal Sch. Dist. No. 160,* 156 Wn.2d 62, 124 P.3d 283 (2005). Flygare RP (1/21/2015) 59-62. The trial court denied the motion, noting *Christensen* was limited on its facts to cases where a plaintiff student is incapable as a matter of law from consenting to statutory rape by a teacher. *Id.* at 61-62.

After presentation of the evidence, Hopkins moved for a directed verdict, again seeking a directed verdict on liability and dismissal of the District's affirmative defense of comparative fault, as well as other defenses that are not challenged in Hopkins' appeal. Flygare RP (2/2/2015) 3-26. The court denied the motion, noting, "we have been through ... [these issues] a couple of times." *Id.* at 23-26.

2. Jury Instructions and Objections to the Instructions

Before trial, the parties submitted proposed jury instructions. CP 928-60, 1220-23 (Hopkins' proposed instructions); CP 816-858, 1318-19, 1320-21 (District's proposed instructions). The trial court heard argument on the parties' respective instructions, as well as the parties' objections to

the court's instructions. Vernon RP (A) (1/29/2015) 108-43; Vernon RP (B) (1/29/2015) 65-109; Flygare RP (2/2/2015) 25-54. The court's instructions and special verdict form were read to the jury, and jurors were provided copies of the same during their deliberations. Flygare RP (2/2/2015) 56-77; CP 1662-95.

a. Jury Instructions Regarding Duty

As to duty, the District proposed use of the standard Washington Pattern Instructions ("WPI") 10.01 (Definition of Negligence) and 10.02 (Definition of Ordinary Care) that set forth the duty of ordinary care. CP 837-38. Hopkins proposed three instructions that paraphrased portions of WPI 10.01 and 10.02 and blended that language into his partial paraphrases of a few appellate decisions (*see* Plaintiff's Proposed Instructions 8, 9, and 10, set forth in the appendix to the Brief of Appellant Hopkins). CP 949-51. During trial, the court heard argument on the parties' respective proposed instructions on duty, and objections to each other's proposals. Vernon RP (A) (1/29/2015) 110-133.

The court ultimately instructed the jury using the standard WPI 10.01 and 10.02 instructions on the duty of ordinary care after hearing further objections from Hopkins. CP 1673-74; Flygare RP (2/2/2015) 25-54. Hopkins' counsel told the court they had no objection to the court's instruction number 8, which is the standard WPI 10.01 on the duty of

ordinary care, although he now assigns error to the giving of that instruction. Flygare RP (2/2/2015) 33; Brief of Appellant Hopkins, p. 2. Hopkins' counsel did object to the court's instruction numbers 5 (the claims instruction) and 9 (the standard WPI 10.02 defining ordinary care), to which he now assigns error. Flygare RP (2/2/2015) at 27-36.

b. Jury Instructions Regarding Comparative Fault

The District proposed use of the standard WPI 10.05 (negligence of a child), 11.01 (contributory negligence) and 11.07 (determining degree of contributory negligence). CP 840-42. Hopkins proposed WPI 10.05 (negligence of a child), but omitted WPI 11.01 and 11.07. CP 928-29, 950. The court heard argument on the contributory negligence instructions, noting both parties proposed the WPI 10.05 instruction on the negligence of a child, and rejected Hopkins' argument that he could not be at fault, either legally or factually. Vernon RP (B) (1/29/2015) 133-35. Hopkins counsel did not object to the WPI 10.05 negligence of a child instruction (court's instruction number 11), but did object to the court's use of the standard WPI 11.01 and 11.07 instructions on contributory negligence (*i.e.,* court's instruction numbers 13 and 14; CP 1677-78). Flygare RP (2/2/2015) at 36-37.

c. Jury Instructions Regarding "Mainstreaming"

The District proposed an instruction articulating its duty to

"mainstream" E.E. to the maximum extent appropriate based on federal and state laws and *Kok v. Tacoma Sch. Dist. No. 10,* 179 Wn. App. 10, 21-22, 317 P.3d 481 (2013), *review denied,* 180 Wn.2d 1016 (2014). CP 847. Hopkins argued this instruction was inappropriate. Vernon RP (B) (1/29/2015) 70-72. The court gave the requested instruction over Hopkins' objections, recognizing that instructing on the District's duty owed to E.E., as well as its competing duty owed to Hopkins, was a significant part of the District's theory of the case and an accurate statement of the law. CP 1681; Flygare RP (2/2/2015) 37-39.

d. The Jury's Verdict and Judgment

The jury returned a verdict for the District. CP 1694-5. Using the special verdict form provided by the court, the jury answered "No" to question one, which asked "Was the defendant negligent?" CP 1694-95. The jury did not reach any other questions, including those pertaining to Hopkins' comparative fault, proximate cause, or alleged damages. *Id.* Judgment for the District was entered on February 9, 2015. CP 1702-03. Hopkins did not bring a post-trial motion for judgment as a matter of law, or seek a new trial pursuant to CR 59. This appeal timely followed entry of the Judgment. CP 1699-1700.

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V. ARGUMENT

A. Standard of Review

"Jury instructions are generally sufficient if they are supported by the evidence, allow each party to argue its theory of the case, and when read as a whole, properly inform the trier of fact of the applicable law." *Fergen v. Sestero,* 182 Wn.2d 794, 803, 346 P.3d 708 (2015). "When these conditions are met, it is not error to refuse to give detailed augmenting instructions, nor to refuse to give cumulative, collateral or repetitious instructions." *Bodin v. City of Stanwood,* 130 Wn.2d 726, 732, 927 P.2d 240 (1996). "It has, for some years, been the policy of our Washington system of jurisprudence, in regard to the instruction of juries, to avoid instructions which emphasize certain aspects of the case and which might subject the trial judge to the charge of commenting on the evidence, and also, to avoid slanted instructions, formula instructions, or any instruction other than those which enunciate the basic and essential elements of the legal rules necessary for a jury to reach a verdict." *Laudermilk v. Carpenter,* 78 Wn.2d 92, 100, 457 P.2d 1004 (1969) (affirming use of standard ordinary care instructions and rejecting use of more detailed instructions augmenting the ordinary care instructions). If the court's instructions accurately state the law, are supported by substantial evidence, and allow the parties to argue their respective theories of the case, the jury's verdict should be affirmed. *Hough*

v. Stockbridge, 152 Wn. App. 328, 342, 216 P.3d 1077 (2009).

Claimed legal errors in jury instructions are reviewed *de novo. Anfinson v. FedEx Ground Package Sys., Inc.,* 174 Wn.2d 851, 860, 281 P.3d 289 (2012). "An erroneous instruction is reversible error only if it prejudices a party." *Id.* "Prejudice is presumed if the instruction contains a clear misstatement of law; prejudice must be demonstrated if the instruction is merely misleading." *Id.* An instructional error is harmless if it had no effect on the verdict, or did not prevent a party from arguing his or her theory of the case. *Estate of Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, PLLC,* 177 Wn. App. 828, 861, 313 P.3d 431 (2013).

If a jury instruction correctly states the law, the trial court's decision to give the instruction will not be disturbed absent an abuse of discretion. *State v. Aguirre,* 168 Wn.2d 350, 364, 229 P.3d 669 (2010). A trial court's refusal to give a proposed jury instruction is also reviewed for an abuse of discretion. *State v. Stacy,* 181 Wn. App. 553, 569, 326 P.3d 136, *review denied,* 181 Wn.2d 1008 (2014). A trial court abuses its discretion when its ruling is manifestly unreasonable or based on untenable grounds. *State v. Cuthbert,* 154 Wn. App. 318, 326, 225 P.3d 407, *review denied,* 169 Wn.2d 1008 (2010).

Use of the WPI pattern jury instructions to accurately state the law is favored. "The *Washington Pattern Jury Instructions* are an immense

aid to the bench and bar in selecting appropriate jury instructions. [Citation omitted.] They are to be used in preference to individually drafted instructions, but are not absolutely required." *Humes v. Fritz Cos.*, 125 Wn. App. 477, 498, 105 P.3d 1000 (2005).

The trial court's instructions to the jury on the District's duties, including its duties under federal and state "mainstreaming" laws, and on Hopkins' duty to use reasonable care for his own safety, met these standards. Therefore, the jury's verdict should be affirmed.

