



STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS

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September 29, 2000

Parents



David R Bagby, Director Special Svcs  
Chehalis School District  
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Chehalis WA 98532-3809

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**RE: Chehalis School District, Special Education Cause No.: 0-55**

Dear Parties:

Please find enclosed a copy of the Final Order in the above-entitled matter.

The entry of this Order completes this matter. The file will be returned to the Office of Superintendent of Public Instruction (OSPI). If you have any questions please contact Ben Gravely in Legal Services at OSPI at (360) 753-2298.

Thank you for your attention in this matter.

Very Truly Yours,

Rosemary Foster  
Administrative Law Judge

c: Ben Gravely, OSPI  
Mary Radcliffe, OAH ALJ Hearing Coordinator



1 STATE OF WASHINGTON  
2 OFFICE OF ADMINISTRATIVE HEARINGS  
3 FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
4

5 IN THE MATTER OF:

6  
7 CHEHALIS SCHOOL DISTRICT  
8

SPECIAL EDUCATION

CAUSE NO. 00-55

9 **FINDINGS OF FACT,**  
10 **CONCLUSIONS OF LAW,**  
11 **AND ORDER**

12  
13 A hearing in this docket was conducted June 23, 2000, at the board room of the  
14 Chehalis School District in Chehalis, Washington. Rosemary Foster was the presiding  
15 Administrative Law Judge. The District was represented by Bill Coates, attorney at law. The  
16 student and his parents were represented by Mary McKnew, attorney at law. Appearing as  
17 witnesses on behalf of the District were David Bagby, director of special services for the  
18 District, Fred Carr, psychologist, Richard Gilham, the student's [REDACTED] grade teacher, Don  
19 Rash, principal of the student's [REDACTED] school, Brenda Kabat, [REDACTED]  
20 specialist and Mary Dahlstrom, [REDACTED] specialist. Appearing as witnesses  
21 on behalf of the parent and student were his mother, Dr. Dianna Tognazzini, licensed clinical  
22 psychologist and Becky Yates, the student's private speech therapist. On August 18, 2000,  
23 the final segment of the hearing was conducted by telephone conference call, at which time  
24 the testimony of Kathy Young, the student's [REDACTED] grade teacher was taken. Hearing briefs  
25 were submitted September 1, 2000.  
26

27 Findings of Fact, Conclusions of Law  
28 and Order - 1

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1 ISSUES

2 Was the district's evaluation of the student adequate to determine him ineligible for  
3 special services?

4 Did the district commit procedural due process violations in addressing the student's  
5 eligibility for services?  
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7  
8 Based on the record in this matter, the undersigned enters the following findings of fact,  
9 conclusions of law and order  
10

11 FINDINGS OF FACT

12 1. The student is a [redacted]-year old [redacted] grade student at [redacted] School in the  
13 Chehalis School District. He resides with his parents. From [redacted] grade until mid [redacted]  
14 grade, the student received special services from the District based on a diagnosis of a  
15 [redacted] related to [redacted] difficulties. As of November, 1999, the student  
16 was determined to be no longer eligible for special services and he was placed in a regular  
17 classroom setting with a 504 program put in place by the District to address his learning  
18 disabilities. However, several months later, the parents expressed concern to District  
19 personnel that their son was still experiencing speech and academic performance problems.  
20 They provided the results of testing done by a private speech therapist, Becky Yates, which  
21 showed the student was continuing to have speech and academic performance difficulties.  
22 In the classroom, the student was performing in the "A" to "D" grade range. He expressed  
23 great frustration over inability to communicate despite his efforts to do so. He also talked of  
24 suicide. In response to the parent's concerns expressed early in 2000, the student was again  
25 tested by district personnel and found to be ineligible for special services. Thereafter, the  
26 parents requested an independent assessment at public expense by letter dated April 14,  
27 2000. See Exhibit 138. The District then requested a due process hearing for the purpose  
28 of showing that its evaluation of the student was appropriate by letter dated May 1, 2000 and  
received by the Superintendent of Public Instruction on May 4, 2000.

