



STATE OF WASHINGTON

December 18, 2000 OFFICE OF ADMINISTRATIVE HEARINGS

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Superintendent of Public Instruction
Legal Services

Adult Student
[REDACTED]

Parent
[REDACTED]

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In re: Eastmont School District - Special Education Cause No.00-77

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) for record keeping. If you have any questions regarding this process, please contact the Legal Services office at OSPI at (360) 753-2298.

Sincerely,

Mary L. Radcliffe
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 SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF:

EASTMONT SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 00-77

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

A hearing in the above-entitled matter was held before Administrative Law Judge Mary L. Radcliffe in East Wenatchee, Washington, on October 11, 12, and November 17, 2000. The interested parent, [REDACTED] and the Adult Student, [REDACTED], were represented by Smith Hagopian, attorney at law. The Eastmont School District (District) was represented by Charles Zimmerman, attorney at law. Also appearing on behalf of the District, Cindee Robertson, director of special education. 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

On May 16, 2000, the District filed a request for hearing with the Office of Superintendent of Public Instruction (OSPI), pursuant to WAC 392-172-150, in response to the Parent's request for an independent educational evaluation at public expense (IEE). It was assigned cause number 00-62. On June 8, 2000, the District's motion to dismiss was granted based on mootness, since the Adult Student had graduated from high school with a regular education diploma on June 2, 2000.

On June 9, 2000, the Parent filed this request for due process hearing with OSPI. The Parent asserted the District had failed to follow procedural and substantive requirements of the Individuals with Disabilities Act (IDEA) as far back as the Student's third grade school year. Should she prevail, the Parent requests an IEE as compensatory education services. The Adult Student joined his Parent in the request for hearing, and asked that she be allowed to speak for him.

On July 11, 2000, the District filed a Motion to Dismiss. The Parent requested a continuance in order to obtain counsel. After counsel appeared, the parties agreed to a briefing schedule. On August 28, 2000, the undersigned entered an Order on District's Motion to Dismiss, that granted, in part, and denied, in part, the District's Motion. It is

incorporated by reference. The Parent's request for hearing was dismissed except as it pertained to the 1999-2000 school year.

The following witnesses testified: Adult Student, Mother, Father, Cindee Robertson, Diane King, Alan Schaub, Dan White, Michelle Kloss, Rikki Verstrate, John Charap, Bill Kneadler, and Dr. Cinda Johnson.

ISSUE FOR HEARING

Whether the District complied, in the 1999-2000 school year, with the IDEA and federal and state implementing regulations as it pertains to: The development and implementation of the Adult Student's 1999-2000 IEP, including the transition plan; the Student's triennial reevaluation; and, the cessation of special education eligibility due to graduation.

See August 28, 2000 Order on District's Motion to Dismiss

FINDINGS OF FACT

Background

1. The Student was born on [REDACTED] and has been a resident of the District for at least the last 14 years. On [REDACTED] after the Student's [REDACTED] year at [REDACTED], he turned [REDACTED] years old. On June 9, 2000, at the time of the Parent/Adult Student request for hearing, the Adult Student had just graduated from high school with a regular education diploma. At the conclusion of the hearing, the Adult Student was in his first semester at Moses Lake Community College, on a [REDACTED], passing most of his classes and failing math. If he passes his classes he will play baseball for the college in the Spring. The Student is a talented player and hopes to play baseball professionally.

2. The Student was made a focus of concern in the [REDACTED] grade. He was found eligible for special education as specific learning disabled. In the [REDACTED] grade, due to many behavioral problems he was reclassified as having a [REDACTED]. In [REDACTED], the Student's [REDACTED] grade year, the Parent had the Student privately evaluated by Betty Putnam, a learning disability tutor, who diagnosed the Student with a learning disability and [REDACTED]. The District did not accept Ms. Putnam's evaluation, but paid for an independent educational evaluation with Dr. Shadle. On March 14, 1994, Dr. Shadle diagnosed the student with [REDACTED] and prescribed [REDACTED]. The Student has taken [REDACTED] since, and when he takes his medication his attention and behavior improve greatly. The Student's attention and behavior

deteriorates when he does not take his medication. The Student reported that without the medication he would not have been able to attend the hearing.

3. The Student displays typical [REDACTED] behaviors, in that he procrastinates, has difficulty concentrating, is easily distracted, can be willful, uncooperative, disruptive, disorganized, and has problems meeting deadlines for class assignments and projects.

