

RECEIVED

FEB 14 2000

intendent of Public Instruction  
Legal Services

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

MAILED  
SHS-SEATTLE  
FEB 11 2000  
OFFICE OF  
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:  
  
CENTRAL KITSAP SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. SPI 99-113

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

A hearing was held before Administrative Law Judge (ALJ) JANICE E. SHAVE in Silverdale and Seattle, Washington on December 7, 8 and 21, 1999. The parents of the student whose education is at issue (hereinafter the Parents and the Student) appeared at the hearing and were represented by Melanie C. deLeon and Susan C. Eggers, legal interns, and by Raven Lidman, supervising attorney with Seattle University School of Law. The Central Kitsap School District (the School District) was represented by Sharon Swenson Howard, Attorney at Law.

The record was left open for the submission of post-hearing materials. Due to inclement weather making filing of documents difficult for the Parents's representative, the record closed January 21, 2000. The Order was due out February 11, 2000, which was three weeks following the close of the record, consistent with the request of the parties.

The Administrative Law Judge, having sworn the witnesses, heard testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

**STATEMENT OF THE CASE**

1. By letter dated October 28, 1999 and received by the Office of the Superintendent of Public Instruction (OSPI) November 3, 1999 the Parents requested a due process hearing to challenge the School District's proposed Individualized Education Program (IEP) program location at Ridgetop Junior High School (Ridgetop). The Parents also sought a stay-put order placing the Student at Klahowya Secondary School (KSS).

2. The [redacted] year old Student is currently attending KSS in the School District, where [redacted] is enrolled in the [redacted] grade as a special education student in a self-contained life skills program for mildly retarded students. The average functional IQ of the other students in his life skills class at KSS is approximately 80.

3. On December 1, 1999 a prehearing telephone conference was conducted, and an order entered granting the Parents' stay-put request that the Student be placed at KSS pending issuance of the final administrative decision. The Student has attended KSS since the start of the 1998-1999 school year at the request and insistence of the mother, and against the advice of the School District. This placement began as a two week trial period, continued during lengthy settlement discussions between the Parents and the School District, then continued during the pendency of two prior requests for hearing, one made by the School District and one by the Parents. The 1990-1999 school year ([redacted] grade) was completed at KSS pending the completion of an Independent Educational Evaluation (IEE) by Betty Jones, Ph.D. The School District has opposed the location of delivery of services to the Student at KSS since September 1998.

4. The Student was enrolled in the School District in [redacted] grade, and prior to that participated in home-schooling through the School District for two years while an elementary student. This dispute involves the Student's placement for [redacted] grade, during the school year he is [redacted] to [redacted] years of age.

### ISSUES

Whether the educational program proposed for the Student by the School District, at Ridgetop, satisfies the procedural and substantive requirements of a free and appropriate public education (FAPE) as defined by the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC) § 1400 *et seq.*, applicable state and federal regulations, and applicable precedent.

### **FINDINGS OF FACT**

#### BACKGROUND

1. The Student is a [redacted] year old [redacted] (date of birth [redacted]) with cerebral palsy, mild to moderate mental retardation (motoric and cognitive delays) and blindness in his right eye. and some vision problems in his left eye. His functional IQ is 51. He

performs academically at the pre-K through grade 1 level. He is a friendly, emotionally healthy child with high self-esteem who enjoys school, is eager to learn to read and write. He presents no significant discipline problems.

2. He resides in the home of his adoptive mother and father. He has a large extended family, since his adoptive parents had 6 birth children, and served as foster parents for many, many children, eventually adopting 5 children. Three of the adopted children receive or have received special education services. Many of the extended family members live near the Student and his parents.

3. The Student has been found to be eligible for special education services as a multiply-handicapped child.

4. The Student attended elementary school in the School District until the [REDACTED] grade, when the parents home schooled him, with assistance from the School District. The Student was home schooled because he was discouraged he was not learning to read or write at school, although he was eager to learn to do both. He continued to be home-schooled for fifth grade. He did not learn to read or write after two years of home schooling, although his Mother reported some progress which did not appear in test results administered by the School District. He then attended [REDACTED] grade (19[REDACTED]-19[REDACTED] school year) in a self-contained classroom at Tracyton Elementary School (Tracyton). Tracyton was not the Student's neighborhood school. It was the school in the School District with an appropriate program for the Student. It has a special education program which serves the District's mildly to moderately mentally retarded students. Students from the classroom the Student attended at Tracyton normally progress on to junior high school at Ridgetop.