1 2. The student has been in the District's schools since [REDACTED] He first came to  
2 the attention of the District while in [REDACTED] where he showed some [REDACTED]  
3 [REDACTED]. At that time he was screened and found to have normal intellectual ability, normal  
4 speech, but suspected problems with motor skills. The matter of possible eligibility for special  
5 services was referred to his parents, who declined services and, as the case was borderline,  
6 no further action was taken. In [REDACTED] grade he was again referred for evaluation because of  
7 speech and behavioral concerns. At that time he was assessed and his speech was found  
8 to be within the normal range. However, in the second grade he was once again referred for  
9 evaluation. This time the referral occurred as a result of an incident where he choked another  
10 student on the playground. Shortly thereafter, further testing was done and he was found to  
11 have a [REDACTED]. As a result of this evaluation, he was found eligible for  
12 special education services. He received the services of a one-to-one aide as well as mental  
13 health therapy and a speech therapist. This program continued in the [REDACTED] grade. The  
14 student's behavior improved and the services of the aide were gradually phased out. By the  
15 spring of 1999, the student continued to improve and District personnel determined that  
16 further services would not be needed. This decision was made independent of the Multi  
17 Disciplinary Team (MDT) by the District's speech therapist and the director of special services.  
18 The decision also was not based on current information. The District's plan was to transition  
19 the student into a regular classroom with a 504 Program taking the place of the services he  
20 had previously received. In November, 1999, the parents were advised that the student's  
21 eligibility for special education services based on the [REDACTED] would be  
22 ending. The parents accepted the District's 504 program believing that this plan would  
23 successfully address the student's needs. However, several months later, the parents again  
24 raised concerns with the District about the student's continuing speech and academic  
25 performance difficulties.

26 3. The student's mother testified on his behalf. She was advised by District personnel  
27 six months before the MDT meeting in November 1999 that the student's eligibility would be  
28 ending as of that time. To her knowledge, no assessment of the student had been made  
which would form the basis for the recommended termination of services. Notwithstanding the  
504 plan, the student's speech, articulation and comprehension problems continue. The  
testing done by the District has not been helpful in addressing the student's problems. A  
complete battery of tests would give those who work with the student information they need  
to address his unique combination of speech, learning disability and behavior problems. The

1 student continues to have difficulties getting along with his peers. At times, he did not want  
2 to go to school and his social skills are lacking. His mother expresses concern that he is  
3 suicidal. Although the District included the parents in setting up the 504 plan, they have never  
4 felt part of the District's planning process or part of the MDT process,

5 4. Over the years, the student has had four psychological assessments and five speech  
6 assessments by the District. He shows [REDACTED] or [REDACTED] characteristics. He has had  
7 behavioral difficulties and problems getting along with peers but these areas of his  
8 performance have shown some improvement in the last two years. The student also has  
9 manifested speech and articulation difficulties.

10 5. The District maintains that its March 20, 2000 testing of the student using the Wechsler  
11 Intelligence Scale for Children-III (WISC-III) was properly performed even though not all  
12 subtests were given. The student received a full scale I. Q. of 109 with a verbal I.Q. of 101  
13 and a Performance I.Q. of 117. The District also administered the WIAT, a test of academic  
14 performance. On this test, the student received a standard score of 105 in math calculation,  
15 which placed him at grade level 4.9. He received a standard score of 101 in basic reading  
16 skills, which placed him at grade level 4.8. His standard score in reading comprehension was  
17 103, which placed him at grade level 5.9. When the test results were evaluated using the  
18 applicable discrepancy table for assessing learning disabilities, the student's scores did show  
19 him to be eligible for special services.

20 6. Brenda Kabat also performed additional testing for the District regarding the student's  
21 speech problems. These tests were performed February 3, 2000. She administered a  
22 standardized articulation test which required the student to read sentences out loud. She also  
23 administered a language test known as the Test of Word Knowledge (TOWK). This test was  
24 to measure receptive and expressive language skills. She concluded that his scores were  
25 within normal limits for his age.