4. High school in the District is tenth through twelfth grade. Through out high school the Student was enrolled in all regular education classes, with the exception of a resource room period in the [REDACTED] and [REDACTED] grades. As his transcript reflects, the Student had consistent problems with passing his classes. The problem was not the quality of the work the Student submitted, it was the failure to turn in assignments. In order to play ball, the Student was required to pass his classes. There were times when he was in danger of not passing, but he always did. The Student played baseball for the school each of his three years in high school. The District did not compromise its minimum class requirements in order to pass or promote the Student.

5. Diane King, special education teacher, was in charge of the Student's IEP for the three years in high school. Over the Student's high school career he had become increasingly resistant to special education services. The Student did not like to be identified as special education and did not want to draw attention to his learning challenges. During high school, the District's recommended placement and IEP services were placement in the general education classroom with accommodations and related services in the form of assistance by Ms. King at the request of the Student. Assistance offered included: reading aloud directions; assistance in the resource room; books on tape; one to one paraprofessional assistance; early morning or late afternoon resource room assistance; lecture notes from the teachers; and, Ms. King's personal help. The Student was also provided with additional time to submit assignments. Ms. King observed that the Student demonstrated problems with comprehending information, writing, and development of complete thoughts. However, because the Student rejected her offers of help, she was not able to help him develop learning strategies to address these problems. Ms. King tried incentives to develop rapport and cooperation with the Student but was unsuccessful. By the end of his junior year, the Student rejected all offers of assistance, except that offered by his friends. By his senior year, at the Student's request, the District's special education services consisted of offers of assistance, oversight, and accommodations by his regular education teachers.

6. During the IEP and evaluation processes over the years, the District included the Parent and provided her with a copy of her procedural due process protections under the IDEA. She did not read the procedural safeguards because she was focused on other concerns. The Parent maintained close contact with the Student's teachers, and requested, and attended, many meetings. She was frustrated that she could not convince

the District to make the Student's IEP goals and objectives more specific. The Parent was also concerned about the Student's continual behavior problems and that the District did not specifically address them in his high school years as they had in his earlier years. In his [REDACTED] year, the Student was suspended for ten days for behavior unrelated to his disability. He was suspended again for one day, more probably than not, in his senior year.

1997 Reevaluation

7. Alan Schaub, a District school psychologist, conducted the Student's triennial reevaluation in April 1997. He administered the Wechsler Individual Achievement Test (WIAT). The Student demonstrated low scores in reading, comprehension, math reasoning, numerical operations and written expression. Although Mr. Schaub did not calculate the standard deviation score, a comparison between the Student's scores on his intelligence testing, administered in 1989 and 1993, and the WIAT, established that the Student had significant learning delays.

8. During the [REDACTED] evaluation process, the Parent asked Mr. Schaub to evaluate the suspected disability of [REDACTED]. The term [REDACTED] is a general term that can indicate a number of types of problems. Mr. Schaub asked the Parent to describe the problems the Student was having. The Parent explained that the Student had trouble understanding or following oral directions. As part of the evaluation, Mr. Schaub administered the Listening Comprehension Test of the WIAT. The Student scored significantly above grade level. This score was consistent with the Student's previous intelligence tests, administered in 1989 and 1993, which included the digit span memory test, part of the auditory memory subtests. Mr. Schaub concluded that the Student did not have problems listening, other than the distractability problems accompanying [REDACTED]. In response to the Parent's request for additional testing, Mr. Schaub told the Parent that he was unaware of any additional testing that would help identify educational strategies that the Student needed.

9. The 1997 reevaluation qualified the Student for continuing eligibility for special education under the classification of health impaired.

1998-99 IEP

10. The District invited the Parent to the Student's Fall 1998-99 IEP meeting. Due to illness, she could not attend. The meeting was not postponed. Ms. King and the Parent had numerous conversations about the IEP and the Student's progress and needs. Ms. King sent the IEP to the Parent in December 1998. The transitions section included the names and telephone numbers of agencies, including the Department of Vocational Rehabilitation. The Parent's copy did not state whether they attended the meeting.