5. The Student was provided transportation by the School District from his home to Tracyton on a special education bus. He experienced some bladder control difficulties with the length of the bus ride. The Parents believed this was related to school staff providing the Student with a beverage within the last one hour of school. They requested the staff withhold fluids for the last one hour of the school day. The Parents were unable to work this problem out to their satisfaction by the end of the [REDACTED] grade school year.

6. [REDACTED] was the Student's sixth-grade teacher at Tracyton. An Individualized Education Plan (IEP) was in place for the Student while at Tracyton. The last IEP in place while the Student was at Tracyton was signed May 21, 1998. School District Exhibit 13. The IEP noted on page 6 that in the Fall of 1998 the Student would be going to junior high school, and a change of transportation would be completed upon district-level placement before August of 1998. The IEP provided on page 7 of 7 that the placement option selected for the Student was special education class with integration into general education class and/or community.

7. Handwritten onto the IEP by [REDACTED] after that entry were the words "Normal Progression to Junior High in Sept." She felt it was not appropriate for the Student to remain at Tracyton after the sixth grade, and considered "normal progression" for the Student to be on to junior high school. [REDACTED] was a part of the Student's multidisciplinary team (MDT team), and as such she recommended the Student attend Ridgetop as his junior high school.

8. Although Ridgetop was the program recommended by virtually every person in the School District for the Student after completion at Tracyton, the Parents wanted the Student to attend KSS, which was the neighborhood school. It would mean the Student could ride the regular education bus with neighbors and relatives, which was a shorter ride than the one to Ridgetop (20-25 minutes as opposed to 40-50 minutes each way). He could attend school with various members of his extended family, which is very important to the Student and the Parents.

9. An older brother of the Student attended Ridgetop's self-contained special education program, so the Parents had familiarity with the program. That brother has a functional IQ approximately 30 points higher than the Student's, although that brother is not as outgoing or sociable as is the Student.

10. The Parents strongly disagreed with the proposal for the Student to attend Ridgetop, and, although all School District staff opposed the idea of educating the Student at KSS, the Parent succeeded in working out an agreement with the School District for the Student to be placed at KSS for a 2-week trial period at the beginning of his [REDACTED] grade year.

11. As part of the 2-week trial period agreement, the Parents agreed the Student's mother would be in the classroom to help the teachers and teachers' aides. The mother did not understand the nature of the help that a parent does in the classroom, and felt that being asked to run errands for the teaching staff and copy papers showed that the teaching staff did not really need her. These typical types of assistance performed by parents free up the teaching staff to focus their attention on the students.

12. After only a few days, the Student's mother stopped going in to the school to help out. She did not notify the teacher or anyone in the School District she had changed her mind about her portion of the agreement, or about her disagreement with the type of tasks she was asked to do.

13. The School District staff in the KSS classroom felt the temporary placement was inappropriate and not successful for the Student from the beginning. The Student had physical difficulties, related to musculoskeletal problems related to his cerebral palsy. He bumped into things, and fell from time to time. He needed to be closely watched and accompanied at all times for his safety.

14. The staff at KSS attempted to implement the Student's May 21, 1998 IEP. The Student was observed to be having academic difficulties following along with the class and operating independently outside of the classroom. The Student was not able to participate in the KSS classroom with classmates on academics. His classmates all had a higher functioning level than he did. All his education needed to be done with one-on-one tutoring. The School District and the Parents spent significant efforts to each communicate their view of what the Student's functional abilities were, and where he should best be educated. They were not able to achieve agreement, and in the Fall of 1998 the Parents requested the School District fund an (IEE). The School District then filed a request for a due process hearing to demonstrate the evaluation it had conducted was appropriate. The Parents then requested a separate due process hearing request for context the educational program offered.

15. These two due process hearing requests were consolidated and subsequently settled February 4, 1998. The School district agreed to pay for an IEE to be conducted by Betty L. Jones, Ph.D., and the Student would continue at KSS until that

was completed. The School District expected Dr. Jones would conduct the IEE prior to the end of the 1998-99 school year, and before the then-current IEP of May 21, 1997 expired. Dr. Jones was suggested by the Parents' then-attorney, and both the Parents and the School District agreed to her selection, apparently without being aware of what Dr. Jones's availability was.