26 7. The student and his parents presented two witnesses at the hearing to show that the  
27 District's observations and testing procedures were incomplete and inadequate.

28 8. Dianna Tognazzini, Ph.D., a licensed clinical psychologist, testified on behalf of the  
student and his parents. Dr. Tognazzini is a school and clinical psychologist. She reviewed

1 the evaluations most recently performed by the District of the student and commented on the  
2 District's failure to perform critical sub-tests and other assessment inadequacies. In  
3 reviewing the WISC-III results, she expressed concern that the sub-test related to verbal  
4 comprehension and comprehension in general was not administered. It is impossible to  
5 obtain the index scores for Verbal Comprehension, Perceptual Organization, Freedom from  
6 Distractability, and Processing Speed without the sub-test and the sub-test is directly related  
7 to the referral question. The Freedom from Distractability index would have been useful since  
8 the student was previously diagnosed with [REDACTED] This index is considered a good verification  
9 of that diagnosis. In addition, valuable information would be obtained with completion of the  
10 Digit Span and Coding sub-test that would look at short-term memory for verbal and visual  
11 information as well as speed of hand/eye coordination. In addition, further testing would  
12 probably have revealed a lower sub-test score in the Comprehension sub-test, thus resulting  
13 in a greater split between verbal and non-verbal abilities. The student's overall IQ may be  
14 higher based on his demonstrated academic achievement given what appears to be a  
15 language processing problem. See Exhibit 144. The 16 point difference between the Verbal  
16 IQ of 101 and Performance IQ of 117 is a significant difference for his age at the .05 statistical  
17 level. A split of this kind is associated with a student who is having processing problems. In  
18 order to have a complete picture of the student's intellectual ability, the WISC-III should be  
19 performed using all sub-tests except Mazes and possibly Symbol Search depending on how  
20 the student did in the Coding sub-test. The student appears to have a significant processing  
21 gap between his verbal and non-verbal ability, which is a condition which results in learning  
22 problems. The behavior evaluation scale used by the District was only responded to by one  
23 rater although standard practice generally requires at least two raters. In addition, language  
24 and oral expression and listening comprehension should have been designated as significant  
25 learning deficits, delays or serious problems on the special education referral for the student.  
26 However, they were not cited as bases for referral.

21 9. Becky Yates, a private speech therapist with a Master's in Communication Disorders,  
22 testified on behalf of the student. She evaluated the student on December 29, 1999 at the  
23 request of the parents. Her evaluation included sound production and language. Her results  
24 show that the student has difficulties structuring what he was going to say. He also has  
25 distortions of certain speech sounds. His weaknesses in speech pull down his overall  
26 performance. She has seen him on a one-on-one basis 45 to 60 minutes a week since  
27 January 2000. The student has difficulty with concepts such as opposites, comparison of

1 relationships and temporal concepts. His biggest deficits are associated with his inability to  
2 put his experience into the correct words which is characteristic of a learning disability. His  
3 difficulties with concepts negatively impact his self esteem. Although his parents work with  
4 him, it often takes as much as an hour for him to learn a concept or how to use a word. More  
5 information in the form of comprehensive speech and academic assessment regarding  
learning disabilities of this student would show his unique learning style.

6 10. The 45 day date was extended by agreement of the parties to September 29, 2000.

### 7 8 CONCLUSIONS OF LAW

9 1. The Office of Administrative Hearings has jurisdiction over the parties and subject  
10 matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C.  
11 Section 1401 et.seq. (Individuals with Disabilities Education Act (IDEA)), Chapter  
12 28A.155 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated  
13 thereunder, including 34 CFR 300 et.seq., and Chapter 392-171 WAC (or Chapter 392-172  
WAC for cases arising after November 11, 1995).

14 2. The Individuals with Disabilities Education Act (IDEA) (formerly the Education for All  
15 Handicapped Children Act) and its implementing regulations provide federal money to assist  
16 state and local agencies in educating children with disabilities, and condition such funding  
17 upon a state's compliance with extensive goals and procedures. In Hendrick Hudson District  
18 Board of Education vs. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982), the Supreme Court  
19 established both a procedural and a substantive test to evaluate a state's compliance with the  
Act, as follows:

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

25 103 S. Ct. at 3051.