Findings of Fact, Conclusions of Law and Order

1999-2000 School Year

11. In early fall, 1999, the Mother, Ms. King, and Mr. Charap, the school counselor, met to discuss the Student's recent poor behavior and the concern that the Student's employment combined with school would be too much for the Student. The Mother explained that the Student had moved to his father's home, she had not been monitoring his taking of his medications, and that the Student was working to pay off debt. She told them that she wanted the District to keep her in the information loop and that she would deal with the medication problem. It was about this time that Mr. White, the baseball coach, temporarily took the Student off the baseball team due to an altercation. Soon thereafter, the Student's behavior improved, apparently as the result of regularly taking his medication, and he was reinstated on the team.

12. In October 1999, in preparation for the Student's annual IEP review, Ms. King asked the Adult Student if he wanted her to send notice to, and include, his mother in the IEP process. He told her that he would do the process on his own and not to notify his mother. Ms. King complied with his request. The District did not provide the Adult Student with written notice of the IEP meeting. The District file contains an undated Notice of Action and a Request for Parent to Attend IEP/Placement Meeting on October 26, 1999, addressed to the Parent. There is no evidence that this was sent to the Parent, and it is improbable that it was, because it would have been contrary to the wishes of the Adult Student, which the District said it honored.

13. On October 26, 1999, Ms. King met with the Adult Student and Mr. Charap to review the IEP she had prepared. The Student signed the IEP indicating his agreement. Bill Kneadler, vice principal at [REDACTED] School and the District's designee for determining use of District resources, signed off on the IEP, but did not attend the IEP meeting. None of the Student's general education teachers were present.

14. The IEP includes a goal of work experience for credit to increase the Students' work-related skills. He declined the work credit because he was already employed and the work credit experience would interfere with his baseball schedule. It remained part of the Student's IEP.

15. The IEP states that the Student's behavior impedes his learning. The Adult Student disagrees with this assessment because he equates this statement with being in trouble. However, the Student's reluctance to ask for help and his procrastination are behaviors that impede his learning. In order to address this problem, the District proposed a self-advocacy goal. The self-advocacy goal also served as a transition goal because, at the community college level, a student's success is based on a student's ability to seek assistance when needed.

16. The IEP's self advocacy goal provides the following objectives:

[The Student] will ask Mrs. King to have tests and other written materials, as needed, at his request. This will be noted in notes of teachers.

[The Student] will get a copy of overhead notes from his teachers as asked by Diane King.

[The Student] can have lectures taped as requested to Diane King by [the Student].

The anticipated mastery date is June 2, 2000.

17. The IEP objectives are monitored by teacher record keeping.

18. The IEP outlines accommodations in the regular education classroom. These include tape recorded reading material, highlighted material for emphasis, repetition of instructions, visual aids, and an opportunity to respond orally rather than in writing. It does not provide that the Student will receive extra time to complete assignments but his teachers routinely gave him more time because of his special education status.

19. The Student saw his challenge as the difficulty in passing tests. Therefore, he asserted, offers of help with accommodations or modifications were not useful. This opinion is not supported by the record. The Student's risk of failing classes was his failure to turn in assignments, reports, and projects.

20. The transition plan in the IEP provides that the Student's goal is to attend community college to play baseball. This has been the Student's goal since the outset of his IEP transition planning. Originally, the Student had hoped to attend a four year college, but that plan was changed to a community college when he decided not to take language prerequisites. The 1999-2000 transition plan identified his current area of need as educational instruction. His future needs were identified as vocational education and/or training, community experiences, and employment objectives. The transition plan includes a list of organizations and agencies, with telephone numbers, with whom the Student would be provided linkages in the Spring 2000. It included [REDACTED] for employment and financial assistance, [REDACTED] for educational accommodations, the [REDACTED], and [REDACTED] for employment and training.

21. The District provided a copy of the IEP to the Mother in December 1999, at the request of the Student. The Parent and Ms. King discussed special education services for the 1999-2000 school year on an ongoing basis. Although the Parent was unhappy with the lack of specificity in the self advocacy goal, she had given up trying to get changes in the IEP because she had been refused in previous years. She did not offer suggestions

as to how the goal could be improved. In January 2000, the Adult Student returned to live with his Parent.

22. Ms. King monitored the Student's 1999-2000 IEP by checking in with the Student every so often to see if he needed help, and to check with teachers to see if the Student was completing work. During his senior year, the Student did not ask for help, and mostly did not comply with requests to get his work done unless it affected his ability to play baseball. On occasion it was necessary for staff to ask the baseball coach to intervene. When persuasion failed, the coach told the Student what he had to do in order to play baseball and the Student would comply.

