

ART WANG
Chief Administrative
Law Judge



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

*One Union Square Suite 1500
600 University Street
Seattle WA 98101-1129*

February 15, 2000

Parent

[REDACTED]

Brenda J. Little, Deputy General Counsel
Seattle School District
815 Fourth Ave N
Seattle, WA 98109

In re: Seattle School District - Special Education Cause No. 99-38

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(e) (Individuals with Disabilities Education Act) or RCW 34.05.510-598 (State Administrative Procedure Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact the Legal Services office at OSPI at (360) 753-2298.

Sincerely,


William F. Lemke
Administrative Law Judge

c: Legal Services, OSPI
Deputy Chief ALJ, Jan Grant
Mary Radcliffe, OAH/OSPI Coordinator



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

IN THE MATTER OF:

SEATTLE SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 99-38

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
ORDER**

A hearing in the above-entitled matter was held before Administrative Law Judge William Lemke in Seattle, Washington, on June 8, 9, 10, and 11, 1999, and October 19, 20, 21 and 22, 1999. The parent and student were represented by William L.E. Dussault, Attorney at Law. The Seattle School District (District) was represented by Brenda Little, Deputy General Counsel. The Administrative Law Judge having sworn the witness, hear testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

STATEMENT OF THE CASE

The parent filed a request for due process hearing with the Office of the Superintendent of Public Instruction on March 26, 1999. The parent's request for hearing asked for the following remedies: 1) compensatory educational services for the student based upon the District's failure to develop and implement an IEP from September 8, 1998 through March 1999 to address the student's special education and related service needs, 2) an order for the District to convene an IEP meeting to sufficiently address completion of a transition plan, spelling objectives, and a positive behavioral support plan to address absences and tardies, 3) determination that the student required assistive technology in the form of a laptop computer to benefit from her instruction, 4) determination that the student required an orientation to [REDACTED] School similar to that which her non disabled peers were provided, with appropriate modifications based on her needs, 5) determination that the student required written instructions for her all of her classroom assignments, a written class syllabus for each class, and support from a special education teacher to assist her to understand the requirements of her class assignments, track time lines for completion of her class assignments, and assist the student with self-advocacy skills with regard to her needs,

6) payment of Dr. Wendy Marlowe's fees for assisting in the development of the student's IEP for the [REDACTED] school year, and 7) reimbursement by the District for the costs for the student's private placement at [REDACTED] during the summer of [REDACTED], part time during the [REDACTED] school year, and full time during the [REDACTED] school year.

A hearing was held on these issues on June 8, 9, 10, and 11, 1999. On June 11, 1999, the District's counsel stipulated on the record that "procedural violations" had been committed by the District "which denied the student a free, appropriate, public education (FAPE) for the [REDACTED] school year and that the student was entitled to compensatory education benefits plus other benefits such as a transition plan, behavioral plan, health plan, counseling, and other items."

The parties then agreed to meet to develop an IEP for the [REDACTED] school year which would address several of the issues for hearing. The parties met on July 12 and 29, 1999 and agreed upon a [REDACTED] IEP for the student. The parties requested additional hearing days for October 19 through 22, 1999 to complete the record to resolve remaining issues of: 1) whether the parent is entitled to reimbursement for the student's private schooling at [REDACTED] for periods beginning with the summer of [REDACTED], part-time during the [REDACTED] school year, and full-time during the [REDACTED] school year, 2) whether the parent should be reimbursed for services provided by Wendy Marlowe in addition to the District's payment to Dr. Marlowe for an independent educational evaluation of the student in March, 1998, and 3) to determine the extent and type of compensatory educational services to be provided to the student as relief for the District's failure to develop an IEP for the [REDACTED] school year.