B. The Jury was Properly Instructed on the District's Duty of Ordinary Care

Hopkins argues the trial court misstated the law and deprived him of the ability to argue his theory of the case by using WPI 10.01 and 10.02 to instruct on the District's duty of ordinary care, and rejecting Hopkins' proposed instructions 8, 9 and 10, which he argues "would have better instructed the jury on the District's special duty." Brief of Appellant Hopkins, p. 14.[5] Putting aside that Hopkins did not object to using WPI

[5] Hopkins does not assign error to the trial court's instruction number 21. *See* Brief of Appellant Hopkins, p. 2. However, on page 14 of his brief, he summarily states (perhaps mistakenly) without further argument that the court erred in giving instruction number 21. Instruction number 21 is virtually the same as an instruction approved by this court in *Rollins v. King County Metro Transit,* 148 Wn. App. 370, 379, 199 P.3d 499, *review denied,* 166 Wn.2d 1025 (2009). This instruction stated that if the jury reached the issue of damages, any damages caused solely by E.E's intentional acts must be segregated from any damages caused by the District. CP 1686. Hopkins does not argue that this instruction misstated the law, or was otherwise erroneous. Accordingly, this court should not engage in conjectural resolution of an issue that was not briefed. *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 456, 832 P.2d 1303 (1992). Further, any error in

10.01 to instruct on the duty of ordinary care (Flygare RP (2/2/2015) 33), using WPI 10.01 and 10.02 to instruct the jury on the District's duty to use ordinary care to prevent E.E.'s assault was not error. Additionally, the court did not abuse its discretion by declining to give Hopkins' proposed instruction numbers 8, 9 and 10.

1. The Trial Court's Instruction Numbers 9 and 10, Reciting WPI Instructions 10.01 and 10.02, Properly Stated the District's Duty of Ordinary Care

There is no dispute that a school district owes a duty of ordinary care to its students to protect them from foreseeable harm. *E.g., Kok,* 179 Wn. App. at 18-19 (summarizing cases). WPI 10.01 and 10.02 (the trial court's instructions 9 and 10, CP 1673-74) correctly define the duty of ordinary care. Indeed, Hopkins' proposed instructions 8 and 9 paraphrase this duty of ordinary care as defined in WPI 10.01 and 10.02. CP 947-48.

Hopkins essentially argues that, although WPI 10.01 and 10.02 correctly state the duty of ordinary care, they "misstate" the law because they do not fully explain <u>why</u> appellate courts have held that school districts owe a duty of ordinary care to their students, which he claims prevented him from being able to argue the District breached its duty of ordinary care in this case. *See* Brief of Appellant Hopkins, pp. 14-16.

The trial court did not abuse its discretion by declining to give

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this instruction is harmless because the jury did not reach the issues of proximate cause or the nature and scope of Hopkins' alleged damages. *See* CP 1694-95.

detailed augmenting instructions explaining why appellate courts have held school districts owe a duty of ordinary care to students in their custody. In *Bodin,* the court affirmed the trial court's discretionary decision to reject a plaintiff's proposed instructions giving detailed elaborations of the defendant's duty of ordinary care. *Bodin,* 130 Wn.2d at 732. Application of *Bodin* yields the same result here.

While Hopkins alleges the trial court's duty instructions did not permit him to argue his theory of the case, he actually was able to do so. Flygare RP (1/22/2015) 27-41, 52; Flygare RP (2/2/2015) 81-94. Also, his standard of care expert was permitted to provide lengthy opinion testimony explaining the scope of the District's obligation to use ordinary care to protect students and the reasons for her view that the District breached the standard of ordinary care. Flygare RP (1/22/2015) 83-85, 92-134, 159-61. Thus, Hopkins is unable to meet his burden of showing prejudice resulted from use of the standard WPIs on the duty owed in negligence cases.

2. Hopkins' Proposed Instruction Numbers 8, 9 and 10 Were Properly Rejected by the Trial Court

Hopkins proposed instructions on duty contained misstatements of the law and were incomplete or unnecessary. Accordingly, the trial court did not abuse its discretion by declining to use Hopkins' proposed

instruction numbers 8, 9 and 10, and instead using the standard WPI instructions on the duty of ordinary care.

Hopkins' proposed instruction number 8 states as follows:

> A school official stands in the place of a parent when the student is in the school's custody. The placement of children under a school's custody and control gives rise to a duty on the part of the school to exercise ordinary care to protect students in its custody from reasonably anticipated dangers, including the intentional or criminal conduct of third parties.

CP 947. This proposed instruction suggests that intentional or criminal conduct is always foreseeable, and fails to correctly state the law that such conduct is not foreseeable when it is "so highly extraordinary or improbable as to be wholly beyond the range of expectability." *See Kok,* 179 Wn. App. at 18. *See also Nivens v. 7-11 Hoagy's Corner,* 133 Wn.2d 192, 205 n.3, 943 P.2d 286 (1997) ("Washington courts have been reluctant to find criminal conduct foreseeable"). The proposed instruction also omits applicable Washington law holding that "evidence of a person's antisocial, unruly, or hostile behavior is generally insufficient to establish that a defendant with a supervisory duty should reasonably have anticipated a more serious misdeed." *J.N. v. Bellingham Sch. Dist. No. 501,* 74 Wn. App. 49, 60, 871 P.2d 1106 (1994). Hopkins' proposed instruction number 8 was, therefore, incomplete and misstated applicable law. The trial court did not abuse its discretion by declining to give this

erroneous, augmenting instruction.

Hopkins' proposed instruction number 9 states as follows:

> Negligence is the failure to exercise ordinary care. Ordinary care is that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances or conditions. A school district fails to exercise ordinary care to protect students if it fails to anticipate dangers that may reasonably be anticipated or to take reasonable precautions to prevent the harm from occurring.

CP 948. This proposed instruction paraphrases WPI 10.01 and 10.02, then provides possible examples of the failure to use ordinary care in a manner specifically applicable to the District. The WPIs make clear that "the jury should be instructed that the standard of care to be applied in a negligence action is the care that a reasonably careful person would take under the circumstances, rather than the care a particular defendant should have exercised in a given circumstance." Comments to WPI 10.01 (citing *Baughn v. Malone*, 33 Wn. App. 592, 656 P.2d 1118 (1983)). Hopkins' proposed instruction number 9 conflicts with the WPI's comments, was unnecessary, unduly emphasized his theory of the case by specifically pointing to the ways in which he was arguing the standard of care was breached in this particular case, and arguably would be a comment on the evidence (*see Laudermilk,* 78 Wn.2d at 100). The trial court did not abuse its discretion by choosing to use the standard WPI instructions on the duty

of ordinary care, rather than Hopkins' proposed instruction number 9 paraphrasing that duty in a slanted manner.

Hopkins' proposed instruction number 10 states as follows:

> Whether a risk of harm is reasonably foreseeable under the same or similar circumstances depends upon the particular defendant's characteristics and experience. Where the disturbed, aggressive nature of a child is known to school authorities, proper supervision requires the taking of specific, appropriate procedures for the protection of other children from the potential for harm caused by such behavior.

CP 949. This proposed instruction was properly rejected because it conflicts with the comments to WPI 10.01 by focusing on the standard of ordinary care the particular defendant should have exercised in a particular circumstance. Second, the WPI does not support giving an instruction on foreseeability. Third, the instruction is an argumentative comment on the evidence concerning E.E's "disturbed, aggressive nature." Fourth, the proposed instruction unduly emphasizes Hopkins' theory of the case by instructing that "proper supervision requires the taking of specific, appropriate procedures" in order to meet the duty of ordinary care. The trial court did not abuse its discretion by declining to give this flawed instruction in lieu of the standard WPI instructions.

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C. The Jury Was Properly Instructed on Contributory Negligence

1. Instructing on Hopkins' Contributory Negligence Was, at Worst, Harmless Error

The jury did not reach the issue of Hopkins' comparative fault; it found only that the District did not breach its duty of ordinary care. CP 1694-95. Any alleged errors in the trial court's instruction numbers 13 and 14 (CP 1677-78) pertaining to contributory negligence are, therefore, harmless.

