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SUPREME COURT
OF THE STATE OF WASHINGTON

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MITCH DOWLER and IN CHA
DOWLER, individually and as limited
guardian ad litem for NAM SU CHONG,
et al.,

Appellants,

vs.

CLOVER PARK SCHOOL DISTRICT,
NO. 400,

Respondent.

NO. 84048-2

FIFTH
STATEMENT OF
ADDITIONAL
AUTHORITY

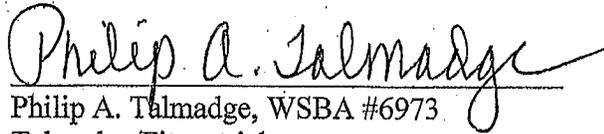
COME NOW the appellants and submit the following additional
authority to the Court pursuant to RAP 10.8:

- *Payne v. Peninsula School District*, ___ F.3d ___, 2011 WL 3211503 (9th Cir. 2011) (in an en banc decision, the 9th Circuit overruled its prior decisions in *Robb* and other cases and held that IDEA's exhaustion requirement was not jurisdictional and that in applying the exhaustion requirement of 20 U.S.C. § 1415(I), a court must look to the relief being sought by the party rather than the party's injury: "We hold that the IDEA's exhaustion provision applies only in case where the relief sought by a plaintiff in the pleadings is available under the IDEA. Non-IDEA claims that do not seek relief available under the IDEA are not subject to the exhaustion requirement, even if they allege injuries that could conceivably have been redressed by the IDEA. We overrule our previous cases to the extent that they state otherwise and conclude that, although the district court properly dismissed Payne's IDEA based section 1983 claim, it should not have dismissed her non-IDEA claims on exhaustion grounds." The court further determined that a claim for knowing and intentional infliction of excessive force by school district personnel is

cognizable under the Fourth Amendment and exists separate and apart from the denial of a FAPE, irrespective of the fact that the alleged excessive punishment took place in a special education classroom.).

DATED this 1st day of August, 2011.

Respectfully submitted,



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DECLARATION OF SERVICE

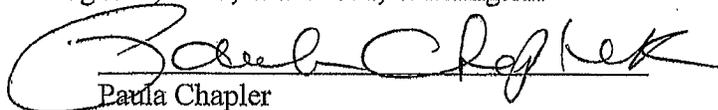
On this day said below, I emailed and deposited with the U.S. Postal Service a true and accurate copy of the Fifth Statement of Additional Authority in Supreme Court Cause No. 84048-2 to the following parties:

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Clerk's Office
415 12th St. W
Olympia, WA 98504-0929

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: August 1, 2011, at Tukwila, Washington.



Paula Chapler
Talmadge/Fitzpatrick
DECLARATION