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OFFICE OF ADMINISTRATIVE HEARINGS
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Superintendent of Public Instruction
Legal Services

September 20, 2000

Parents


Jim Ayers II, Director of Special Services
Ellensburg School District
506 N Sprague
Ellensburg, WA 98926-3177

In re: Ellensburg School District - Special Education Cause No. 00-56

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 RCW 34.05.510-598 (State Administrative Procedure Act) this matter may be further appealed to state superior court.

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,

Robert P. Kingsley
Administrative Law Judge

c: Legal Services, OSPI ✓
Acting 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:

ELLENSBURG SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 00-56

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

A hearing in the above-entitled matter was held before Administrative Law Judge Robert P. Kingsley in Ellensburg, Washington, on August 28 and 29, 2000. The interested parents/guardian appeared on their own behalf. Ellensburg School District (District) was represented by James Ayers II, 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

The parents filed a request for due process hearing with the Office of the Superintendent of Public Instruction (OSPI) on May 8, 2000. The parties were served with a copy of a Notice of Hearing setting this matter for June 8, 2000. A prehearing conference was convened on May 17, 2000, and June 1, 2000. The parties initially agreed to change the hearing date to June 5 and 6, 2000, to accommodate a scheduling conflict for the District. The parent requested a second continuance to obtain an evaluation that had not been available for the deadline for disclosure of documents. The hearing was continued to the week of June 26, 2000.

At the first prehearing conference, the parents sought an order establishing the student's placement pending the hearing. The parties submitted materials for argument at the second conference. The administrative law judge determined that the District's proposed placement constituted the appropriate placement pending hearing according to WAC 392-172-364 and its federal counterpart.

On June 21, 2000, the parents moved for summary judgment based, in part, on a settlement agreement with the Arapahoe School District in which the parties agreed that an individual education program (IEP) dated November 10, 1999, was invalid due to procedural violations. The parents argued that this invalidity and the expiration of an earlier IEP terminate the student's eligibility for services. The administrative law judge

concluded that invalidity or expiration of an IEP does not terminate a child's eligibility for special education and the motion for summary judgment was denied.

When the parties first appeared for hearing, the District had not received copies of an evaluation and counseling reports submitted by the parents. The parents had not notified witnesses to appear and testify at the hearing. The administrative law judge notified the parents of the limitation against basing a finding of fact solely upon statements in reports. See RCW 34.05.461(4). The parents requested a continuance to secure the appearance of the witnesses. The District did not oppose a continuance and the matter was continued to the current date for hearing.

A prehearing conference was convened on July 17, 2000, and a prehearing order issued on July 21, 2000, clarifying issues for hearing. In addition to the issues previously defined, the administrative law judge ordered that the parents could include a request for reimbursement of their independent evaluation as part of their presentation.

The deadline for decision was extended at the time of each continuance according to WAC 392-172-356. The current deadline is September 14, 2000.

ISSUE

The following issues for hearing were identified at the prehearing conferences:

- a. Whether the student should receive special education and related services;
- b. Whether a determination should be made that the student is no longer eligible for special education and related services; and
- c. Whether the provision of special education and related services as proposed by the District would be detrimental to the student; and
- d. Whether the parents should be reimbursed for private evaluations.

FINDINGS OF FACT

1. The student resides with her [REDACTED] and his residential partner (parents) in the District. The [REDACTED] is the student's court appointed guardian. There are [REDACTED] in the household from the [REDACTED] previous marriage to the student's biological mother. The partner has assumed the role of surrogate mother to the children.

2. The [REDACTED] was appointed guardian and custodian of the student on [REDACTED], in [REDACTED], [REDACTED]. The family has relocated since that date, and has transferred the student to several schools. The student transferred twice to the Kittitas School District. The first transfer to [REDACTED] School was from the [REDACTED] and occurred during the [REDACTED] school year. The student completed the school year at [REDACTED] school. The family moved back to the [REDACTED] area and the student began school the following year in the Adams County School District. The student transferred to the Englewood Public Schools in [REDACTED] on October 25, 1999, then transferred back to Kittitas School District on December 16, 1999. On February 23, 2000, the student withdrew from Kittitas School District and on February 29, 2000, began attending school in the District as a nonresident student. The family has since moved to their current residence in the District.

3. School records accompanying the student's first enrollment in the Kittitas School District included an IEP from the [REDACTED] Public Schools dated March 5, 1998. The Kittitas School District determined that a reevaluation was necessary since the records did not include a copy of the current evaluation and summary analysis. The [REDACTED] agreed to the reevaluation.

4. The student's academic records from [REDACTED] Public Schools indicated cognitive functioning within the slow learner range. The student had not learned to tie her shoelaces and visual spatial difficulties were reported. The student was described as easily distracted and overly concerned with the actions of others. Grooming, hygiene, and placing objects in her mouth were identified as concerns. Annual goals targeted academic, social, and fine motor areas.