Veit v. Burlington N. Santa Fe Corp., 171 Wn.2d 88, 249 P.3d 607 (2011), is instructive on this point. There, the court held that because Washington is a pure comparative negligence jurisdiction (where a defendant can be held liable in negligence even when the plaintiff bears the majority of fault), any error in a trial court's jury instructions on the plaintiff's contributory negligence is *not* a ground for granting a new trial if (i) the jury returned a verdict that the defendant was not negligent; and (ii) the jury was explicitly instructed by the verdict form not to address contributory negligence unless it found the defendant to be negligent. *Id.* at 117. The *Veit* court reasoned that because juries are presumed to follow the law, courts must assume the jury did not consider the plaintiff's contributory negligence in determining whether the defendant was negligent. *Id.*

This case is like *Veit*. The jury was instructed on a summary of the parties' claims, the District's burden to prove contributory negligence, and that the questions on the special verdict form had to be answered in the order presented after reading all of the questions before answering any of them. CP 1672, 1677-78, 1692. The special verdict form required the jury to consider the District's potential negligence first, before reaching any decision on Hopkins' contributory negligence. CP 1694-1695 (for example, the verdict form instructed that, when determining the amount of damages proximately caused by the District's negligence, the jury could "not consider the issue of contributory negligence, if any, in your answer"). Thus, as was similarly held in *Veit,* any alleged instructional error regarding contributory negligence is immaterial because the jury returned a negative finding on the defendant's alleged negligence.

In a footnote, Hopkins cites to *Gregoire v. City of Oak Harbor,* 170 Wn.2d 628, 244 P.3d 924 (2010), for the proposition that where a trial court gives erroneous instructions on assumption of risk and comparative fault, such instructions might cause a jury to reach an erroneous decision on proximate cause. Brief of Appellant Hopkins, p. 16-17, n. 5. Hopkins' reliance on *Gregoire* is misplaced because, in this case, the jury did not reach a decision on proximate cause. *See* CP 1695. *Veit* applies, not *Gregoire.* Hopkins is thus unable to show that instructing the jury on

comparative fault, using the standard WPI 11.01 and 11.07 wording, caused him prejudice.

2. In Any Event, the Trial Court's Instructions on Comparative Negligence Were Proper

Even if Hopkins could show prejudicial harm, the court's use of the standard WPI instructions 11.01 and 11.07 on contributory negligence did not misstate the law. Hopkins argues that instructing the jury on comparative fault was erroneous as a matter of law because school districts' special relationship with students in their custody precludes students from ever being contributorily negligent. Brief of Appellant Hopkins, pp. 16-19.[6] This argument ignores the fact that several reported decisions in Washington have stated students injured while in the custody of school districts may be contributorily negligent. *See, e.g., Eckerson v. Ford's Prairie Sch. Dist.,* 3 Wn.2d 475, 487, 101 P.2d 345 (1940) (finding contributory negligence of a minor student a proper issue for the jury); *Briscoe v. Sch. Dist. No. 123,* 32 Wn.2d 353, 366, 201 P.2d 697 (1949) ("a charge that the boy's actions constituted contributory negligence is ... a jury question, under the proper instructions to be given by the court"); *Osborn v. Lake Wash. Sch. Dist.,* 1 Wn. App. 534, 537, 462 P.2d 966

[6] Hopkins does not argue there was insufficient evidence to support the giving of instructions on his contributory negligence, or any other basis for reversal aside from his argument that school students can never be found contributorily negligent as a matter of law. *See* Brief of Appellant Hopkins, pp. 16-19.

(1969) (permitting instruction on contributory negligence of a student); *Yurkovich v. Rose,* 68 Wn. App. 643, 646-47, 656, 847 P.2d 925, *review denied,* 121 Wn.2d 1029 (1993) (13 year old student found 4 percent at fault for exiting school bus, crossing highway, and getting hit by a car).

Hopkins solely relies on a legally and factually distinguishable case establishing a narrow exception to this long-standing precedent. He relies on *Christensen,* 156 Wn.2d 62, where a plaintiff student alleged a school district was liable for a teacher's statutory rape of the student. The *Christensen* court limited its holding to statutory rape cases, "concluding that, as a matter of law, a child under the age of 16 may not have contributory fault assessed against her for her participation in a relationship such as that posed in the question. This is because she lacks the capacity to consent and is under no legal duty to protect herself from the sexual abuse." *Id.* at 64-65.

The plaintiff in *Christensen* was granted an exception from general comparative negligence rules *not* because she was a student in school, but because she lacked the legal capacity to consent to statutory rape. *See id.* The *Christensen* court did not overrule prior precedents treating school students' alleged contributory negligence as a question of fact in cases that do not involve statutory rape. *See supra.* The court did not hold that, although children as young as 6 years old may be contributorily negligent

in all other contexts, such children can never be contributorily negligent when in a *loco parentis* special relationship while attending school. If the *Christensen* court intended to make such a dramatic, sweeping change in the law, it would have said so.

Ordinarily, children are not absolved of their duty to use reasonable care for their own safety when they arrive at school. Therefore, the trial court did not misstate the law by using the standard WPI instructions on children's contributory negligence.

D. The Jury Was Properly Instructed on the District's Duty to Mainstream E.E. to the Maximum Extent Appropriate

Hopkins argues that the trial court committed reversible error by giving the jury instruction number 17, which briefly explained the District's legal duty to mainstream disabled students to the maximum extent appropriate. Brief of Appellant Hopkins, pp. 19-23. The trial court's instruction number 17 states as follows:

> Both federal and state laws require public school districts to provide appropriate education to students with disabilities. Both federal and state laws also require that, to the maximum extent appropriate, public school districts must educate children with disabilities in the general education environment.

CP 1681.

Hopkins does not claim this instruction is a misstatement of the law, or that it is unsupported by substantial evidence. He also does not

dispute that this instruction enabled the District to argue its theory of the case. Instead, he argues that the instruction was "irrelevant to the legal issues on trial," and was an improper comment on the evidence. Brief of Appellant Hopkins, p. 19. Hopkins is incorrect on both counts.

1. Instruction Number 17 was Relevant

Instruction number 17 was relevant to whether the District breached its duty to use reasonable care to prevent E.E. from assaulting another student. Hopkins' theory of the case is that the District breached its duty of ordinary care by not placing E.E. in a more restrictive educational environment consisting of greater "monitoring." His standard of care expert, Ms. Billings, testified about a range of restrictive educational environments available to the District when educating disabled children, stating that "[t]he most restrictive environment would be where a child is in a self-contained classroom for all of that child's day and has what is called a one-on-one, someone with them at all times." Flygare RP (1/22/2015) 84. Ms. Billings then opined the District should have placed E.E. in this most restrictive one-on-one supervision whenever he was not in a self-contained classroom:

> They could have had a para professional walk with him between passing periods. They could have had a security guard walk with him during passing periods. They could have made certain that he was always in the line of sight of some adult so that he was always under supervision.

Flygare RP (1/22/2015) 131.

The District presented opposing evidence that placing E.E. in a more restrictive environment (such as one-on-one supervision during P.E. class or passing periods) was inconsistent with E.E.'s federal and state right to be educated in the least restrictive environment appropriate. *E.g.*, Vernon RP (B) (1/29/2015) 36-37. Thus, E.E.'s level of supervision was squarely at issue for purposes of determining whether the District exercised ordinary care.

As the *Kok* court held, because the standard of ordinary care is that of a reasonably prudent person *in similar circumstances*, the duties imposed by federal and state laws to educate disabled children in the least restrictive environment appropriate "are relevant to whether the District exercised ordinary care." *Kok,* 179 Wn. App. at 21-22. The *Kok* court's reasoning is equally applicable to this case.

Hopkins argues that *Kok* is distinguishable because there the plaintiff argued the assaultive student should not have been placed in the general education environment at all, while Hopkins is arguing E.E. should have had one-on-one supervision when in the general education environment. Brief of Appellant Hopkins, pp. 22-23. This is a distinction without a difference. In both cases, the mainstreaming laws are relevant to

whether a reasonably prudent person *in similar circumstances* would or should have made the educational environment of the disabled student more restrictive to protect other students, while balancing the competing duty to educate disabled children in the least restrictive educational environment. Therefore, instruction number 17 was relevant and the trial court did not abuse its discretion by instructing the jury on the District's legal obligations to E.E.