16. The School District made arrangements to have Dr. Jones conduct the IEE as soon as possible, but Dr. Jones was not available to perform that until May 10, 1999. However, in the meantime Dr. Jones traveled to the School District, observed both the Ridgetop and KSS programs, and met with the Parents and the Student in preparation for the May 10, 1999 scheduled IEE.

17. The Parents canceled the May 10, 1999 scheduled IEE, apparently because the Student's Mother believed it conflicted with a physician's evaluation appointment through the ██████████ Hospital in Portland where the Student was scheduled to have surgery on his leg or legs sometime in late summer, 1999. The Parent rescheduled Dr. Jones's IEE appointment for June 21, 1999, but the Parent accepted an invitation to an out of state family wedding and canceled that appointment, as well. The IEE was rescheduled for August 16, 1999.

18. The School District's Assistant Director of Special Education, David Sours, then wrote the Parents a letter urging them to keep the August 16, 1999 appointment, and emphasizing that an updated IEP must be in place before the Student could enroll in the Fall for 8th grade. The letter also notified the Parents of an IEP meeting to be held August 20, 1999 and stated this meeting must be held whether or not the IEE took place. The Parents canceled the August 16, 1999 meeting with Dr. Jones.

19. On August 17, 1999 the Mother and the Student appeared at KSS and attempted to enroll the Student for the 1999-2000 school year. The Student was not allowed to enroll because he had no current IEP.

20. The School District's Assistant Director of Special Education called the Parent August 17, 1999 to discuss the Student's education for the 1999-2000 school year and the cancellation of the August 16, 1999 IEE. The Mother then informed the School District that the Student would not be medically able to attend school at the start

of the school year, because of the surgery. The Mother did not feel it was imperative to have an IEP in place by the start of the school year because of this

21. On or about August 23, 1999 the Assistant Director of Special Education called the Parents to discuss home tutoring of the Student, and was then informed *The Student would, after all, be starting school on time.* The School District proposed an IEP be held August 27, 1999 so the Student would have a current IEP and be able to begin the school year on time. The Parents declined that date, and the parties agreed to attend an IEP meeting September 3, 1999.

22. Prior to that date, and prior to the formulation of an IEP, the Parents again attempted to enroll the Student at KSS. The Student was not allowed to enroll, since there was no current IEP. His records had been removed from KSS and transferred to Ridgetop, which was a surprise to the Parents. This made the Parents believe the School District had already made its decision to transfer the Student at Ridgetop, even before the IEP meeting was held.

23. The first 1999 IEP meeting was finally held September 3, 1999. The School District proposed a draft IEP which placed the Student's program for 1999-2000 at Ridgetop. The Parents did not agree, and on September 14, 1999 the Parents met with the School District Superintendent to discuss the Student's placement. They were referred back to the IEP process.

24. On September 21, 1999 another IEP meeting was held, a number of changes were made to the draft IEP based upon the Parents' input. The Parents did not want the IEP to include any school staff instructing the Student on personal hygiene, for instance. They believe that is an area where the family should provide instruction, not the schools. The School District did not agree to change the location of delivery of educational services from Ridgetop to KSS. The Parents continued to object to Ridgetop, and specifically objected to the lack of academic emphasis in the Ridgetop program. They also objected to the community involvement at the Ridgetop program. The Parents refused to sign the IEP. It was finalized and signed by the other members of the IEP team and mailed to the Parents September 24, 1999.

25. The Parents refused to send the Student to Ridgetop, saying they were home schooling the Student, instead. No formal paperwork electing home schooling

was received by the School District. The Student did not receive any educational services from the School District during that time, and there is no evidence he received any home schooling.

26. The IEE was at last completed October 15, 1999 and the final report of Betty Jones, Ph.D. was delivered orally to the parties November 15, 1999.

27. The Parents requested this due process hearing November 3, 1999. The Parents requested a stay-put order, and asserted the School District had failed to provide the Student with a free, appropriate public education (FAPE) and requested compensatory education for the time the Student was not in the public school system and was not receiving services from the School District (September 1 through approximately December 7, 1999).