5. The Kittitas evaluation was conducted by a multidisciplinary team (MDT) consisting of the school psychologist, general education teacher, resource room teacher, occupational therapist, and the step-father. Psychoeducational assessments included the Wechsler Intelligence Scale for Children - 3rd Edition (WISC-3) to test intelligence and cognitive ability; and the Devereux Behavior Rating Scale (Devereux) and Vineland Adaptive Behavior Scales: Interview Edition (Vineland) to test the student's social skills in the educational environment.

6. The WISC-3 scores were: verbal - [REDACTED], performance - [REDACTED], and full scale - [REDACTED]. Her overall performance was ranked at the second percentile and was classified within the mentally retarded range. Numerical reasoning was a relative strength, rated within the average range. Social judgment and spatial abilities were rated within the low average range. Verbal comprehension, short-term auditory memory, long-term memory, and psychomotor speed/accuracy were borderline. Abstract reasoning, visual

attentiveness, visual sequencing, and perceptual organizational skills were apparent weaknesses.

7. The step-father provided information for the Vineland assessment. The Vineland scales identified delays in the areas of communication, daily living skills, and socialization. The Devereux scales revealed elevated scores for interpersonal problems, inappropriate behavior/feelings, and physical symptoms and fears. The teacher reported that the student showed difficulty establishing relationships and interacting appropriately with peers. The student sought out younger playmates as a result.

8. Based on a referral from the school psychologist, the student was assessed for occupational therapy needs. The assessment revealed moderate delays in gross motor and significant delays in fine motor skills. These delays would impact the student's success with handwriting, near and far point copying from the blackboard or overhead projector, cutting with scissors, using manipulatives in learning and creative projects, and in physical education. The therapist recommended thirty minutes of occupational therapy per week.

9. A summary analysis of data was completed by the MDT. The MDT concluded that the student qualified for special education under the eligibility criteria for mental retardation. It noted that testing results revealed general intelligence functioning two or more standard deviations below the mean with concurrent deficits in adaptive behavior. The MDT recommended a program consisting of 300 minutes per week of resource room services to address delays in reading, math, and adaptive behavior. It also adopted the recommendation for 30 minutes per week of occupational therapy. It suggested close monitoring and preferential seating in the classroom setting and the use of a reward system by the resource room teacher. Additional recommendations were: visual presentations paired with verbal cues; directions to be made short and simple with repetition as necessary; and counseling services to help the student cope with changes in her life. The analysis was signed by the step-father and the other members of the MDT.

10. The step-father participated in an IEP meeting on February 23, 1999. The student was placed in general education with pull-out special education services as recommended in the summary analysis. Annual Goals and short-term objectives were identified in reading, math, and motor skills.

11. After her transfer to the Adams County School District in the [REDACTED] school year, an eligibility review/IEP meeting was convened on October 8, 1999. Academic assessments included the Woodcock Johnson Test of Achievement-Revised (WJ-R), the Wold Sentence Copying Test, Clinical Evaluation of Language Fundamentals - 3

(CELF-3), the Hughes Basic Gross Motor Assessment, and an interview with the step-father. The school psychologist administered psychological/cognitive tests including the WISC-3.

12. The IEP/review team identified a number of concerns in the student's present levels of functioning. These included: distractibility, low participation in academic tasks, high mobility, difficulty making and keeping friends, lying or stealing behavior, motor difficulty and need for glasses, low impulse control, vocabulary, response to oral directions, repetition of auditory information, attention to detail, social awareness, memory and recall, and general information. The team identified educational priorities as reading, writing, auditory discrimination, motor skills, and social relationships with peers.

13. The cognitive testing scores were almost identical to those from Kittitas School District. The student's verbal score was [REDACTED], the performance score was [REDACTED], and the full scale score was [REDACTED].

14. The IEP/review team did not identify the student as eligible for services on the basis of mental retardation. It found her eligible on the basis of a [REDACTED] or [REDACTED]. A [REDACTED] or [REDACTED] disability is defined as a disorder in one or more of the psychological processes involved in understanding or in using language which prevents the child from receiving reasonable educational benefit. The IEP comments indicated that the IEP team found the student eligible because her cognitive scores were low average, her reading scores were lower than average, her language testing indicated a need for her participation in an auditory discrimination class, and her social/emotional testing indicated that she would benefit from participation in social skills classes. Annual goals and short-term objectives were identified in reading, writing, sound discrimination, vocabulary, motor skills, organization, and social skills with peers. Special education and services towards these goals was to be provided both in and outside of a general education placement. The parent did not sign the IEP and the student was withdrawn from the Adams County School District shortly after the meeting.