2. Instruction Number 17 Was an Accurate Statement of Law, Not a Comment on the Evidence

A judge's statement is an unconstitutional comment on the evidence only if it conveys or implies the court's opinion on the merits, or an evaluation of a disputed fact or issue. *State v. Lane*, 125 Wn.2d 825, 838, 889 P.2d 929 (1995). "The touchstone of error in a trial court's comment on the evidence is whether the feeling of the trial court as to the truth value of the testimony of a witness has been communicated to the jury." *Id.*

By instructing the jury with an undisputedly accurate summary of federal and state "mainstreaming" law, the trial court did not comment on the veracity of any witness, or the weight to be given any evidence. Instruction number 17 merely informed the jury of the District's statutory duty to provide all disabled students with a free and appropriate public

education and that, to the maximum extent appropriate, school districts must educate disabled students in the general education environment. CP 1681. This instruction summarizing applicable law did not convey in any way the trial court's views about any item of evidence, nor did it unduly emphasize the District's theory of the case. This instruction on the District's duty to E.E. was no more a comment on the evidence than the court's instructions on the District's duty to use ordinary care to prevent E.E. from assaulting Hopkins.

Even if this instruction could somehow be construed as a comment on the evidence, the jury was instructed at both the beginning and the end of trial that if it appeared the judge was commenting on the evidence, the jury should disregard any such comment. Flygare RP (1/22/2015) 22-23; CP 1664. Because courts embrace an "abiding faith in the intelligence of juries and their commitment to follow the law has long been a fixture of our jurisprudence," any such comment should be considered harmless error in light of the trial court's instructions. *See Veit,* 171 Wn.2d at 93.

Finally, the court's instruction number 17 did not unduly emphasize the District's theory of the case. "[I]nstructions that inform the jury of a party's theory of the case are not necessarily harmful or incorrect. If a party's theory of the case is supported by substantial evidence, he or she is entitled to have the court instruct the jury on it." *Fergen,* 182 Wn.2d at

810. Hopkins does not claim substantial evidence is lacking to support the District's theory that it used ordinary care in balancing its duty to prevent E.E. from assaulting others with its competing duty to educate E.E. in the least restrictive environment appropriate. Indeed, Hopkins' standard of care expert articulated the District's obligations to E.E. on direct examination. Flygare RP (1/22/2015) 77-78, 83-84. *See also* Vernon RP (A) (1/29/2015) 159-60 and Vernon RP (B) (1/29/2015) 36-39 (the District's standard of care expert, Maureen Davis, similarly testified about the District's obligation to educate E.E. in the least restrictive environment appropriate). Accordingly, the trial court did not abuse its discretion by giving instruction number 17, which was a correct statement of the law supported by substantial evidence, and central to the District's theory of the case.

VI. CONCLUSION

The trial court properly instructed the jury on the District's duty to use ordinary care to prevent E.E. from assaulting others, its competing duty under federal and state laws to mainstream E.E. to the maximum extent appropriate, and Hopkins' duty to use reasonable care for his own safety. Therefore, the jury's verdict finding that the District was not negligent should be affirmed. Hopkins' request for a new trial should be denied.

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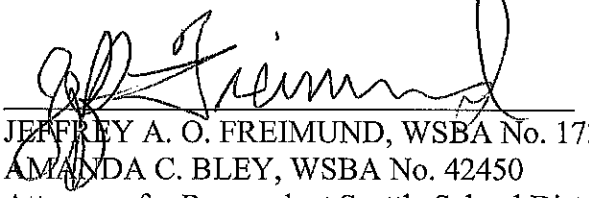
RESPECTFULLY SUBMITTED this 19th day of August, 2015.

FREIMUND JACKSON & TARDIF, PLLC



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Attorneys for Respondent Seattle School District

CERTIFICATE OF SERVICE

I certify that the foregoing was served by the method indicated below to the following individuals this 19th day of August, 2015.

Kyle C. Olive Olive Bearb Law Group, PLLC 1218 Third Ave, Suite 1000 Seattle, WA 98101 kyle@olivebearb.com erin@olivebearb.com	☒ ☐ ☒	U.S. Mail Facsimile E-Mail
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 19th day of August, 2015, at Olympia, WA.

KRISTY JENNE

APPENDIX A

Student Name [redacted] Student ID [redacted]

The IEP is designed to clearly communicate to the parents, student and providers the type and amount of special education services and supports that will be made available for the student. The most recent evaluation report is used to develop the IEP. The IEP is individualized to reflect the unique needs of the student and how these needs will be addressed to permit the student to be included and progress in the general education curriculum.

Individualized Education Program

SEATTLE PUBLIC SCHOOLS

Date of IEP meeting 11/23/2005

___ Initial X Annual Review ___ Three-Year Review

Student Information

Student Name [redacted] Student ID [redacted]
Date of Birth [redacted] Age 14 Grade 08 Adult student ___ yes X no
Eligibility category EMOTIONALLY/BEHAVIORALLY DISABLED Date of initial eligibility 09/24/1999
Primary language of student ENGLISH Primary language used in the home ENGLISH
Date of most recent evaluation 06/16/2005 Three-year reevaluation due date 06/16/2008
IEP case manager MAUREEN DAVIS Provider Code 2221
Additional case manager
Building AKI KUROSE MIDDLE SCHOOL
Additional building

Parent/Guardian Contact Information

Name H[redacted] T[redacted] Relationship: X parent ___ guardian ___ surrogate
Address [redacted]
Home phone [redacted] Work phone parent #1 ___ Work phone parent #2 ___
E-mail

Included in the IEP (check all that apply):

X yes ___ no Functional Behavior Assessment
X yes ___ no Behavior Intervention Plan
X yes ___ no Individualized Transition Plan (required starting at age 14)
___ yes X no Plan for Non-Special Education Certificated Staff to Provide Specially Designed Instruction
___ yes X no Extended School Year Plan
___ yes X no Aversive Intervention Plan
___ yes X no Health Care Plan
___ yes ___ no Other:

Attached to the IEP

___ yes X no Independent Educational Evaluation
Other: (attach signed release/exchange of information form)

Consideration of Special Factors

This student's behavior (a) impedes his/her learning or that of others, (b) puts the student or others at risk for injury, or (c) could lead to a change in placement. If yes, describe strategies, including positive behavioral interventions and supports, to address behavior in the box below. Note: The IEPs of students demonstrating behavioral concerns must include behavioral goals and objectives and a functional behavior assessment and behavior intervention plan. Functional Behavior Assessment included? X yes ___ no Behavior Intervention Plan included? X yes ___ no	X yes ___ no
This student has limited English proficiency. If yes, determine primary language proficiency and in the box below, address any appropriate language needs of the student related to the IEP.	___ yes X no
This student is blind or visually impaired. If yes and Braille instruction and the use of Braille are not being provided, give justification in the box below.	___ yes X no
This student has communication needs. If yes, describe in the box below, any communication needs of the student. In the case of a student who is hard of hearing, consider the student's (a) language and communication needs; (b) opportunities for direct communications with peers and professional personnel in the student's language and communication mode; (c) academic level; (d) full range of needs, including opportunities for direct instruction in the student's language and communication mode, and (e) technological devices (e.g., FM systems, hearing aids, cochlear implants) used by the student in school settings.	___ yes X no
This student requires assistive technology in order to receive a Free Appropriate Public Education. If yes, describe any assistive technology devices or services needed in the box below.	___ yes X no
If answered yes to any of the above questions, provide information here. see FBA and BIP	

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Student Name [redacted] Student ID [redacted]

Present Levels of Performance

Present levels of educational performance should reflect how the student's disability (ies) affects the student's involvement and progress in the general education curriculum. For preschool students, present levels of educational performance should reflect how the disability (ies) affects the student's participation in appropriate activities.

Points that must be considered:

* Strengths of the student and the concerns of the parents for enhancing the educational performance of the student.
* Results of the initial or most recent evaluation or subsequent reviews of the student's progress on IEPs.
* Data that report student's current performance levels (e.g., standard scores when using named instruments, grade level performance when using curriculum-based assessments, observational data).
* Results of the student's performance on any general state or district-wide assessments as appropriate.

Areas qualified for specially designed instruction as indicated by most recent evaluation:

reading, math, written expression, behavior

Statement of adverse educational impact:

[redacted] behavior and learning disabilities negatively impact his academic progress.