23. At one point during the Student's senior year, Ms. King, feeling that she was not providing much help to the Student, and having confirmed that the community colleges would provide accommodations to either a Section 504 or special education high school student, asked the Student whether he wanted to continue in special education. The Student consulted with his Parent, and decided to continue on special education. Changing the Student's designation to Section 504 would not change the Student's negative perception he associated with asking for help.

24. At the end of the Student's senior year, Ms. Kloss (one of the Student's teachers), the Parent, and Ms. King discussed the Student's failing Ms. Kloss' [REDACTED] class, due to incomplete assignments. If the Student failed the class he would not graduate. Ms. King taped two stories that the Student needed to read and provided them to the Student. Two days before graduation, when the Student learned he had completed sufficient work to pass, he told Ms. King "See I told you, I didn't need help." The Student was proud of the fact that he accepted no help and was able to get the necessary work done.

Transition Planning

25. The Student's goal was to attend college so that he could play baseball. Ultimately, his goal is to play professionally. The District assessed the Student's goal as feasible, and guided his high school curriculum to ensure that he would have an appropriate college preparatory transcript. In his first high school year ([REDACTED] grade), the Student did not want to take a language class which is required for a four year college. The counselor and Student changed the Student's goal from attendance at a four year to a two year college and eliminated the language requirement. The District monitored the Student's progress, by checking with his teachers, informing the Student of potential problems, and using the baseball coach to motivate the Student.

26. As part of transition planning, Ms. King invited the Student to go on a group outing to [REDACTED] (his closest community college) and when he refused, she offered to take him on his own. The Student declined because his coaches had

helped him connect with the baseball coaches at [REDACTED] and [REDACTED] Colleges.

27. Mr. Charap assisted the Student with his college application to [REDACTED] College.

April 2000 Reevaluation

28. The Student's triennial evaluation was due on April 25, 2000. Mr. Schaub was running behind schedule because of his large caseload and personal problems. On April 25, 2000, Mr. Schaub called the Parent, informed her that the reevaluation needed to be done, and that he would like to test the Student the following day. The Parent gave her consent. On the same day, Mr. Schaub left a packet of paperwork related to the reevaluation in the Parent's mailbox. The forms provided to the Parent included: Notice of Reevaluation, Notice of Action, Request for time extension, and the Parent's due process procedural protections. The Parent disputes the receipt of the due process protections, but Mr. Schaub's testimony that the Parent received them is the more persuasive: procedural protections are part of each packet and he used the standard packet in the Student's reevaluation. The Parent agrees that she has received them in the past but not read them until the due process hearing was initiated. As indicated by his telephone call to the Parent for permission to evaluate, Mr. Schaub continued to proceed as though the Student were not yet an adult. There is no evidence that he provided the Adult Student with written notice of the evaluation or procedural safeguards. At the time of the reevaluation, the Adult Student was living with his Parent.

29. On April 26, 2000, Mr. Schaub went to the Student's classroom, unannounced, and asked the Adult Student to leave with him. The Student was embarrassed in front of his peers and refused. Mr. Schaub called the Parent a second time, who told him to ask the Student's coach to intervene. Mr. White told the Student to do the testing, the Student agreed, and completed the testing on April 26, 2000.

30. Mr. Schaub administered the Wechsler Individual Achievement Test (WIAT) to determine the Student's academic levels of functioning. He denied the Parent's request for new intelligence testing, because he did not have a reason to believe that the 1989 and 1992 intelligence testing scores, which were consistent with one another (full scale score 98 and 95 respectively), had changed. The Parent asserts that the testing took too little time to be considered reliable. However, there is no evidence that shows the test results were inaccurate or unreliable.

31. The WIAT test provided the following standard scores:

Basic Reading	88
Reading Comprehension	92

Findings of Fact, Conclusions of Law and Order

Math Reasoning	92
Numerical Operations	75
Written Expression	80

32. Mr. Schaub did not calculate the standard deviation to determine whether the Student qualified for special education services under Specific Learning Disability because the Student already qualified for services as Health Impaired. Average scores range between 85 and 115. The Student has some learning delays in reading, math, and written language. Mr. Schaub opined that but for the Student's learning delays, the District would have accommodated the Student's [REDACTED] needs under a Section 504 Plan.