28. On December 6, 1999, just prior to the due process hearing, the parties conducted another IEP meeting to consider Dr. Jones's recommendations based upon the IEE she had conducted. Some agreements were reached, but the parties were again unable to agree on the location of the delivery of services. School District Exhibit 11A is the amended IEP proposed by the School District December 6, 1999 after additional input from the Parents.

#### COMPARISON OF KSS AND RIDGETOP PROGRAMS

29. KSS is a secondary school composed of grades 7 - 12 with approximately 1,000 full time equivalent students. It has a general student population with students ranging in age from 12 to 18+ and offers various special programs, including a special education program for severely medically fragile children, a program for learning disabled students that are fully included in the general education program, and the self-contained life skills class which the Student has attended from 1998 to date.

30. The KSS program has one teacher who has a Bachelor's degree, a state certificate in education and a special education endorsement. The self-contained classroom has nine students with two assistants. Those students function at a significantly higher level than does the Student; they are socially at grade level, and are much more independent than is the Student. Those students function at grade levels three through eight, and have IQs in the range of 80 and above. The education is

academically-oriented and aimed at learning abstract concepts in math, reading and writing, rather than primarily life skills.

31. The Student is not treated like one of the regular classmates by the other students in the life-skills class. [REDACTED] is not treated like one of the regular schoolmates by the regular education students, although [REDACTED] is well liked by the regular education student body. [REDACTED] is treated as a mascot.

32. The Student was unable to follow the class and school routine independently. Although the staff worked with [REDACTED] and with the parents to modify the program at KSS, the Student required constant supervision. [REDACTED] would wander off, and was generally to be found at the gym. All [REDACTED] academic education was delivered to [REDACTED] one-on-one from an adult, while [REDACTED] classmates were able to work on assignments as a group. [REDACTED] participated with classmates on recycling and cooking assignments, only. This did not allow [REDACTED] significant peer interaction.

33. Ridgetop has approximately 806 full-time-equivalent students in grades 7 through 9. It serves a large general education population serving students ages 12 through 14. It has special education and related services available in a self-contained life skills classroom. That classroom has 14 students, with one teacher and five full-time adult assistants. The students there function at levels from pre-k through grade 2 and have functional IQs in the range from the mid-40s to the high 60s. One student there has an IQ of 80.

34. The program offered for 1999-2000 for the Student at Ridgetop focuses on functional skills, practical application of academics, community activities and vocational work. It is aimed at the cognitive level the Student is now performing at, and is capable of performing at. The program is presented in a manner appropriate to and consistent with the Student's needs and abilities. Because there are other students with similar achievement levels and abilities, it would be possible for the Student to be served in the Ridgetop life skills class along with other students, where [REDACTED] could interact as a peer.

35. Ridgetop has a regularly scheduled weekly session with a speech/language pathologist (SLP) and with an occupational/physical therapist (OPT). A school nurse and a school psychologist are available, and work with the class on a

frequent basis. The program also has eight peer tutors. The program has additional support and supervision to aid students such as the Student. The proposed placement would allow the Student to engage in hands-on activities; this is the type of activity that [REDACTED] enjoys and does well. It is focused less on abstract academic instruction, and more on physical activities and practical, functional life skills acquisition.

36. Both schools have the same length school day. Both provide a wide variety of student activities and class options for mainstreaming and extracurricular participation for general education and special education students. The schools are located a bit more than 6 miles apart. Both have qualified, certificated general and special education staff.

37. The programs at Ridgetop and at KSS are at the same level of restrictiveness on the continuum of placement options. Both programs are self-contained life skills programs for children with mental retardation, taught by comparable certified teaching staff and aides. Whether the Student is educated at Ridgetop or KSS, [REDACTED] program would include the same number of self-contained life skills classroom hours, and the same number of classroom hours of mainstreamed general education for non-academic subjects (with some modifications)

#### DR. JONES'S IEE RECOMMENDATIONS

38. Dr. Jones is a private licensed psychologist. She is well-qualified to perform an IEE, and to issue recommendations for the Student. Her IEE revealed the Student performs at the K - 1st grade level, and has a mental age equivalent of 6 years, 2 months in math, 9 years, 2 months in verbal skills and 6 years, 2 months in motoric (motor skills) tests. He tested with a verbal IQ of 60 and a performance IQ of 49, which converts to a full scale, or functional IQ of 51. These scores are on the cusp between the mild to moderate mental retardation categories. [REDACTED] has deficits in visual and auditory memory, visual/spatial performance, and abstract reasoning [REDACTED] has comparative strength in tactile memory, satisfactory attention skills, and a very positive socio-emotional status.