FINDINGS OF FACT

1. The student is [REDACTED] years old and resides within the Seattle Public School District. [REDACTED] has attended school in the Seattle Public School District since [REDACTED] was in [REDACTED] with the exception of [REDACTED] grade year in [REDACTED] when [REDACTED] attended a full-time program at [REDACTED]. [REDACTED] also attended a summer school program there during the summer of [REDACTED] and a part-time program at [REDACTED] at the end of [REDACTED] regular school day during [REDACTED] grade year.
2. At the time of the request for hearing ([REDACTED] school year), the student was enrolled in the [REDACTED] grade at [REDACTED] School in the Seattle School District. The student is currently enrolled in the [REDACTED] grade as a full-time student at [REDACTED] School ([REDACTED] school year).
3. The student is currently eligible for special education and related services

as a health-impaired student. [REDACTED] is diagnosed with [REDACTED] and learning disabilities in the areas of spelling and written language. (See Exhibits 319,320).

4. The student has been diagnosed with [REDACTED] since the age of [REDACTED]. The parent informed the District of the student's health issues when [REDACTED] first enrolled [REDACTED] child in the Seattle School District and the student, District and parent have worked with these issues throughout the student's enrollment and formulated and adopted various health plans. The parent and District personnel have had a number of disagreements over health plans and enforcement of health plans.

5. The District and the student's parent have frequently discussed concerns regarding the level of support for diabetes management the student received at school each year. (Testimony of the parent, Rehder, Shaw, and Holland).

6. The student was diagnosed with [REDACTED] following an evaluation by Dr. Wendy Marlowe in March, 1998 (Exhibit and testimony from Dr. Marlowe). Dr. Tona McGuire has subsequently confirmed the diagnosis and is the student's treating counselor (Exhibits 086-104, 235-241 and testimony from Dr. McGuire).

7. The student's [REDACTED] has never been under full control. [REDACTED] experiences episodes of [REDACTED] and [REDACTED]. These incidents have been a factor in the student's social/emotional and school adjustment. (Testimony from Dr. Mauseth, Dr. McGuire, Dr. Marlowe).

8. The student has a history of difficulties in completing school work and acquiring skills in written language. [REDACTED] received Chapter I services in the [REDACTED] and [REDACTED] grades for reading. [REDACTED] was made eligible for special education at the end of [REDACTED] grade ([REDACTED] school year) as a student with learning disabilities. Severe discrepancies in achievement in written language and spelling were noted. Some mild difficulties in reading were also noted and recommendations for use of a multi sensory approach in the classroom were made. Additional recommendations for nurse support for [REDACTED] management, counseling to assist with adjustment issues, and use of methods to improve memory were made. (See Exhibits 025-032).

9. An IEP was developed for the student in the [REDACTED] grade ([REDACTED] school year) which provided for instructional support in written language and spelling in a resource room setting. (See Exhibits 031, 040-045).

10. The student attended [REDACTED] School [REDACTED], an alternative school within the Seattle School District, for [REDACTED] grade [REDACTED] and [REDACTED] grade ([REDACTED]) years.

11. Achievement testing by the District demonstrates that by the end of [redacted] grade, the student continued to function at or below the [redacted] grade level in written language and spelling, but functioned in the superior range in math and basic knowledge. (See Exhibits 048,056). Wide Range Achievement Testing referenced in the student's [redacted] grade IEP showed a spelling grade level of (-3) (See Exhibit 058). Specialized instruction offered to the student was a tutoring/phonics program for 15 minutes prior to the commencement of school each week. (Testimony of teachers and parent).

12. During the summer, [redacted], the parent enrolled the student in [redacted] a private, state-approved school for students with specific learning disabilities. The [redacted] program was specifically designed to provide intensive instruction in the areas of the student's learning disability. Prior to enrollment the parent did not request a summer school program for the student in the District or payment for this private program. The presented evidence demonstrates the student progressed and benefitted from the specialized instruction [redacted] received during the 6-week program. (Testimony of Dr. Susan Malmquist and Dr. Wendy Marlowe).

13. Because of the student's success in the [redacted] program in the summer of [redacted] mother enrolled [redacted] in the [redacted] at [redacted] own expense on a part-time basis in the Fall of [redacted]. The parent discussed the Morningside program with the school IEP team at [redacted] at the start of the [redacted] school year. [redacted] did not request District reimbursement for the program but did request the student's release one hour earlier than the end of the normal school day. The team agreed to have the student dismissed from school one period early each afternoon to attend [redacted]. [redacted] IEP for the year reflects [redacted] attendance at [redacted] and early dismissal to attend that program. (Exhibit 058).