33. On May 2, 2000, the Parent and Mr. Schaub met for about an hour and a half to discuss the reevaluation, at which time the Parent signed the consent to reevaluate. The Parent requested new intelligence testing and requested an independent educational evaluation (IEE) related to [REDACTED] and/or [REDACTED]. Mr. Schaub denied the Parent's request for new intelligence testing because the Student's performance was consistent with his previous IQ scores in 1989 and 1993. Mr. Schaub told the Parent that a request for an IEE should be made to Ms. Robertson, the director of special education, and is not timely until after the reevaluation is completed. Mr. Schaub requested and the Parent complied, with signing an extension of the due date to May 25, 2000, for the reevaluation, due to the needed medical documentation having been sent to the wrong Dr. Abbott.

34. On May 2, 2000, Dr. Abbott returned the confirmation of the Student's [REDACTED] diagnosis. On May 3, 2000, Mr. Schaub completed the Summary Reassessment.

35. On May 3, 2000, Mr. Schaub and the Parent talked again on the telephone. Later that day, Mr. Schaub, Ms. King, and Ms. Kloss signed off on the Summary Reassessment in a MDT meeting. Dan White, one of the Student's teachers, as well as the baseball coach, signed off on it later.

36. Mr. Schaub testified that he provided an invitation to the Parent to the MDT meeting. The Parent testified that she was not invited and did not receive notice. The Parent's testimony is the more persuasive as it is consistent with the series of evaluative activities recited above. That is to say, Mr. Schaub, at the somewhat lengthy meeting with the Parent the previous day, had not anticipated the return of Dr. Abbott's health impairment verification and had requested a month's extension. Secondly, Mr. Schaub was well aware of the Parent's disagreement with the reevaluation and that she would not sign off her agreement with the summary analysis. It is more probable than not that Mr. Schaub saw no purpose to inviting the Parent to the MDT meeting and did not do so.

37. Mr. Schaub and the Parent spoke again on May 3, without reference to the upcoming meeting, wherein Mr. Schaub explained the process for an IEE. Mr. Schaub forwarded the Parent's request for an IEE to Ms. Robertson.

38. On May 16, 2000, Ms. Robertson, through counsel, timely requested a due process hearing to defend the appropriateness of its evaluation and its decision to deny the Parent's request for an IEE at public expense.

39. The District conducted the Student's 2000 reevaluation, not only to meet the special education triennial requirement, but also because community colleges require eligibility for special education or Section 504 in order for a student to be eligible for accommodations (such as taped lectures, books on tape, etc.). The 2000 reevaluation established the Student's eligibility for special education and his need of modifications, accommodations, and assistance at the community college.

40. When a parent requests an independent educational evaluation, the District's decision to grant or deny the request is based on a number of factors. In this case, the District found the Student's areas of difficulty to be classic symptoms of [REDACTED]. Ms. Robertson denied the Parent's request for an IEE because further testing was not needed to determine the Student's eligibility for services and because an evaluation is not necessary to identify learning strategies to compensate for learning delays resulting from [REDACTED].

Notice of Change of Placement Due to Graduation

41. On June 1, 2000, the District provided a Notice of Change of Placement to the Parent and Adult Student, advising them that the Adult Student's graduation with a regular education diploma would cease his eligibility for special education services. The District did not provide it earlier because they wanted to be sure that the Student would, in fact, graduate. The District assumed that the Parent and Adult Student understood that graduation would cease his eligibility for services. In fact, the Parent and Adult Student were unaware of the implications of graduation, and point to the Student's IEP review date of October 26, 2001 to suggest that his special education could have gone beyond graduation to the community college. On June 2, 2000, the Adult Student graduated.

42. The District did not include a copy of the Adult Student's due process procedural protections with the Notice of Change of Placement because they had been included in the recent Notice of Reevaluation to the Parent.

43. There is not dispute that the Adult Student wants to keep his regular education diploma and continue at the community college.

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 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.

A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA (formerly the 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.

3. An 'appropriate' public education does not mean the absolutely best of 'potential-maximizing' education for the individual child. The states are obliged to provide 'a basic floor of opportunity' through a program individually designed to provide educational benefit to the handicapped child. *Gregory K. v. Longview School Dist.*, 811 F.2d 1307, 1314 (9th Cir. 1987), citing *Rowley*, 458 U.S. at 201.