Dr. Jones's IEE report recommends the Student's program be concretistic (meaning related to the real world, not abstract) and focus on functional skills and hands-on tasks. The appropriate reading program for the Student would need to be

creatively designed. The Student needs ongoing speech/language therapy. Dr. Jones recommended the Student's program include self-talk (from the Student to the Student), subtle visual cues, multimodal curricula, clear instructions, large print books (although the Student's visual acuity/difficulties are not agreed upon by the various experts) and opportunities for repetition and review. The type of program Dr. Jones advises is appropriate for the Student closely mirrors the program available and offered at Ridgetop, and does not closely match that available at KSS. The parties agree the IEE is an accurate reflection of the Student's current abilities.

39. Dr. Jones notes the Student's self-esteem is currently good, but advises care must be taken so that the Student has successes at school, so [REDACTED] can make progress and so that [REDACTED] self-esteem is not imperiled.

#### PARENTS' POSITION AND OBJECTION TO RIDGETOP

40. The Parents are opposed to the School District's proposed placement of the Student at Ridgetop for a variety of reasons. The crux of the difference of opinion is the Parents' belief that the School District is undervaluing the abilities of the Student, and will condemn the Student to achieve less than he is capable because Ridgetop emphasizes life skills and does not stress academics. The Parents note the Student has achieved more than was predicted for [REDACTED] time and again since birth.

41. The Parents fundamentally disagree with the School District about the purpose of special education. The Parents feel it is the family's job to introduce the Student to the community, and to vocational skills. They note the Student already has a strong work ethic, and has performed actual work, along with family members, on a roofing job for a former neighbor. They note [REDACTED] has good social and living skills. [REDACTED] helps care for family animals, including pigs, goats, a horse, sheep, cows and rabbits. [REDACTED] is required to do, and does, a variety of household chores.

42. They do not want the Student to appear in the community with other special education students, fearing it will cause the Student to be identified by [REDACTED] disability and be marginalized in society. Their vision of the Student's future involves [REDACTED] significant involvement with other extended family members far into the future.

43. The Parents feel age [REDACTED] is far too young to begin to focus the Student's education on life skills and transitioning to an independent life, outside of school. They

do not appear to believe the Student will ever live a life outside of family support, even if he were to reside in a separate household. They believe it is the responsibility of the School District to devise creative ways to educate the Student in basic academic skills including math, science, history and most importantly to the Parents, reading. They fear the School District has given up on teaching the Student academics, and is trying to use a cookie cutter or pigeon hole approach to education. They believe an appropriate IEP means one-on-one education for the Student.

44. The Parents feel the ride to Ridgetop in a special education bus is inappropriate, as it takes too long and removes the Student from family, neighbors and friends. They note the extensive community activities undertaken at the Ridgetop program will require even more bus time, and less time for academics. They oppose education of the Student with the students in the life skills class at Ridgetop, as they feel those students are not good role models for the Student.

45. The Parents note the Student is happy at KSS, eager to go to school and eager to learn, especially eager to learn to read. [REDACTED] on the KSS team, and is a [REDACTED] for the KSS [REDACTED] team. The Parents feel these extracurricular activities are very important for the Student, who identifies with KSS, and has expressed [REDACTED] strong preference to remain there, noting [REDACTED] family likes that school. The family predicts the Student would not [REDACTED] or be a [REDACTED] on the Ridgetop team, due to difficulties with transportation, including the length of the commute for [REDACTED] and [REDACTED].

46. The Student made progress on only one of his IEE goals during the 19[REDACTED]-19[REDACTED] school year at KSS, but because the teacher sent home progress reports that said the Student was passing, and doing the agreed-upon job, the Parents believed the Student was making progress on his IEP goals, and believed [REDACTED] was being appropriately served at KSS. The Parents are satisfied with the education the Student has received at KSS. The believe [REDACTED] has improved in reading, math and handwriting.