Strengths and present levels of performance for each area qualified for specially designed instruction.

[redacted] is relatively new to Ald Kurose. He has been here 1 month and been suspended twice for assault. Because of this there is no information on his academic progress. [redacted] has been made a self contained EBD student.

[redacted] was given the Brigance Test of Basic Skills in November 2005:

READING:

Vocabulary:	6th grade
Comprehension:	4th grade

WRITTEN EXPRESSION:

Spelling:	4th grade
Sentence Writing:	4th grade

MATH:

Computation:	3rd grade
Problem Solving:	3rd grade

Student Name [redacted] Student ID [redacted]

Participation in General Education Curriculum/Extracurricular/Nonacademic Activities

An explanation as to how the student (a) will be involved and progress in the general curriculum, (b) will participate in extracurricular and nonacademic activities and (c) will be educated and participate with other special education students and nondisabled students.

all electives and school activities as behavior allows

An explanation of the extent, if any, to which the student will not participate with nondisabled students (a) in the general class, and (b) in nonacademic and extracurricular activities.

all academic classes in special ed class

Participation in Physical Education Services

- X general physical education program (accommodations, if needed _____)
- __ specially designed instruction in physical education (IEP goals and objectives and services must be included in IEP)
- __ physical education program provided at the separate facility in which the child is enrolled
- __ exempt (justification statement _____)

Student Progress Reporting to Parents

Student's parents will be regularly informed of progress toward annual goals through periodic IEP progress reports. The progress reports will indicate the extent to which progress is sufficient to enable the student to achieve the IEP goals by the anniversary date of the IEP. It will be issued as often as report cards are issued to parents of nondisabled students. IEP progress reports, and a signature page, are sent home with the student. Parents are to sign and then return the signature page to the special education provider.

Determination of Eligibility for Extended School Year

ESY eligibility is based on the pattern of student performance on his/her IEP goals/objectives. When appropriate, the student's IEP team convenes during the month of May to determine ESY eligibility. If found eligible, the IEP team completes the ESY Plan. Determination of eligibility for ESY services is not made based on a category of disability and does not limit the type, amount, or duration of services.

IEP Team Decision: X student is not in need of ESY services __ student's progress will be reviewed in May

Participation in District and State Assessments of Student Achievement

For preschool students or students grade 11 or beyond, this section is left blank, unless the IEP team determines the student will participate. Parents may exempt their child from these assessments by submitting an exemption letter to the building principal. Attach a justification and statement of how the student will be assessed for exempted students.

WASL/WAAS Participation If not administered this IEP period, leave section blank. ☐ parent exemption letter sent to administrator

Sections	Without Accommodations	With Accommodations	Participation in the WAAS
Listening			__ portfolio
Reading		X	__ portfolio
Writing			__ portfolio
Mathematics		X	__ portfolio
Science		X	__ portfolio

ITBS or ITED and Direct Reading/Writing Assessments (leave blank those items related to tests not administered during this IEP period)

Administered this IEP: ☐ ITBS ☐ ITED ☐ Direct Reading Assessment ☐ Direct Writing Assessment

Sections	Without Accommodations	With Accommodations	If not participating, justification and statement of how the student will be assessed
ITBS or ITED			
Reading			
Writing			
Mathematics			
Developmental Reading Assess.			
Direct Writing Assessment			
Wash. Lang. Proficiency Test			
Cognitive Abilities Test			

Washington Assessment Program
Accommodation Checklist For All Students

	WASL	ITBS/ITED
SCHEDULING - TIMELINE		
• Administer the assessment over the entire testing window.	☑	☐
• Provide frequent breaks.	☑	☐
• Allow students to continue working on each test as long as they are productively engaged. Time for individual students will vary considerably on a performance assessment. Each WASL subtest must be completed within one given day.	☑	NO
• Administer the assessment at a time of day most beneficial to students.	☑	☐
SETTINGS	WASL	ITBS/ITED
• Allow students to use study carrels or other private space.	☐	☐
• Use preferential seating (e.g., near the test administrator to see or hear directions better).	☑	☐
• Assess students individually or in a small group to reduce distractions.	☑	☐
• Assess students in a familiar school environment that maximizes their performance.	☑	☐
• Provide special lighting, furniture, or acoustics.	☐	☐
• Allow low level of calming music or nature sounds to reduce distractions.	☐	☐
• Allow freedom for students to move or stand as needed.	☐	☐
AIDS OR ASSISTANCE	WASL	ITBS/ITED
• Use student's primary language or signing — Sign in Exact English (SEE) or American Sign Language (ASL) — to give assessment directions ONLY.	☐	☐
When needed:		
• Reread directions or quietly repeat for individuals. (Rereading of WASL Reading, Mathematics, and Science assessment prompts or questions is NOT allowed, and rereading of WASL Listening passage is NOT allowed.)	☐	☐
• Rereading of WASL Reading assessment prompts or questions is NOT allowed.	☐	☐
• Rereading of WASL Listening passage is NOT allowed.	☐	☐
• Have students reread directions.	☑	☐
• Assist the students in tracking the assessment items by pointing or placing a finger on the item. Allow assessment administrator or another familiar adult to sit beside students.	☐	☐
• Encourage students to sustain effort and remain on task.	☑	☐
• Provide physical assistance in turning pages, handling materials, etc.	☐	☐
• Secure papers and materials to work area with tape or magnets.	☐	☐
• Provide pencils adapted in size or grip.	☐	☐
• Underline or mark their booklets with a pencil. Students may NOT use a highlighter on the test booklet (it bleeds through to the other side and may make scanning difficult).	☐	☐
• During both sessions of writing, students are permitted to use published reference materials such as a dictionary and a thesaurus in print or electric form (no spell check).	☑	Not Applicable
• Tape record directions for use with small group or individuals.	☐	☐
FORMAT	WASL	ITBS/ITED
• Use the space available. If students cannot write within available space, their work must be transcribed VERBATIM into the test booklet. Added pages will not be scored.	☐	Not Applicable

Accommodations for Special Populations

Additional accommodations for the following special populations:
Section 504 Plan, Special Education, Limited English Proficiency (LEP)/Bilingual, LEP/Migrant, Highly Capable students

Accommodations for Special Populations are the same as those listed on the Accommodations Checklist For All Students with the following additions:

SCHEDULING—TIMELINE	WASL	ITBS/ITED
• Each WASL subtest must be completed within one given day, unless extended time is specified on the student's IEP or Section 504 Plan.	☑	Not Applicable
• Students with an IEP or Section 504 Plan may continue to work on each subtest as long as they are productively engaged as specified on the IEP or Section 504 plan as an accommodation allowed during regular classroom and state testing.	☐	☐

SETTINGS	WASL	ITBS/ITED
• Provide architecturally accessible testing sites.	☐	☐
• Assess students in a hospital or institution; homebound students in their home (with appropriate test security procedures).	☐	☐

AIDS OR ASSISTANCE	WASL	ITBS/ITED
LEP		
If an LEP student falls within a "limited English speaker range" on a state approved language proficiency test, allow student to:		
• Use a reader to read mathematics or science assessment items VERBATIM in English.	☐	NO
• During both days of writing, students are permitted to use published reference materials such as a dictionary and a thesaurus in print or electronic form (no spell check) in English, native language, or visual formats.	☐	Not Applicable
IEP or 504		
If the student's IEP or Section 504 Plan documents a disability that affects reading or written communication, allow the student to:		
• Answer orally, point, use voice recognition technology or sign (in either SEE sign or ASL) a response. A scribe records the student's response VERBATIM (e.g., from written dictation or audiotape) without interpretations, translation or corrections. If a scribe is used, the scribe should write down the student's answer without punctuation or capital letters and then the scribe should ask the student to revise and edit the text (student directs the scribe to add punctuation and capital letters, etc.).	☐	☐
• Use appropriate physical supports or assists (e.g., easel, magnifier, arm or stabilizer guide, text-talk converter, communication device to indicate responses, noise buffers, FM or other sound amplification device to assist in hearing directions, slantboard, or wedge).	☐	☐
• Use a reader to read mathematics or science items VERBATIM in English or use either SEE sign or ASL.	☐	☐
• Use a computer or word processor for recording responses (no spell check or student-created dictionaries) when a computer is indicated on the IEP or Section 504 Plan for written communication. Student responses must be transcribed VERBATIM into the test booklet. Added pages will not be scored.	☐	Not Applicable
• Isolate portions of the assessment page to focus student's attention (mask).	☐	☐
• Use math manipulatives (except calculators) as indicated on the IEP or Section 504 plan. Use calculators only as specifically permitted in test directions.	☐	NO

Student Name [redacted] Student ID [redacted]

Measurable Annual Goals and Objectives/Benchmarks

The purpose of the measurable annual goals and objectives/benchmarks is to outline the student's instructional program derived from the present levels of performance and most recent evaluation.