14. The [redacted] instruction constituted the majority of the student's specialized instruction for remediation of [redacted] spelling and written language difficulties during the [redacted] school year. The District expressly recognized that the student would "leave [redacted] during [redacted] period daily to attend [redacted] to get specialized help with her writing." The District presented no evidence that the District attempted to coordinate and integrate this instruction into the student's regular and special education programs during the student's [redacted] grade year. The IEP included no such goals or objectives, but does reflect the parent's preference for the student attending all [redacted] regular classes without pullout for any major additional instruction for remediation of spelling and written language at [redacted].

15. While the District may have been able to offer the student a similar program to [redacted] there is no evidence that the District attempted to formally offer or provide such a program for either the student's [redacted] or [redacted] grade years. District

personnel did suggest that the student should consider a program other than [REDACTED] which could provide more remediation.

16. The student benefitted from [REDACTED] regular [REDACTED] grade program at [REDACTED] as evinced by [REDACTED] report cards and also benefitted from her instruction at [REDACTED] and made gains in the areas of written expression and spelling during her part-time attendance during the [REDACTED] school year.

17. At the end of [REDACTED] grade, in June, 1997, the student was reevaluated for [REDACTED] eligibility for continued special education services. The multi disciplinary team reviewed past evaluations and current progress and did not perform any additional evaluation procedures. This three-year reevaluation reflected that The student's performance and achievement in spelling/writing continued at the (-3) grade level. the team determined that the student continued to qualify for special education services under the category of learning disabilities "due to significant discrepancies between achievement and ability in the areas of reading decoding and written expression. [REDACTED] continued to need specially designed instruction implemented both in the regular program and in special education to correct deficits in reading and writing." (See Exhibits 066, 067).

18. Following the June, 1997 assessment, the parent placed the student for [REDACTED] grade year [REDACTED] at [REDACTED] on a full-time basis at the parent's expense. The cost of the student's full-time enrollment at [REDACTED] for the [REDACTED] school year was \$9,000.

19. The parent requested the District place the student at [REDACTED] at school district expense in her request for a reassignment of schools in the Fall, 1997. [REDACTED] called the student's principal at [REDACTED] and contacted the Seattle School District via letter to inform the District of her [REDACTED] enrollment at [REDACTED] and [REDACTED] continued dissatisfaction with the District program. (See Exhibits 071, 072, 073).

20. The parent testified that she was provided no information by the District concerning [REDACTED] rights to challenge the District-proposed placements and no information concerning [REDACTED] rights to placement at [REDACTED] at public expense. The District presented no evidence that the parent was provided any information by the District regarding [REDACTED] right to request private placement at public expense by the District.

21. In October, 1997, the parent made direct contact with the District's legal counsel to request private school placement at public expense at [REDACTED] (See Exhibits 078, 079). The district requested a hearing on the parent's behalf in response (Exhibit 075). That matter became Special Education Cause No. 97-91. This cause was dismissed without prejudice to the parent's rights to request an additional hearing if a parties did not satisfactory resolve these issues. Parties agreed at the time of

dismissal that the parent's request for reimbursement for the [REDACTED] school year would be considered as timely made if the hearing request was refiled. Parties agreed on the hearing record that an independent evaluation would be made at District expense.

22. Although the District had discussed and agreed to a different assessor, district personnel ultimately agreed to the parent's request to contract with Dr. Wendy Marlowe to complete the assessment. The District paid Dr. Marlowe for [REDACTED] services in completing independent educational evaluation of the student.

23. On February 25, 1998, Dr. Marlowe began [REDACTED] neuropsychological evaluation of the student. She saw the student again on three other dates to continue the evaluation and also interviewed the parent. Upon completion, Dr. Marlowe prepared a written assessment of her evaluation. The district did not contract with Dr. Marlowe for further services.