#### SCHOOL DISTRICT POSITION

47. Each School District staff member who testified on behalf of the School District offered credible testimony that the Student could not be educated appropriately at KSS. Those witnesses included the Assistant Director of Special Education

(David Sours), the life skills teacher at KSS (Donna Gingery), the life skills teacher and special education department chair at Ridgetop (Donna Stanton), the principal at KSS (Lee Marcum), the chair of the special education department at KSS (Katie Coleman).

48. The School District staff are in agreement that although an education could be provided for the Student at KSS, it would require the Student to continue to receive virtually all of [REDACTED] academic instruction by an adult aide or teacher, further isolating the Student from any involvement with classmates. They note that now the Student has turned [REDACTED] they must begin to plan for [REDACTED] transition to an independent life, and assert it will take all the remaining [REDACTED] years until [REDACTED] turns [REDACTED] to assist [REDACTED] to become independent, including reading bus schedules, keeping track of [REDACTED] finances, reading sufficiently well to remain safe, and becoming and remaining employed.

49. The Student did work to the best of his ability while at KSS; however, [REDACTED] did not make any significant objective gains on [REDACTED] IEP goals or objectives since leaving Tracyton in June, [REDACTED] did accomplish one objective on the May 21, 1998 IEP.

50. *There is no evidence that the Student benefitted academically from the one-year placement at KSS, or that [REDACTED] made significant progress toward learning independent living skills. The subject matter offered is beyond his ability. It is not appropriate for the Student to receive all his academic instruction in isolation, with reliance upon a one-on-one adult teacher or aide.*

#### CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) Section 1401 *et seq.* (Individuals with Disabilities Education Act (IDEA)), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR 300 *et seq.*, and Chapter 392-171 Washington Administrative Code (WAC) (or Chapter 392-172 WAC for cases arising after November 11, 1995).

2. The Individuals with Disabilities Education Act (IDEA) (formerly the Education for All Handicapped Children Act) and its implementing regulations provide

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

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

103 S. Ct. at 3051.

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

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

103 S. Ct. at 3041, 3042.

4 The Student is eligible for special education under the criteria and definition for multiple disabilities. [REDACTED] is mentally retarded and health-impaired, according to criteria set forth in WAC 392-172-124, -136, and -134

5 The Parents allege the School District violated procedural requirements because the Student was not permitted to enter KSS at the start of the [REDACTED] [REDACTED]

grade) school year. At the beginning of each school year, each public agency (school) shall have in effect an IEP for every special education student. The IEP must be in effect before special education and related services are provided to an eligible student. WAC 392-172-158. The School District also attempted to comply with the requirements of WAC 392-172-156 (modified significantly effective 1-1-2000), which requires the School District to afford Parents an opportunity to participate in IEP meetings and scheduling the meetings at a mutually agreed upon place and time.

6. The School District made significant efforts to have a current IEP in place prior to the beginning of the 1999-2000 school year. It agreed to the Parents' request for an IEE, and agreed to the Parents' choice of experts to perform it. The District then continued to urge the Parents to keep the appointments for the IEE so the parties would have an up-to-date evaluation to utilize in writing the IEP. The School District wrote a letter to the Parents on July 1, 1999 reminding the Parents of the need for a current IEP before the Student could attend school in the Fall, and scheduled an IEP meeting for August 20, 1999. The Parents canceled that meeting, stating the Student would not be starting school at the beginning of the school year, so there was no need for an IEP meeting so soon. The School District then contacted the Parents again on August 23, 1999, and first learned the Student would be medically able to attend school at the beginning of the school year. The School District immediately proposed an IEP meeting be held August 27, 1999, which was prior to the start of school. The Parents did not want to meet on that date. The parties finally met for the first IEP meeting September 3, 1999. At that time, the School District proposed (orally, but not yet in writing) an IEP which would have enabled the Student to begin the school year virtually on time. The School District met with the Parents again September 21, 1999, and made some adjustments to the proposed IEP,, now reduced to writing, following suggestions made by the Parents.

7. Because the Parents refused to participate in the earlier IEP meeting which the School District had requested and attempted to schedule, the District found itself out of compliance with WAC 392-172-158, the requirement to have a current IEP in place. The delay in the completion of the IEP was caused by the School District's ongoing efforts to accommodate changes made by the Parents to the proposed IEP.