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

4 According to the definitions contained in the (Education for All  
5 Handicapped Children Act) a 'free appropriate public education' consists  
6 of education instruction specifically designed to meet the unique needs  
7 of the handicapped child, supported by such services as are necessary  
8 to permit the child 'to benefit' from the instruction. Almost as a checklist  
9 for adequacy under the Act, the definition also requires that such  
10 instruction and services be provided at public expense and under public  
11 supervision, meet the State's educational standards, approximate the  
12 grade levels used in the state's regular education, and comport with the  
13 child's IEP. Thus, if personalized instruction is being provided with  
14 sufficient supportive services to permit the child to benefit from the  
15 instruction, and the other items of the definitional checklist are satisfied,  
16 the child is receiving a 'free appropriate public education' as defined by  
17 the Act. 103 S. Ct. at 3041, 3042.

18  
19 3. A parent has the right to an independent evaluation at public expense under WAC 392-  
20 172-150. Under this provision, if a parent disagrees with the district's evaluation, the parent  
21 may request an independent evaluation. Where a parent requests an independent evaluation,  
22 the District may initiate a hearing within 15 days to show that its evaluation is appropriate.  
23

24 4. Under WAC 392-172-030 which addresses student rights to special education  
25 programs, students referred for special education and related services shall qualify pursuant  
26 to the eligibility criteria set forth in Chapter 392-172 WAC. In addition, a special education  
27 student shall remain eligible for special education and any necessary related services until a  
28 group of qualified professionals and the parent, based upon a reevaluation, determines the  
student is no longer in need of special education. WAC 392-172-186.

29 5. WAC 392-172-108 and WAC 392-172-186 set forth applicable procedures for  
30 evaluations and reevaluations. Among other things, the rule provides specific requirements  
31 for assessing suspected learning disabilities. With regard to use of tests and evaluation

1 materials, they are to accurately reflect whatever factors the tests are designed to measure.  
2 All tests are to be administered in conformance with instructions of the test producer. Where  
3 professional judgment is used to determine the existence of a disability, it shall be documented  
4 in the evaluation report.

5 6. WAC 392-172-10905 requires documentation of the eligibility determination and  
6 preparation of an evaluation report which should include parental input.

7 7. Under WAC 392-172-105 and WAC 392-172-186, parents must be afforded the  
8 opportunity to participate in meetings with respect to the identification, evaluation, educational  
9 placement and provision of a free appropriate public education to the student.

10 8. Under WAC 392-172-106 the evaluation of the student must cover all areas of  
11 suspected disability, including, if appropriate, health, vision, hearing, social and emotional  
12 status, general intelligence, academic performance, communicative status and motor abilities.  
13 The evaluation shall be sufficiently comprehensive to identify all of the student's special  
14 education and any necessary related services needs, whether or not commonly linked to the  
15 disability category in which the student has been classified.

16 9. The District bears the burden of proof with respect to compliance with the procedural  
17 requirements of the Individuals with Disabilities Act, 20 United States Code section 1400 et.  
18 seq. (IDEA). See Clyde K. v. Puyallup School District, 35 F.3d 1396 (9<sup>th</sup> Cir. 1994) A two  
19 step approach is utilized to assess whether a procedural violation has occurred, and, if it is  
20 found to have occurred, was it prejudicial to the student. (CITE) Generally, only procedural  
21 flaws which result in the loss of educational opportunity, or that seriously infringe the parents'  
22 opportunity to participate in the IEP formulation process, will result in a denial of FAPE. W.G.  
23 v. Board of Trustees of Target Range School District, 960 F.2d 1479 (9<sup>th</sup> Cir. 1992); Roland  
M. v. Concord Sch. Comm., 910 F.2d 983, 994 (1<sup>st</sup> Cir. 1990), cert. denied, \_\_ U.S. \_\_, 111  
24 S.Ct. 1122, 113 L.Ed.2d 230 (1991); Hall by Hall v. Vance County Bd. of Educ., 774 F.2d 629,  
25 635 (4<sup>th</sup> Cir. 1985).

