

2. A telephonic pre-hearing conference was held on November 21, 2000. At the pre-hearing conference, the issues for hearing were established. A pre-hearing order was issued on November 28, 2000, setting forth the following as the issue for hearing:

"The issues which are subject to the due process hearing are whether the District must limit the Student's Individual Education Plan (IEP) and placement so that the student can not attend High School, under the requirements of RCW 13.40.215(5)."

The pre-hearing order included a directive that if no objection to the order was filed within ten days after its mailing, "... it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order." No objection to the pre-hearing order was filed by the parties.

3. At the hearing, the adult student and the School District's attorney orally provided an agreed upon stipulation of facts. No other factual evidence was presented by either party.

4. The parties presented legal argument at the hearing.

5. At the conclusion of the hearing on December 13, 2000, the parties extended the timeliness deadline under WAC 388-172-356 to December 27, 2000, to allow preparation and issuance of the written decision by the Administration Law Judge.

FINDINGS OF FACT

1. The student was born .
2. The student resides within the School District for all relevant times.
3. The student is eligible for special education and related services for all relevant times.
4. On or about the student entered a guilty plea to a criminal charge of child molestation in the first degree, under RCW 9A.44.083.
5. Following the entry of the guilty plea, the student continued to attend the School District, where there is one school building in the District.
6. The School provides educational services from kindergarten through the twelfth grade in one building.

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7. The student continued to attend school at the _____ School building under Individual Education Plans (IEP).

8. In the Fall of 2000, the student began the 2000-2001 academic year by attending school at the _____ School building.

9. At the beginning of October, 2000, the adult student was arrested on a criminal charge of failing to register as a sex offender. Proceedings are continuing regarding this criminal charge.

10. Based upon the October of 2000 arrest, and concerns voiced by the parent and/or grandparent of the victim of the earlier child molestation, the District became concerned about its obligation under RCW 13.40.215.

11. The District subsequently concluded that under RCW 13.40.215, it was not proper for the student to attend the _____ School building, as the victim of his earlier child molestation and the victim's sister both attend this school.

12. The District informed the student that he could not attend the School District building any longer.

13. The District has continued efforts to meet the requirements of the student's IEP but in a different location.

14. The District's current program with this student includes a combination of home tutoring, community college courses and a variety of other services. Such education and related services are not in dispute except for the student's challenge that he wishes to attend school at the _____ School District building.

15. The current educational program is designed to earn the student a high school diploma by June 2001.

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 Chapter 392-172 WAC.

2. The Office of Administrative Hearings has more specific jurisdiction to hear

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this matter pursuant to WAC 388-172-350(1)(a), arising from the adult student's request for a due process hearing to contest the School District's bar on allowing him to attend the School District building during regular class hours as part of his IEP.

3. The School District has only one building where it provides education for its students, with classes provided from kindergarten through the twelfth grade. Until October of 2000, the claimant was placed at this school under his IEP's. Such placement was not continued by the School District based upon RCW 13.40.215 (5).

4. RCW 13.40.215(5) states the following:

"Upon discharge, parole, transfer to a community residential facility, or other authorized leave or release, a convicted juvenile sex offender shall not attend a public or approved private elementary, middle, or high school that is attended by a victim or a sibling of a victim of the sex offender. The parents or legal guardians of the convicted juvenile sex offender shall be responsible for transportation or other costs associated with or required by the sex offender's change in school that otherwise would be paid by a school district. Upon discharge, parole, transfer to a community residential facility, or other authorized leave or release of a convicted juvenile sex offender, the secretary shall send written notice of the discharge, parole, or other authorized leave or release and the requirements of this subsection to the common school district board of directors of the district in which the sex offender intends to reside or the district in which the sex offender last attended school, whichever is appropriate. The secretary shall send a similar notice to any approved private school the juvenile will attend, if known, or if unknown, to the approved private schools within the district the juvenile resides or intends to reside. (Emphasis added).

5. The adult student pled guilty to child molestation in the first degree in . . . Therefore, he qualified as a "convicted" juvenile sex offender for the purposes of RCW 13.40.215(5). Further, the victim of that child molestation by the student and her sister both attend School. If the School District allows the student to attend the same school building with the victim and/or her sister, such action violates the mandates of RCW 13.40.215(5). The School District has properly discontinued the student attending school at the School District's building and acted properly in not considering a further placement in that building where the victim or her sister are attending school.

6. The adult student's primary concern at the hearing was a fear that he could face a similar problem at the community college if the victim or her sibling attended that school. However, the provisions of RCW 13.40.215(5) apply only to "elementary, middle, or high school." The provisions of RCW 13.40.215(5) will not apply to community college.

7. The undersigned also recognizes that there is no authority in the administration process for an ALJ to ignore or overturn a state statute. The ALJ also lacks authority to determine that the Individuals with Disabilities Education Act (IDEA) preempts RCW 13.40.215(5). The scope of jurisdictional authority of the ALJ is established in WAC 392-171-350. Neither that rule nor the relevant state and federal authority authorizes the ALJ to render a preemption determination. Further, the general authority in Chapter 34.12 RCW and Chapter 34.05 RCW lack such authority. The provisions of RCW 13.40.215(5) remain in full force and apply to this the case.

ORDER

The School District was correct in not allowing the student's IEP Placement at the School District building given the limits in RCW 13.40.215(5).

Dated at Vancouver, Washington this 14th day of December, 2000.



Mark C. Ebbeson
Administrative Law Judge