4. The district has the burden of establishing by a preponderance of the evidence that it has complied with the procedural requirements of the Individual with Disabilities Education Act (IDEA), 20 U.S.C. §1401 et. seq. , and its implementing regulations, 34 C.F.R. §300 et. seq., and state law. *Clyde K. v. Puyallup School District*, 35 F.3d 1396, 1398 (9th Cir. 1994). This includes the appropriateness of its evaluations, notices, and eligibility determination for the student. See *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1497 (9th Cir. 1996); *Hacienda La Puente School District v. Honig*, 976 F.2d 487 (9th Cir. 1992).

5. Generally, procedural error will be dispositive, that is to say, denies a student a free appropriate public education, only where it results in the loss of educational opportunity, or seriously infringes the parents' opportunity to participate in the IEP process. *W.G. v. Board of Trustees of Target Range Sch. Dist.*, 960 F.2d 1479 (9th Cir. 1992).

1999-2000 IEP

6. The Parent asserts that the District committed procedural and substantive errors in the Student's October 1999 IEP process. The asserted errors relate to notice requirements, IEP team members, and the development of appropriate goals and objectives.

7. First, the District was required to provide advance written notice of the IEP meeting to the Adult Student. WAC 392-172-15700. There is no evidence that the District provided the Adult Student with such notice. The District had no obligation to send the Parent notice because the Adult Student had requested it not do so.

8. Second, the District's IEP team did not include a general education teacher, as required by WAC 392-172-153(2). The purpose of the general education teacher's presence is to participate in the development, review, and revision of the student's individualized education program, including assisting in appropriate positive behavioral interventions and strategies and to determine supplementary aids and services, program modifications, and supports for school personnel, consistent with WAC 392-172-160(1)(c). See WAC 392-172-15700. The IEP contains a list of modifications and accommodations that the Adult Student received in the general education class environment, and testimony established that the Adult Student's teachers were aware of, and provided these accommodations, which were facilitated by Ms. King.

9. Third, the District's IEP team did not include a representative of the district who is knowledgeable about the availability of resources of the District, as required by WAC 392-172-153(4)(c). Mr. Kneadler's participation came after the meeting, when he signed off on the IEP. The IEP meeting did not include discussion of District resources that would require approval by Mr. Kneadler.

10. Lastly, an IEP must include, in relevant part:

A statement of measurable goals, including benchmarks or short-term objectives, related to meeting the student's needs that result from his disability to enable the student to be involved in and progress in the general curriculum;

A statement of the special education and any necessary related services and supplementary aids and services to be provided and any program modifications or supports;

A statement of how the student's progress toward the annual goals will be measured, and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

See WAC 392-172-160((1)(b), (c), and (g).

11. In this case, the District's IEP has two main goals: classroom modifications and accommodations, and self advocacy skills.¹ The self advocacy goal attempts to address the Adult Student's unwillingness to ask for help. This unwillingness is, in part, due to his [REDACTED] disability and, in part, due to the stigma he attaches to the receipt of special education services. This unwillingness to ask for help can prevent him from participating effectively in the general education classroom. The self advocacy goal serves not only as a relevant classroom goal but also an important transitional goal. The need to be able to self-advocate transcends school. The undersigned concludes that the self advocacy goal is appropriate.

12. The self advocacy short term objectives provide concrete suggestions of the types of help the Adult Student can request, and from whom he should make the request. The objectives are measured by the Student's teachers, and Ms. King, by making a record of the Adult Student's request for assistance. The IEP intentionally leaves the entire goal up to the discretion and willingness of the Adult Student. Since the Adult Student never asked for help, the objectives became a means to watch the Adult Student fail at this goal. The evidence established that other forms of offering special education services had been unsuccessful because the Adult Student refused them.

¹The Adult Student's learning delays are not addressed because he has refused all specialized instruction for several years.

13. The question arises as to where the District's obligation ends and the Adult Student's decision to refuse help takes over. A district must provide the special education and related services in accordance with the IEP and make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP. A district is not accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. See WAC 392-172-160(4).