8. The School District's procedural violation of failing to have a current IEP in place at the start of the 1999-2000 school year resulted in denial of all educational services to the Student. In order to determine the value of that three week loss (start of school year through September 21, 1999), it is necessary to look at what progress would have been expected for the Student, based upon his prior one year at KSS. KSS would have been the Student's stay-put placement, had either party asked for a hearing in September, 1999. It is also the only location the Parents would have accepted. It is appropriate to evaluate the scope of the denial of services by measuring what was lost by the Student not attending KSS from the start of the school year until [REDACTED] was offered a FAPE. That loss is determined to be *de minimis*, in light of the lack of progress the Student made during the 19[REDACTED]-19[REDACTED] KSS school year.

9. The inquiry next turns to whether the School District offered the Student a FAPE for the 1999-2000 school year, and if so, when. The definition of "free, appropriate public education" is set forth at WAC 392-172-035. It is special education and related services which are provided at public expense, under local school district or other public agency supervision and direction, and with out charge to the parents, which meets the standards of the state educational agency and the state board of education, including the requirements of Chapter 392-172 WAC, and which are provided in compliance with IEP requirements of Chapter 392-172 WAC.

10. According to the US Supreme Court in *Rowley, supra*, a FAPE consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. A FAPE is provided if the student derives more than minimal or trivial progress in a placement.

11. The 9-99 IEP as written emphasizes the Student's integration into the larger community. The Parents oppose this, and expressed dismay at the hearing that the School District is focusing so far into the future, when the Student is only [REDACTED] years old at present. WAC 392-172-060, in effect in the Fall of 1999, required school districts to begin transition services (services which promote movement from school to post-school activities, WAC 392-172-060) when special education students reached age [REDACTED]. That regulation was amended to comply with changed federal laws, and school districts

are now required (effective January 1, 2000) to begin transition services at age [REDACTED] the age of the Student. The School District's emphasis on life skills in the context of transition services for this Student was consistent with the new law, and the IEP drafted in September, 1999 was to be implemented largely after January 1, 2000.

12. Evaluation of the Student's educational needs and achievement levels in light of the IEE performed by Betty Jones, PH.D., reinforces the appropriateness of the IEP offered by the School District in writing September 21, 1999. The appropriate placement within the School District for this Student is Ridgetop. FAPE cannot be provided for this Student at KSS. Academically [REDACTED] is not suited to KSS and its program, despite [REDACTED] preference to be a KSS Eagle and despite his Parents' preference that he be served at KSS. The two schools are on the same continuum of restrictiveness, as they are a self-contained life skills program supplemented by modified general education classes for non-academic subjects.

13. The length of time the Student would spend being transported to Ridgetop is a reasonable amount of time. The School District has offered to, and must, accommodate the Student with a restroom break, if needed.

14. The Parents assert the Student is entitled to compensatory education for the loss of three months of educational services at KSS. The Student did not lose three months of education due to the failure of the District to follow procedural safeguards. Instead, the Student was denied educational services for the period from the September 1, 1999 (the start of school in Fall, 1999) until September 21, 1999, when the School District proposed Exhibit 11, which offered the Student a FAPE. Thus, the Student lost those three weeks of education at KSS in a program that was not appropriate for [REDACTED], due to a combination of the Parents' refusal to meet prior to the start of the school year, and the School District's continuing attempts to fine-tune its proposed IEP.

15. The loss of educational services from September 21 through the issuance of the stay-put order was due to the Parents' refusal to send the Student to Ridgetop under an IEP which offered [REDACTED] a FAPE.


ORDER

1. The Parents' request for compensatory education is denied. Although the School District committed a procedural violation by failing to offer, in writing, a FAPE from September 3 through September 21, 1999, that violation is determined to be *de minimis*.

2. The School District offered the Student a free appropriate educational program for the 1999-2000 school year at Ridgetop as set forth in the IEP developed in September 1999 and amended December 6, 1999.

3. The IEP proposed by the School District in September 1999 which calls for Ridgetop as the location for services to be provided by the School District is the stay-put placement for the purpose of any further appeal.

Dated at Seattle, Washington this 11th day of February, 2000 .



JANICE E. SHAVE  
Administrative Law Judge  
Office of Administrative Hearings