24. In October 1998 after the student had returned to school in the District at [REDACTED] and while the parent and District were attempting to schedule conferences to complete an IEP, the parent had a family medical emergency and had to travel out of state. The parent called district personnel from out of state and requested that Dr. Marlowe be allowed to attend the student's IEP meetings and represent her at the meetings. District personnel denied this request and did not schedule meetings while the parent was out of state. Thereafter the parent, parent's attorney, and Dr. Marlowe made several requests that the District fund Dr. Marlowe's attendance at IEP meetings. District personnel repeatedly denied these requests.

25. However, Dr. Marlowe did attend these meetings at the parent's request, attending over 30 hours of meetings. Dr. Marlowe participated in IEP conferences to assist in the development of the student's IEP on January 25, 1999; March 1 and 25, 1999; and July 12 and 29, 1999. (See Exhibit 175).

26. Dr. Marlowe recommended the student continue to be qualified for special education services, but that her category of eligibility be changed to "health-impaired" and that [REDACTED] receive specific support for [REDACTED] in the school-setting. She recommended psychotherapy to be paid for by the District as well as continued instruction by [REDACTED] for spelling and grammar. She also recommended word processing instruction and computer literacy instruction to replace the effort the student would otherwise expend completing extensive writing assignments. Dr. Marlowe emphasized the need for a clear plan to address the student's nutritional needs and monitoring of [REDACTED] at school. (See Exhibits 086-104 and Testimony of Dr. Marlowe)

27. The student has a Verbal IQ at the upper end of the high average range of intelligence. [REDACTED] Performance IQ was in the superior range, with a Full Scale IQ also in the superior range. The student demonstrated fluctuations in attention and focusing throughout [REDACTED] testing which were not consistent with attention deficit disorder. Dr. Marlowe concluded these fluctuations were related to [REDACTED] changes consistent with [REDACTED]. In addition, the student demonstrated graphomotor and spelling difficulties inconsistent with [REDACTED] expected level of achievement. [REDACTED] also exhibited significant adjustment issues related to [REDACTED] (Testimony of Dr. Marlowe and Exhibits 086-104).

28. Dr. Marlowe's evaluation confirmed that the student benefitted from the instruction at [REDACTED] in the areas of [REDACTED]. Evidence from testing at [REDACTED] also supports the student's significant achievement in the areas of [REDACTED] learning disabilities. (See Exhibits 216-228).

29. An evaluation completed by Dr. McGuire in May of 1998 confirmed that the student was now suffering from [REDACTED] and that [REDACTED] depressive symptoms were having an impact on [REDACTED] ability to work up to [REDACTED] potential. It was Dr. McGuire's opinion that the student met the criteria for dysthymia in that [REDACTED] had experienced [REDACTED] for at least 6 months and had at least one episode of major depression. (See Exhibits 235-241).

30. An IEP was not developed for the student prior to [REDACTED] entering [REDACTED] School for [REDACTED] grade year and [REDACTED] did not have a special education program or support available to her at the commencement of the [REDACTED] school year. The student waited in the school's attendance office for the first week of school in order to obtain a regular education class schedule. [REDACTED] did not receive a math class for approximately one month after the commencement of school. [REDACTED] did not receive any specialized instruction or related services provided by the District throughout the entire school year.

31. Meetings between various representatives of the District and the parent and [REDACTED] representatives were held in January, February and March, 1999, but a final IEP was not completed. (See Exhibits 124 through 174).

32. During the meetings evidence was presented that the student's grades were dropping, and that the student failed to complete assignments, request help, and had problems with tardiness and attendance which may have been related or partially related to the student's medical condition. No intervention was offered or implemented by the District until late spring when the district offered and the student obtained after school tutoring at [REDACTED] in late April and May. A counseling and advocacy program to assist the student with her problems with attendance and

completion of assignments was discussed but not implemented. A partial IEP was offered by the District at a meeting on March 25, 1999, and resulted in the implementation of tutoring at [REDACTED]

33. Following testimony in this matter on June 8, 9, and 10, 1999, the District's counsel stipulated that the District did not develop or implement an IEP for the student for the [REDACTED] school year, and consequently failed to provide a free, appropriate, public education for the student during the [REDACTED] school year. The District's counsel also stipulated that the student was entitled to compensatory educational services based on the District's failure to develop and IEP for the student's freshman year.