26 10. The District bears the burden of proof to show that it has conducted an appropriate  
27 evaluation of the student. See WAC 392-172-108. In this case, the District has not met its  
28 burden of proof to show that the evaluation information demonstrates the student was

1 ineligible for services. In particular, the WISC and WAIT were not properly administered to the  
2 student and failed to include all the necessary and relevant information. Not all the necessary  
3 subtests were administered. The evaluation also does not address all areas of suspected  
4 disability, including but not limited to, [REDACTED], consideration of the "other [REDACTED]  
5 [REDACTED] basis for eligibility, [REDACTED] and [REDACTED].  
6 This violates WAC 392-172-106. A complete independent educational assessment should  
7 cover all areas of suspected disability. In this regard, the testimony of Dr. Tognazzi and  
8 Brenda Yates is found to be credible and is the basis for this decision. A complete evaluation  
9 and the resulting information will aid the MDT in determining the student's eligibility for  
10 services.

11 11. With regard to the MDT, the District violated the provisions of WAC 392-172-030, 392-  
12 172-186 and 392-172-105 when MDT personnel determined several months prior to the  
13 November 1999 MDT meeting that the student would no longer be eligible for special  
14 education services. This action was taken without the benefit of a current assessment and  
15 was done outside of the MDT meeting, thus depriving all those associated with the student,  
16 particularly the parents, from sharing relevant information to address the eligibility issues.  
17 Failure to include the parents in a meaningful manner also kept the team from having the  
18 benefit of information from the parents and thereby limited the team in making its decisions  
19 regarding eligibility of the student. It is hoped that any future MDT meetings will include  
20 outside professional personnel who work with the student as well as all appropriate district  
21 personnel. This will allow all relevant information to be presented for the MDT to consider  
22 regarding the student's eligibility. To allow decisions regarding eligibility to be made outside  
23 the MDT violates the applicable statutory and due process provisions which contemplate  
24 sharing of information from a variety of sources and developing a consensus as to eligibility  
25 and programming requirements for the student. The result in this case was a violation of the  
26 student and parent's procedural due process rights which was prejudicial to the student and  
27 parents as it prevented full consideration of all factors related to the student's eligibility.

28 12. The 45 day date is extended to September 29, 2000 pursuant to WAC 392-172-356.


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**ORDER**

WHEREFORE, IT IS HEREBY ORDERED that because the evaluation of the Chehalis School District is not adequate to assess all suspected areas of disability, the student and his parents are entitled to an independent evaluation at public expense pursuant to WAC 392-172-150. The new evaluation should investigate all areas of suspected disability including, but not limited to, whether this student is in the category of other [REDACTED] whether he suffers from [REDACTED] or [REDACTED] whether he suffers from a [REDACTED] whether he is seriously [REDACTED] and whether he suffers from a [REDACTED] either in terms of oral expression or listening comprehension or both. Further decision making with regard to the student's eligibility must be done in the MDT with the parents included in the process.

IT IS FURTHER ORDERED that the 45 day date be extended to September 29, 2000 pursuant to WAC 392-172-356.

Dated this 29th day of September, 2000, at Olympia, Washington.

  
Rosemary Foster  
Administrative Law Judge  
Office of Administrative Hearings

**APPEAL RIGHTS**

PURSUANT TO 20 USC 1415 (e) (INDIVIDUALS WITH DISABILITIES EDUCATION ACT) AND CHAPTER 34.05 RCW, THIS MATTER MAY BE FURTHER APPEALED TO A COURT OF LAW. THE 30-DAY TIME LIMIT FOR FILING A PETITION FOR JUDICIAL REVIEW COMMENCES WITH THE DATE OF THE MAILING OF THIS DECISION.

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 9-29-00 by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Findings of Fact, Conclusions of Law  
and Order - 10

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Parents



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