14. Here, the weight of the evidence supports the conclusion that the District made a wide variety of past efforts to assist the Adult Student and that over time his reluctance to accept help grew to a refusal to accept help. The evidence established that during the course of the Adult Student's senior year, Ms. King, and others, appropriately monitored the Adult Student's progress on the goal as well as the overall objective of graduation, and that Ms. King provided assistance as appropriate. The Parent does not support her complaint that the self advocacy goal should have been more specific or more helpful, nor does she suggest what the District should have done differently.² It is unfortunate that the Adult Student made no gains on the goal to increase his ability to seek assistance. However, the lack of progress is not demonstrated to be the result of District error.

15. The undersigned concludes that the District's procedural errors in the development of the October 1999 IEP did not interfere with the development and implementation of the Adult Student's IEP and did not deny the Adult Student educational opportunity. Therefore, the procedural errors did not deny the Adult Student a free appropriate public education. See *Target Range, supra*. The undersigned also concludes that the District did not make substantive errors in the development and implementation of the IEP.

Transition Services and IEP

16. The Parent asserts that the District committed errors in the development and implementation of the Student's transitional services. WAC 392-172-161(1)(h) through (m), -164 and -166, pertain to transition needs and services. The evidence does not support the Parent's contention. The October 1999 IEP transitional elements do not have any apparent procedural deficiencies. Moreover, the evidence established that the District and

² The Parent's assertion that the District should have offered the Adult Student a Section 504 Plan because it is a less restrictive environment than special education eligibility is without merit. First, the concept of less restrictive environment pertains to the IDEA, second, there is no showing that the services offered or provided under a Section 504 Plan would be any different, and lastly, there is no showing that the stigma the Adult Student associated with receiving special education help would be ameliorated by calling it Section 504 help.

Adult Student identified and worked towards the Adult Student's goals and they succeeded. The undersigned concludes that there is no merit to the Parent's assertion.

2000 Reevaluation

17. The Parent's assertion that the District committed procedural errors in the Adult Student's May 2000 reevaluation has some merit.

18. First, a reasonable time prior to conducting the reevaluation, the district shall provide prior written notice to parents or adult students consistent with WAC 392-172-302. In the event new testing is conducted, informed parental or adult student consent is required. WAC 392-172-185. In this case, the District's notice should have been provided to the Adult Student a reasonable time before the reevaluation and his informed consent obtained to administer the WIAT. Instead, the District provided the notice to the Parent on the same day as the school psychologist wanted to conduct the testing and obtained the Parent's consent rather than the Adult Student's consent. Therefore, the District failed to comply with the requirements of WAC 392-172-185 and -302.

19. Second, a group consisting of, at the minimum, the IEP team members, must review existing evaluation data, including evaluations, information from the parents, class observations, teacher and related services observations, and determine whether the student continues to be eligible for special education and needs special education and related services, his present levels of performance, any additions or modifications to enable the student to meet the measurable annual goals set out in the IEP. WAC 392-172-186(1) and (2). This review may be conducted without a meeting, but if a meeting is held, the Parent must be given an opportunity to participate. WAC 392-172-186(3)³. In this case, the District held a meeting but did not invite the Parent or Adult Student. Therefore, the District did not comply with WAC 392-172-186(3). However, this did not deny the Parent an opportunity to participate in the process, in that the Parent and school psychologist had a lengthy meeting and follow up discussion, wherein the Parent was able to raise her requests and express her disagreement, all of which were considered by the school psychologist.

20. The purpose of reevaluation is to determine a student's continued eligibility for special education and related services, his present levels of performance and educational needs, and whether any accommodations and modifications are needed to enable the student to meet the annual goals and to participate in the general curriculum. WAC 392-172-186.

³ A reevaluation is not required before termination of eligibility due to graduation. WAC 392-172-186(5).

21. The Parent asserts that the District's May 2000 evaluation is substantively flawed because it does not include new intelligence testing and [REDACTED] testing. The District's refusal to conduct new intelligence testing was within its discretion, because in the Adult Student's case, it was not needed for continued eligibility as health impaired. The intelligence testing would not add significant value as to the already established fact that the Adult Student had learning delays. As to the auditory processing testing, the evidence does not support the Parent's contention that it is a suspected area of disability. The District established that the 1997 reevaluation included additional testing on the Adult Student's listening skills and found that the Adult Student did not have any identified problems. Moreover, the District established that the Adult Student's learning problems were consistent with his [REDACTED] diagnosis and the Parent did not present evidence to support her opinion. Based on the evidence presented, the undersigned concludes that the District did not commit error when it refused to conduct the additional testing requested by the Parent.