Measurable Annual Goal

Behavior	Baseline to Goal Level	Evaluation Tool for Measuring Progress
[redacted] will _X_ increase ___ decrease computation and problem solving skills before or by the anniversary date of this IEP.	Baseline performance: 3rd grade Goal level performance: 4/5th grade	___ standardized tests _X_ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics

Objective/Benchmark

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given 10 two and three multiplication and division problems, [redacted] will solve.	8 out of 10 correct	___ standardized tests _X_ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given timed math facts test, [redacted] will solve.	95% correct	___ standardized tests ___ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys _X_ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given 5 word problems with addition, subtraction, multiplication, or division, [redacted] will solve and explain his answer using words, pictures, or symbols.	4 out of 5 correct	___ standardized tests ___ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys _X_ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Student Name [redacted] Student ID [redacted]

Measurable Annual Goals and Objectives/Benchmarks

The purpose of the measurable annual goals and objectives/benchmarks is to outline the student's instructional program derived from the present levels of performance and most recent evaluation.

Measurable Annual Goal

Behavior	Baseline to Goal Level	Evaluation Tool for Measuring Progress
[redacted] will X increase ___ decrease comprehension and vocabulary skills before or by the anniversary date of this IEP.	Baseline performance: 4/5th grade Goal level performance: 5/6th grade	___ standardized tests ___ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys X teacher-developed tests ___ rubrics

Objective/Benchmark

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given a passage at the 5/6th grade level, [redacted] will summarize.	80% accuracy	___ standardized tests ___ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys X teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given a passage at the 5/6th grade level and 5 questions (ie plot, setting, inference, characters, etc.) [redacted] will answer.	4 out of 5 correct	___ standardized tests X criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given 10 vocabulary words from reading or curriculum, [redacted] will look them up in a dictionary and write the definition in his own words.	8 out of 10 correct	___ standardized tests ___ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys X teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Student Name [redacted] Student ID [redacted]

Measurable Annual Goals and Objectives/Benchmarks

The purpose of the measurable annual goals and objectives/benchmarks is to outline the student's instructional program derived from the present levels of performance and most recent evaluation.

Measurable Annual Goal

Behavior	Baseline to Goal Level	Evaluation Tool for Measuring Progress
[redacted] will X increase ___ decrease paragraph and essay writing skills before or by the anniversary date of this IEP.	Baseline performance: 4th grade Goal level performance: 5 th grade	___ standardized tests ___ criterion-referenced tests ___ systematic observation X portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics

Objective/Benchmark

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given paper, pencil, and a topic, [redacted] will write 6 paragraphs with an introduction, 6 detail and a concluding paragraph	correct spelling, grammar, punctuation, capitalization	___ standardized tests ___ criterion-referenced tests ___ systematic observation X portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
-Given paper, pencil, and a topic, [redacted] will write a 1 page essay/research paper with correct organization and using the writing traits.	correct spelling, grammar, punctuation, capitalization	___ standardized tests ___ criterion-referenced tests ___ systematic observation X portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
		___ standardized tests ___ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: Projected date for completion:

Student Name [redacted] Student ID [redacted]

Measurable Annual Goals and Objectives/Benchmarks

The purpose of the measurable annual goals and objectives/benchmarks is to outline the student's instructional program in the behavioral/social domain.

Measurable Annual Goal ** Minutes of service are reported in the IEP Service Matrix

Behavior	Baseline to Goal Level	Evaluation Tool for Measuring Progress
[redacted] will ___ increase _X_ decrease verbally and physically assaultive behavior to peers before or by the anniversary date of this IEP.	Baseline performance: 50% Goal level performance: 75%	___ standardized tests ___ criterion-referenced tests _X_ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics

Objective/Benchmark

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
Given a negative social interaction with a peer, [redacted] will stop, breathe, and request to see an adult to talk.	60% of the time	___ standardized tests ___ criterion-referenced tests _X_ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
[redacted] will refrain from physical and verbal altercations with peers.	80% of the time	___ standardized tests ___ criterion-referenced tests _X_ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: 11/23/2005 Projected date for completion: 11/22/2006

Behavior	Criterion	Evaluation Tool for Measuring Progress	Timeline
		___ standardized tests ___ criterion-referenced tests ___ systematic observation ___ portfolios ___ checklists/rating scales ___ curriculum-based measurement ___ precision teaching ___ inventories/surveys ___ teacher-developed tests ___ rubrics	Initiated: Projected date for completion:

Student Name [redacted] Student ID [redacted]

IDEA '97 requires that a Functional Behavior Assessment (FBA) be conducted when a student's behavior impedes his/her learning or that of others, puts the student or others at risk for injury, or could lead to a change in placement. FBAs apply to all students, not just those identified as having emotional and/or behavioral disabilities. The FBA process involves the collection of data concerning the student's behavior, with the goal of the process being to hypothesize the function or purpose the behavior is serving for the student. Information from the FBA is used to develop a positive behavior intervention plan.

Functional Behavior Assessment

Strengths

Date: 11/12/2005

Academics:

Behavioral/social:

can be cooperative and appropriate when he wants to.

Work habits/study habits:

Family/community supports:

Student's Areas of Greatest Challenge

___ completing schoolwork _X_ following directions _X_ interacting with peers ___ interacting with authority figures
___ other: ___

History of the Student's Behavior (including medical conditions and treatments that impact behavior):

[redacted] has a history of verbal and physical assault on peers.

Positive Behavioral Supports Currently in Place (check all that apply)

Rules and Consequences

_X_ school/classroom rules are posted, enforced, and reviewed
_X_ student and parents have been informed of consequences for violation of school/classroom rules/policies

Environmental Considerations

_X_ room is arranged to promote positive behavior
_X_ there is calm place where the child can choose to go as necessary
_X_ group and individual learning areas are available in the classroom
_X_ distractions are limited

Curricular and Instructional Accommodations

_X_ curriculum is at an appropriate level of difficulty
_X_ assignments are adjusted (e.g., more time, fewer items)
_X_ information is presented in visual/auditory formats
_X_ instruction is broken down into steps and clustered into short-learning segments with breaks
_X_ instructions are presented orally and in writing, with check-ins for student understanding
_X_ instructional approaches are varied
_X_ study skills and organization skills are taught
___ child is offered choices

Communication between Home and School

_X_ parents are contacted concerning behavioral incidents
_X_ conferences are held with parents
_X_ behavior report is sent home to parents
___ home reinforces school behavior

Social Skills

___ instruction in social communication is provided (e.g., pragmatics)
___ instruction in social skills is provided (e.g., friendship, working in groups)
_X_ instruction in problem solving is provided (e.g., steps in problem solving and alternative strategies)
_X_ instruction in conflict resolution skills is provided (e.g., using I statement, negotiating)

Behavioral Accommodations

_X_ classroom routines are clearly established and reviewed
_X_ behavior management system is in place
_X_ classroom schedule is clearly established each day
_X_ students are prepared for transitions
_X_ student has permission to remove him/herself from the group when anxious, frustrated, angry, etc.
_X_ a point or level system is implemented
___ student is allowed to move about the room or stand when completing work, as appropriate
___ a behavior contract is implemented
_X_ self-management techniques are implemented
_X_ daily/weekly charting of behavior paired with reinforcement is in place
_X_ feedback and reinforcers are provided

Student Name E[redacted] E[redacted] Student ID [redacted]

Comments related to supports currently in place:

all support currently available at Aki Kurose are supporting E[redacted]

Identification of the Behavior of Concern

Check or identify the most important behavior of concern (i.e., the one that interferes most with the student's functioning in the school environment).