34. Parties agreed on the record on June 11, 1999 to issues to be discussed in a IEP meeting to develop an IEP for the [REDACTED] school year. The issues included compensatory education, a transition plan, a behavior plan to address tardiness, instructional pieces to address spelling and written language, and accommodations in regular classes. The parties did meet and developed and agreed to an IEP for the student's [REDACTED] school year on July 13, 1999. The parties did not discuss or agree on compensatory education.

35. A Health Plan as part of the student's educational program is included in the [REDACTED] IEP. Counseling to assist the student with emotional adjustment and school adjustment issues is also included in the [REDACTED] IEP.

36. The IEP developed for the student for the [REDACTED] school year included assistive technology (request for relief # 3 in parent's request for hearing), a transition plan (request for relief #2 in parent's request for hearing), specific objectives to address spelling and written language (request for relief #2 and #5 in parent's request for hearing), written instructions and support understanding and completing assignments in regular classes (request for relief #5 in parent's request for hearing), and assistance with self-advocacy skills (request for relief #5 in parent's request for hearing).

37. The [REDACTED] IEP does not contain educational services that would constitute compensatory education for the district's failure to complete an IEP for the student for the [REDACTED] school year. (Ex.319-335).

38. The parent requests that the District establish a trust fund for the student to use for educational purposes as an award of compensatory education. The District argued that the IEP for the student's [REDACTED] school years should be considered as including compensatory education although no portion of the IEP is designated as included to provide compensatory education.

39. The parties have failed to agree on the extent and type of compensatory educational services that should be provided to the student; (See Exhibits 317-318) whether the parent is entitled to be reimbursed for the student's private schooling at [REDACTED] for periods beginning with the summer [REDACTED] part-time during the [REDACTED] school year and full-time during the [REDACTED] school year; and whether the cost for consultation services provided by Dr. Marlowe following [REDACTED] evaluation to develop the student's IEP should be reimbursed.

40. During the course of this proceeding the parent's representative alleged that there had been a settlement agreement between the District's legal office and the parent. The undersigned understood that allegation to concern funding the student's private placement. No evidence was presented to indicate such an agreement existed and the undersigned granted the District's motion to dismiss this issue at the conclusion of parties' presentation of testimony.

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 U.S.C. Section 1401 *et. seq.* (Individuals with Disabilities Education Act (IDEA)), chapter 28A.155 RCW, chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR 300 *et seq.*, and Chapter 392-172 WAC.

2. The IDEA (formerly known as 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 v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), the Supreme Court established a test to evaluate a state's compliance with the Act as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the state has complied with the obligations imposed by Congress and the courts can require no more. 103 S. Ct. at 3051.

A "free appropriate public education" (FAPE) consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services: 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. S. Ct. at 3041, 3042.

3. The substantive test of Rowley does not require the absolutely best or "potential-maximizing" education for the individual child. But the benefit must be real and measurable. A FAPE is provided if the student derives more than minimal or trivial progress in a placement, considering the student's unique characteristics. *Florence County Sch Dist Four v. Carter*, 950 F. 2d 156, 160 (4th Cir. 1991), *affd.* 510 U.S.7, 115 S. Ct. 361, 365, 126 L.Ed. 2d 284 (1993).

4. The District bears the burden of proving compliance with the procedural requirements of the IDEA. *Clyde K. v. Puyallup School District*, 35 F.3d 1396 (9th Cir. 1994). Generally only procedural flaws which result in the loss of educational opportunity, or that seriously infringe the parent's opportunity to participate in the IEP formulation process, will result in a denial of FAPE. *W.G. v. Board of Trustees of Target Range School District*, 960 F. 2d 1479 (9th Cir. 1992); *Roland M. v. Concord Sch. Comm.*, 910 F. 2d 983, 994 (1st Cir. 1990), *cert denied*, 111 S. Ct. 1122, 113 L.Ed. 2d 230 (1991); *Hall by Hall v. Vance County Bd. Of Educ.*, 774 F. 2d 629, 635 (4th Circ. 1985).