22. The Parent's assertion that the District committed procedural error by failing to conduct the reevaluation on time has technical merit. The reevaluation was late by approximately seven days (it should have been completed by April 25, 2000). The reevaluation could not have been on time regardless of the Parent's consent for an extension because it was due on the initiated date. In any event the seven day delay was of very short duration.

23. The undersigned concludes that the District's procedural errors in the 2000 reevaluation were either minor in nature or were such that the effect did not deny the Adult Student an educational opportunity nor seriously infringe on the Parent's and Adult's Student to participate in the process. Accordingly, the undersigned concludes, pursuant to *Target Range, supra*, that the District did not deny the Adult Student a free appropriate public education in the 2000 reevaluation.

Discipline

24. The Parent's assertion that the District committed procedural errors in the discipline of the Adult Student, pursuant to WAC 392-172-370 *et seq.*, is not supported by the evidence. The undersigned concludes the Parent's contention is without merit.

Change of Placement Due to Graduation

25. The Parent's assertion that the District committed procedural error when it failed to give her timely notice of the termination of special education services due to graduation has merit. WAC 392-172-030 provides, in relevant part:

(4) A special education student shall remain eligible for special education and any necessary related services until one of the following occurs:

(b) The special education student has met high school graduation requirements established by the school district or other public agency pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172-302;

26. WAC 392-172-302 When prior written notice must be given. provides in relevant part:

A school district or other public agency shall give prior written notice in accordance with WAC 392-172-306 to the parent(s) of the student (or the adult student) a reasonable time before the school district or other public agency:

(1) proposes or refuses to initiate or change the identification, evaluation, educational placement of the student or provision of FAPE to the student.

27. WAC 392-172-306 requires that the notice contain:

(a) A statement that the parents of a special education student have protection under the procedural safeguards of this chapter. If a copy of the procedural safeguards are not included with the prior written notice, the district or other public agency shall include a statement that describes the means by which a copy of a description of the procedural safeguards can be obtained.

28. In this case, the District's notice to the Adult Student was deficient because it was not provided within "a reasonable time" before the school district's proposed change in placement due to graduation, in violation of WAC 392-172-302.

29. The District's assertion that it could not provide notice of graduation until it was certain that the Adult Student would graduate, and graduation was in doubt until May 30, 2000, is without merit. The requirement of notice is founded on basic principles of due process. Due process has two elements: notice and opportunity to respond. Notice that provides no meaningful opportunity to respond has little value. WAC 392-172-302 includes this element of due process by requiring the notice to be a "reasonable time" before graduation. No time frame is specified by the regulation, and it may be different in each circumstance. In some circumstances, a parent and district may dispute the appropriateness of a regular education diploma or the timing of it, as well as the

termination of special education services. Prior notice provides time to work out that difference of opinion.

30. Here, the undersigned understands that the District might be reluctant to provide a notice of graduation, when it was not clear to the very end that the Student would graduate. However, the District could have provided notice at mid-senior year, when his last semester class schedule was in place, advising the Adult Student that if all proceeded as planned, and he passed his courses, he would be expected to graduate in June, and that graduation would terminate his eligibility for special education. The undersigned concludes that the District's notice was not timely pursuant to WAC 392-172-302, and did not contain the required notice of procedural safeguards. These procedural errors did not affect the Student's educational opportunity or deprive him of any actual due process opportunities, as evidence established the Student had earned a regular education diploma, wanted to graduate, and was ready to move on to college. Accordingly, the undersigned concludes, that the errors were *de minimis* and did not deny the Adult Student a free appropriate public education.

31. A parent who is the prevailing party in a special education due process hearing may be entitled to reimbursement of attorney's fees. The administrative law judge has no authority to consider or award attorney's fees. WAC 392-172-362. The Parent's and Adult Student's request for attorney fees is denied for lack of jurisdiction.

ORDER

1. The Eastmont School District committed some procedural errors in the development of the Adult Student's October 1999 IEP, May 2000 Reevaluation, and Notice of Change of Placement due to graduation, but the errors did not deprive the Adult Student of a free appropriate public education.

2. The Parent's and Adult Student's request for relief is denied.

Dated at Seattle, Washington this 18th day of December, 2000.



Mary L. Radcliffe
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 U.S.C. 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.

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 12/18/00, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Adult Student

[REDACTED]

Parent

[REDACTED]

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