___ is out of seat	___ talks out	X does not follow directions	___ is withdrawn and/or daydreams
___ refuses/fails to complete work	___ is verbally abusive/uses inappropriate language	X teases/threatens/intimidates others	___ cries
___ loses control	___ violates rules	___ destroys property	___ steals
X assaults others	___ is self-injurious	___ defies authority	___ other:

Describe the behavior (Describe specifically what the student does. For example, for 'loses control,' the description could include that the 'student yells, swings limbs, throws objects.')

E[redacted] threatens hits, kicks, punches and assaults peers. He does not follow adult directions.

Analysis of the Behavior of Concern

Data collection procedures (check all that apply)

X observations ___ interviews/rating scales ___ testing X other: referrals, suspensions, teacher input

House all data charts in the teacher file.

Frequency: How often does the behavior of concern occur? 1 times per: ___ hour ___ period X day ___ week

Duration: On average, how long does the behavior of concern last? 10 minutes per incident

Intensity: How would you rate the behavior? X high intensity ___ medium intensity ___ low intensity

Describe E[redacted]an hit,punch, kick and assault other students.

Where: Check to indicate where the behavior of concern is most likely to occur.

X classroom	X hallway	___ cafeteria
___ playground	___ parking lot	X gymnasium/sports field
___ bathroom	___ locker room	___ bus
___ library	X other: on and off school grounds	

Where does it not occur? ___

Who: Check to indicate who is present when the behavior of concern occurs.

X student's friends	X classmates	X teacher
___ instructional assistant	___ principal/administrator	___ volunteer/tutor
X older students	X younger students	___ parent
___ other: ___		

When: Check to indicate when the behavior of concern is most likely to occur.

X before school	X after school	___ during extracurricular activities
___ before lunch or recess	X during lunch or recess	___ after lunch or recess
___ during morning classes	___ during afternoon classes	X during passing periods
___ during assemblies	___ other: ___	

Student Name [redacted] Student ID [redacted]

When: If during class, indicate the types of activities during which the behavior of concern is most likely to occur.

- X during lectures
- __ during group work/labs
- __ during transitions
- __ when student thinks tasks are too difficult/easy/boring
- __ during large group discussions
- __ during long activities
- __ when tasks involve gross or fine motor skills
- __ other: _____
- X during independent work time
- __ during student-choice/directed time
- __ when student feels rushed to complete a task

When does it not occur? when working one on one

Antecedents: Check to indicate events/actions that typically occur prior to the behavior of concern and appear to be triggers.

- __ demand/requests made
- X consequences are imposed
- X redirected by an adult
- __ difficulties on the bus
- __ difficulties at home or daycare
- __ assigned perceived easy/difficult tasks
- __ interruption in routine
- __ illness/fatigue/hunger
- __ student-directed activities
- X lack of attention by others
- __ transition to a new task or setting
- X negative social interaction
- __ change in or lack of medication
- X provocation by a peer
- __ other: _____

Consequences: Check to indicate what happens as a result of the behavior of concern.

- __ is ignored by others
- __ loses a privilege
- X controls and/or stops an activity
- X receives a disciplinary referral
- X communication sent home
- __ altered schedule is developed
- __ receives attention
- X is reprimanded and/or given a warning
- __ peers retaliate
- X is restrained
- X is removed or suspended from school
- X other: 911 called
- X is redirected by adults
- X is removed from an activity or setting
- X is sent to the office/counselor
- __ parents are called
- X security is called

Hypothesizing the Function of the Behavior

Check possible functions of the behavior of concern that seem to answer the question: "What is the student getting or avoiding by engaging in the behavior?"

- X to gain attention of adults and/or peers
- __ to avoid a demand/request, an activity, a person, or public exposure of poor skills
- __ to escape from the classroom, campus, and/or from a negative interaction
- X to control an activity, person's actions, time on task, or work output
- X to retaliate against an adult, peer, and/or parents
- __ to gain a sense of belonging
- __ to express emotion
- __ other: _____

Hypothesis statement: The student is engaging in this behavior in order to

gain attention, retaliate against a peer, and to control people and situations.

This behavior can be attributed primarily to a

- __ skill deficit (is mainly an instructional issue). The student does not have the necessary skill to perform the desired behavior.
- X performance deficit (is mainly a motivational issue). The student has the necessary skill to perform the desired behavior, but fails to do so.

Student Name E[redacted] E[redacted] Student ID [redacted]

IDEA '97 requires that a Behavior Intervention Plan be developed when a student's behavior impedes his/her learning or that of others, puts the student or others at risk for injury, or could lead to a change in placement. BIPs apply to all students, not just those identified as having emotional and/or behavioral disabilities. Information from the FBA is used to develop the BIP.

Behavior Intervention Plan

Date of meeting 11/23/2005

Behavior of concern as identified in the FBA:

E[redacted] threatens, hits, kicks, punches, and assaults peers. He does not follow adult directions/school rules.

Hypothesis statement: The student is engaging in this behavior in order to

gain attention, retaliate against a peer, and to control people and situations.

This behavior can be attributed primarily to a

- ___ **skill deficit** (is mainly an instructional issue). The student does not have the necessary skill to perform the desired behavior.
- X **performance deficit** (is mainly a motivational issue). The student has the necessary skill to perform the desired behavior, but fails to do so

Skill and Performance Areas to be Taught

Based on the FBA's hypothesis, check the skill areas that will be the focus of the BIP.

Skill Deficit

- ___ skills for gaining attention of others
- ___ skills for responding appropriately to tasks that may appear too difficult, too easy, or boring
- ___ skills for interacting with people, even those he/she may want to avoid
- ___ skills for dealing with negative interactions
- ___ skills in friendship and peer relations
- ___ skills for responding appropriately to demands or requests
- ___ skills for coping with and for participating in activities
- ___ skills for dealing with situations that require physical effort
- ___ skills for managing and increasing time on task and/or work output
- ___ other:
- ___ skills for working cooperatively with peers
- ___ strategies for coping with sensory input
- ___ skills for responding appropriately to adult directives and requests
- ___ skills for communicating needs and expressing feelings

Performance Deficit

- X develop reinforcement system for appropriate behavior
- ___ other: _____
- X teach student to self-manage and self-reward appropriate behaviors
- X teach student to recognize his/her successes and to celebrate them

Behavior to be Developed or Strengthened

Briefly describe exactly what the student will be taught.

To appropriately handle negative peer interaction without verbal or physical assaults. To resist negative peer pressure.

Who will teach the behavior? *If specially designed instruction is to be provided by someone other than a special education/ESA certified staff member, a Plan for Non-Special Education Certificated Staff to Provide Specially Designed Instruction must be prepared.

- X special education teacher
- X instructional assistant
- X general education teacher
- ___ outside agency (e.g., drug and alcohol treatment)
- X school counselor
- ___ other: _____

How will the behavior and related skills be taught? (check all that apply)

- ___ direct instruction
- ___ 1:1 instruction
- X through discussions
- X small group instruction
- ___ through use of role play
- X through modeling
- ___ large group instruction
- ___ through drawing
- ___ other: _____

Where will the behaviors be taught?

- X special education classroom
- X general education classroom
- X other: counselors

When will the behaviors be taught? at all available times

☐ Parent ☐ Teacher File ☐ Therapist File ☐ Compliance File

Student Name [redacted] Student ID [redacted]

Where will the behaviors be practiced?

X special education classroom	X general education classroom	X cafeteria
___ playground	___ parking lot	X gymnasium/sports field
X hallway	X other: on and off school grounds	

How will the behavior be reinforced (extrinsic: verbal praise/reinforcers; intrinsic: self-monitoring/student reflection)?

verbal praise
self monitoring
free time
classes out of self contained room
class rewards

How will staff respond to the behavior if it occurs? (e.g., proximity control, private conference with the student, giving the student choices, providing the student private space and "cool down" time, redirecting the student's behavior)

proximity
private conference
cool down time
security called
restrained
911 called

Consequences if the behavior continues or escalates (check all that apply)

X communication is sent home	X parents are called	X is restrained
X is removed or suspended from school	X is sent to the office/counselor	X security is called
___ altered schedule is developed	X receives a disciplinary referral	X other: 911 called

Is a crisis intervention or aversive plan needed? ___ yes X no If yes, specify.

Is a health care plan to monitor/report on effects of medication needed? ___ yes X no If yes, specify.