5. In instances where a district fails to provide necessary special education and related services, compensatory educational services may be awarded to the student at the discretion of the hearing officer. The nature and extent of the compensatory education should be determined based upon the student's needs. Compensatory education is a form of equitable relief intended to cure the deprivation of a disabled child's statutory rights. *Manchester School Dist. v. Christopher B.*, 807 F. Supp. 860, 871 (D.N.H. 1992), citing *Murphy v. Timberlane*, 973 F. 2d 13, 16 (1st Cir. 1992) and *Lester H.* 916 F. 2d at 873. It involves educational services during time periods in which the school system is not already obligated to provide a student with a free appropriate education. *Id.* at 869. Compensatory education may include extended day programs, extended year services, summer school, or tutoring. See e.g. *Johnson v. Bismark Public School Dist.*, 949 F. 2d 1000 (8th Cir. 1991); *Hall v. Detroit Pub. Sch.*, 823 F. Supp. 1377 (E.D. Mich. 1993); *Lester H.* 916 F. 2d 865.

6. The parent's request for reimbursement of her unilateral placement at [REDACTED] for the student's full-time attendance during the [REDACTED] school year was originally made with notice to the District and was timely.

7. Before awarding reimbursement, a court must determine whether the District offered or provided services which comported with the procedural requirements of the Act and were reasonably calculated to confer the student with educational benefit and met the standards for providing the student with FAPE. If the District has not successfully passed this first test, the court must go on to consider whether the private services obtained by the parent were appropriate and reasonable. If the court determines that relief is due the parent, the court has the authority to order "appropriate" relief pursuant to 20 U.S. C. Sec. 1415 (e)(2), which has since been moved to 1415 (l)(2)(B)(iii). This includes expenditures made to obtain appropriate educational services. See *Still v. DeBuono*, 101 F. 3d 888, 891 (2d Cir. 1996). Under this provision, "equitable considerations are relevant in fashioning relief" and the court enjoys "broad discretion" in doing so. *Burlington*, 471 U.S. at 373, 369.

8. The parent's private placement of the student at [REDACTED] for the summer session in [REDACTED] and after school during the [REDACTED] school year was a voluntary action of the parent and District is not required to reimburse the parent for these voluntary placements which were additions to the student's regular placement in the District. For the summer session the parent did not request an extended school year program from the District or appeal an IEP determination which did not provide for one. For the after school program the parent indicated to the IEP team [REDACTED] was placing the student after school at [REDACTED] and requested the student's early release but did not request funding of this program or that the District provide a similar program. In stead [REDACTED] requested that the student not be pulled out of [REDACTED] regular classes. These actions are consistent with voluntary placements not subject to District reimbursement.

9. For the [REDACTED] school year, the District had notice of the parent's dissatisfaction with the District's offering and the parent's request for a hearing to obtain reimbursement for the placement. That request was dismissed without prejudice to this refiling and based upon parties' stipulation that the parent had provided appropriate notice of her request for reimbursement for the student's private school. The IEP which was effective during this time period was the same IEP offered the previous year when the student attended [REDACTED]. The District did not offer the student any other program or instruction following the parent's request for an additional evaluation and notification of private placement in the Fall of 1997. Offered programs could have included continued enrollment at [REDACTED] and part time enrollment at [REDACTED] at District expense or replication of the [REDACTED] program somewhere in the District other than [REDACTED]. The undersigned concludes that the District's program during the [REDACTED] school year was inappropriate to meet the student's special education needs.

Therefore, the first prong of the *Burlington* test is met. The undersigned further concludes that the program provided by the [REDACTED] did confer educational benefit upon the student and was therefore appropriate. The second prong of the *Burlington* test is met. The parent is thus entitled to reimbursement for the student's costs for instruction at [REDACTED] for the [REDACTED] school year.