Monitoring and Assessment

When will the student performance of the behavior be monitored? (check all that apply)

X before school	X after school	___ during extracurricular activities
___ before lunch or recess	X during lunch or recess	___ after lunch or recess
X during morning classes	X during afternoon classes	X during passing periods
___ during assemblies	___ other:	

How will student progress be monitored?

X checklists/rating scales ___ observations X point sheets ___ student conferences ___ other:

How often will student progress be monitored? X daily ___ weekly ___ monthly

Who will monitor student progress? X special education teacher X other IA

How will outcomes be reported? ___ chart form X summary statement X other: phone calls home

Student Name [redacted] Student ID [redacted]

Adjusting the Learning Environment to Support the Development of Positive Behaviors

Check all interventions to be put into place or continued to support the student's development of positive behaviors. *Documentation of interventions (e.g., behavior reports sent home, contracts) is to be housed in the teacher file.*

Rules and Consequences

- X school/classroom rules are posted, enforced, and reviewed
- X student and parents have been informed of consequences for violation of school/classroom rules/policies

Environmental Considerations

- X room is arranged to promote positive behavior
- X there is calm place where the child can choose to go as necessary
- X group and individual learning areas are available in the classroom
- X distractions are limited

Curricular and Instructional Accommodations

- X curriculum is at an appropriate level of difficulty
- X assignments are adjusted (e.g., more time, fewer items)
- X information is presented in visual/auditory formats
- X instruction is broken down into steps and clustered into short-learning segments with breaks
- X instructions are presented orally and in writing, with check-ins for student understanding
- X instructional approaches are varied
- X study skills and organization skills are taught
- ___ child is offered choices

Communication between Home and School

- X parents are contacted concerning behavioral incidents
- X conferences are held with parents
- X behavior report is sent home to parents
- ___ home reinforces school behavior

Social Skills

- ___ instruction in social communication is provided (e.g., pragmatics)
- ___ instruction in social skills is provided (e.g., friendship, working in groups)
- X instruction in problem solving is provided (e.g., steps in problem solving and alternative strategies)
- X instruction in conflict resolution skills is provided (e.g., using I statement, negotiating)

Behavioral Accommodations

- X classroom routines are clearly established and reviewed
- X behavior management system is in place
- X classroom schedule is clearly established each day
- X students are prepared for transitions
- X student has permission to remove him/herself from the group when anxious, frustrated, angry, etc.
- X a point or level system is implemented
- X student is allowed to move about the room or stand when completing work, as appropriate
- ___ a behavior contract is implemented
- X self-management techniques are implemented
- X daily/weekly charting of behavior paired with reinforcement is in place
- X feedback and reinforcers are provided

Comments related to supports:

[redacted] may request ot speak to a counselor when upset or angry.

Student Name [redacted] Student ID [redacted]

The Individualized Transition Plan (Ages 14 - 16) is designed to clearly communicate to the parents, student and providers the transitional services that will be made available for the student. The ITP (Ages 14 - 16) is individualized to reflect the unique needs of the student and how these needs will be addressed to permit the student to transition to post-school activities.

Individualized Transition Plan Ages 14-16

High School Units/Graduation X not applicable because of grade level
Anticipated date of graduation 06/30/2010 Course of study focus: X jr/college prep ___ vocational/trade ___ other
Number of credits completed _____ Number of credits remaining _____ Grade point average _____

Summary of Functional Vocational Evaluation and Present Levels of Performance in the Area of Transition (Information may be provided here or included in the present levels of performance section of the IEP.)

Student Interests

art, search for stuff, computer graphics and inventing games, other forms of art
cartooning, creating video games, animation

Student Aptitude

art, drawing, cartooning, scripting,

Student Achievements

Desired Post-School Outcome
Indicate projected activity in each area.

Post-secondary Education
- X college program (4 years)
- ___ community/technical college program (2 years)
- ___ adult education
- ___ other: _____

Employment
- X competitive
- ___ supported
- ___ other: _____

Community Living
- X independent
- ___ supported
- ___ family
- ___ other: _____

Recreation/Leisure
- X independent
- ___ supported
- ___ family
- ___ other: _____

Transportation
- X independent
- ___ public
- ___ supported
- ___ family
- ___ other: _____

01010250

Student Name [redacted] Student ID [redacted]

Proposed Course of Study to Achieve Desired Post-School Outcomes

Academic Courses:

Elective Courses:

Vocational Courses/Activities:

Community-based Activities:

Daily Living Activities:

Student Name El[redacted] E[redacted] Student ID [redacted]

Summary of Services Matrix

Special Education Services

Specially designed instruction will be provided by appropriately qualified special education/ESA certificated staff, or designed and supervised by this staff. Student progress will be monitored and evaluated by qualified staff.

Services Delivered by Special Education Teachers

Service	Initiation Date	Frequency (Minutes per week)	Location	Duration	Position Providing Instruction*
math	11/23/2005	300	special ed class	1 yr	special ed teacher
reading	11/23/2005	300	special ed class	1 yr	special ed teacher
written expression	11/23/2005	300	special ed class	1 yr	special ed teacher
writing in the content area	11/23/2006	300	special ed class	1 yr	special ed teacher
social/behavior skills	11/23/2005	300	special ed class	1 yr	special ed teacher

Services Delivered by Related Service Providers (e.g., occupational/physical therapy; speech language therapy; audiology)

Service	Initiation Date	Frequency (Minutes per week)	Location	Duration	Position Providing Instruction*

*For services provided by a non-certificated special education staff member, a *Plan for Non-Special Education Certificated Staff to Provide Specially Designed Instruction* must be developed.

Total number of minutes receiving special education service regardless of setting 1500

Related services, supplementary aids and services, and program modifications. *Related services* are transportation and such developmental, corrective, and preventative and other supportive services as are required to assist a special education student to benefit from special education (WAC 392-172-055). *Supplementary aids and services* means aids, services, and other supports that are provided in general education classes or other education-related settings to enable special education students to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements (WAC 392-172-065). *Program modifications* include the types of supports provided to general education teachers, paraeducators and others who will be assisting the student in achieving IEP goals and objectives in general education settings. List frequency, duration, and location, as appropriate.

Related services, supplementary aids and services, and program modifications.

return to self contained room if needed
speak to counselor for deescalation if needed
more time for assignments

Transportation ___ yes X no **If yes, describe individual student need:** ___

Parent Involvement

planner check
homework support
attend meetings as needed

Offered Placement X no change proposed. If yes, see included Program Placement form.
School Building Aki Kurose Program Description self contained EBD

Student Name [redacted] Student ID [redacted]

Signature Page **Date Completed** _____

Parents received a copy of the procedural safeguards prior to/during this meeting. _____ **parent initials**

Signature of Participating Committee Members
Signature is utilized only to document individuals participating in the development of the IEP.
Parental signature does not constitute agreement or disagreement.

Printed Name	Signature	Printed Name	Signature
[redacted] rdian __ Surrogate	[redacted]	[redacted] Student __ Adult Student	[redacted]
__ Parent __ Guardian __ Surrogate		Administrator or Designee	
Maureen Davis Special Education Teacher	Maureen Davis		
		School Psychologist/Test Interpreter (required for initial IEP)	
General Education Teacher			
		Related Service Provider:	
Other:		Other:	

If a general education teacher did not attend IEP meeting, explain his/her participation in the development, review, and revision of the IEP or why participation was not appropriate:

verbal and written input was given

Other individuals who will be informed of his/her responsibilities in implementing the IEP:

Parent Agreement/Disagreement with Proposed Plan

I, _____ agree/disagree with the following IEP components:
parent signature

Present levels of performance	___ agree	___ disagree
Goals and objectives	___ agree	___ disagree
Special education services	___ agree	___ disagree
Placement	___ agree	___ disagree
Included documents (list each; e.g., FBA, BIP, ITP)	___ agree	___ disagree

Required for Initial Placement Only: Written Parent Permission

My rights and those of my child regarding procedural safeguards have been fully explained. I understand that my child requires special education. I give consent for my child to receive special education services. I understand when I give consent, that it is voluntary, and that while it can be revoked, revocation is not retroactive.

Parent Signature _____ Date _____

I do not give consent for my child to receive special education services at this time.

Parent Signature _____ Date _____