10. The District has admitted an IEP was not developed and implemented for the student's [REDACTED] school year, thus denying the student FAPE and entitling the student to compensatory education. The student attended regular [REDACTED] school classes during the [REDACTED] school year. Special education services for the [REDACTED] school year would have been similar to those provided in the student's [REDACTED] IEP which are designed to help and support the student in [REDACTED] regular school attendance. To the extent the student received failing grades or was considered to have failed to complete classes due to absences or failure to complete assignments, these courses should be reviewed with the involved teachers, the student and [REDACTED] advocate and the student allowed to complete work where appropriate to change [REDACTED] grade or obtain class completion. A specific award of an amount of hours by a particular provider for compensatory education cannot be determined at this point, nor would it be considered appropriate relief. The undersigned does not have authority to award monetary damages directly to the student for [REDACTED] educational losses and does not conclude doing so would be appropriate. The parent's request for a trust fund would be an award of monetary damages. The undersigned thus concludes that the student should receive as compensatory education any public or private educational programs she requests and submits for approval to [REDACTED] IEP team which are reasonably related to remediation of the student's learning deficiencies and study skills during the period from the [REDACTED] school year through the summer after the student's graduation. Examples of such programs would be word processing courses, a course in cursive writing, writing courses and study skill courses.

11. The parent is not entitled to be compensated for the services of Dr. Wendy Marlowe rendered to the parent by providing consultation and participation on the student's IEP team at the parent's request.

ORDER

IT IS HEREBY ORDERED:

1. The District's stipulation to violations of the student's right to FAPE during the [REDACTED] school year is accepted and is made a portion of this order. An IEP was developed for the [REDACTED] school year which contains services requested by the parent on behalf of the student, including assistive technology, self-advocacy support,

spelling and written language instruction, a transition plan, written instructions in each regular education class and support for understanding and completing assignments.

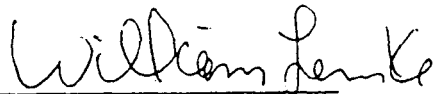
2. The student was denied FAPE during the [REDACTED] school year and is entitled to compensatory education services. To the extent the student received failing grades or was considered to have failed to complete classes due to absences or failure to complete assignments, these courses should be reviewed with the involved teachers, the student and [REDACTED] advocate and the student allowed to complete work where appropriate to change [REDACTED] grade or obtain class completion. The student is awarded as compensatory education any public or private educational programs she requests and submits for approval to her IEP team which are reasonably related to remediation of the student's learning deficiencies and study skills for requests made during the period from the student's [REDACTED] school year through the summer after the student's [REDACTED]. Examples of such programs would be word processing courses, a course in cursive writing, writing courses and study skill courses.

3. The parent is not entitled to be compensated for the services of Dr. Wendy Marlowe rendered to the parent by providing consultation and participation on the student's IEP team at the parent's request.

4. The parent is not entitled to reimbursement for the costs of the student's instruction at [REDACTED] for the summer program in [REDACTED] or part time program during the [REDACTED] school year.

5. The parent is entitled to reimbursement and the District shall reimburse the parent for the costs of the [REDACTED] instruction for the [REDACTED] school year.

Dated at Seattle, Washington on this 15th day of February, 2000.



William Lemke
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

This is a final agency decision subject to a petition for reconsideration filed within ten days of service pursuant to RCW 34.05.470. Such a petition must be filed with the administrative law judge at his/her address at the Office of Administrative Hearings. The petition will be considered and disposed of by the administrative law judge. A copy of the petition must be served on each party to the proceeding and the Superintendent of Public Instruction. The filing of a petition for reconsideration is not required before seeking judicial review.

Pursuant to 20 USC Section 1415 (i) (Individuals with Disabilities Education Act) and Chapter 34.05.542 RCW, this matter may be further appealed to a court of law. The Petition for Judicial Review of this decision must be filed with the court and served on the Superintendent of Public Instruction, the Office of the Attorney General, all parties of record, and this office within thirty days after service of the final order. If a petition for reconsideration is filed, this thirty-day period will begin to run upon the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). Otherwise, the 30-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.

CERTIFICATE OF SERVICE

This certifies that a copy of the above Findings of Fact, Conclusions of Law and Order was served upon the parties or their representatives on 2.15.00, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Parent
c/o William L.E. Dussault, P.S.
219 E Galer St
Seattle, WA 98102

William L.E. Dussault
Attorney at Law
219 E Galer St
Seattle, WA 98102

Brenda J. Little
Deputy General Counsel
Seattle School District
815 Fourth Ave N
Seattle, WA 98109