15. An eligibility review/IEP meeting was conducted for the Englewood Public Schools on November 10, 1999. The review adopted the Adams County determination of eligibility and placement, and proposed a similar level of special education and related services. The step-father indicates that he was not provided notice of the meeting and the parties to the IEP have since agreed that it was invalid due to the procedural error.

16. The student was placed in a [REDACTED] grade classroom upon her return to the Kittitas School District in December, [REDACTED]. She received instruction from two general education teachers. The first taught her from December 6, 1999, until January 26, 1999. The second teacher taught the student until she was withdrawn.

17. The step-father did not agree with special education services being extended to the student. The first teacher spoke with the step-father frequently about resource room services. The step-father requested that the student receive no special education services. The teacher provided one-on-one services to the student and suggested the student read and practice math flash cards at home. With one-on-one assistance, the teacher felt that the student's progress in math and reading was marginally satisfactory, but below grade level. The teacher and parents did not have a successful relationship and the parents requested that the student be transferred to another teacher shortly before withdrawing her for a non-resident placement with the District.

18. The student's teachers and special education staff at Kittitas School District disagreed with the step-father's decision regarding special education services. It is their opinion that the student needs the services. Kittitas School District staff requested that the step-father confirm his request in writing on a document reflecting their disagreement with his decision. On February 23, 2000, the step-father chose not to sign the document and withdrew the student from school.

19. The District initiated steps to review the student's entitlement to special education services upon her enrollment as a nonresident student. She was placed in the [REDACTED] grade regular education classroom at [REDACTED] School during the interim. The special education director obtained the student's records from her previous placements and a review of assessment was completed by April 4, 2000. An IEP meeting was scheduled for April 28, 1999, and an invitation to the meeting, dated April 18, 2000, was personally handed to the step-father on April 19, 2000.

20. On April 21, 2000, the parents wrote a letter to the special education director in which they stated their intention to decline special education services. Consistent with their position, they indicated that they would not authorize "re-entry" into special education services. Citing WAC 392-172-030, the parents asserted that the District was violating the rights of the student by attempting to re-enter her into special education services without parental authorization. The parents also indicated that all further communication should be in writing and provided a post office box address.

21. The special education director responded to the parents' letter on April 25, 2000. The director explained that the District was obligated to serve the student until one of the conditions of WAC 392-172-030(4) had been satisfied.

22. On April 27, 2000, the step-father faxed a letter to the District stating that he would not attend an IEP meeting. He also stated that the District was prohibited from extending services where there was no valid IEP and the parents did not consent to services. The District conducted the IEP meeting in the parent's absence. The IEP

provided for a general education placement with four periods in the resource room per week for a total of 180 minutes. Annual goals and short-term objectives were identified in the areas of reading, writing, and math. The IEP included consideration of behavioral and social issues, noting that the student responds well to structure, consistency, and positive reinforcement, and that she would receive counseling at school.

23. The District began implementation of the IEP on May 1, 2000, with observation of the student by the resource room teacher. She attended one session in the resource room and appeared to benefit from the experience. The parents had informed the resource room teacher that they opposed the services. The special education director had told her to extend services despite the parental opposition. Anticipating potential discomfort by the student, the resource room teacher did not explain to the student that she was receiving special education. The student's general education teacher and resource room teacher believe that the student needs special education services.

24. The parents withdrew the student from school on May 11, 2000, shortly after the student had her first session in the resource room. Both parents are employed on a full-time basis. They have continued the student's education with home-schooling materials administered by another parent who home schools her own children, followed by tutoring from a child care worker during the summer months. The parents have also provided lessons after work.

25. The student completed the California Achievement Test administered under the supervision of the [REDACTED] on or shortly before August 14, 2000. The test was directed at mastery of [REDACTED] grade material. The student achieved average results on vocabulary, language expression, and math computation. She achieved below-average results on comprehension, language mechanics, and math concept and application.

26. The parents have obtained independent evaluations of the student's cognitive abilities. The first evaluation occurred on or about May 23, 2000. It was conducted by students from Central Washington University and included administration of the WISC-3. Their report revealed the following scores: verbal - [REDACTED], performance - [REDACTED], full scale - [REDACTED]. The parents have since arranged for an evaluation by Dr. Phillip G. Barnard, Clinical psychologist. His evaluation included cognitive testing using the Stanford-Binet (Fourth Edition). Both evaluation reports reflect conclusions by the evaluators that the student is not eligible for special education. Dr. Barnard's report indicates his opinion that the student would not qualify for special education since she is not three years delayed in any of the three basic areas of reading, spelling, or arithmetic. While noting that the student has been evaluated for [REDACTED] ([REDACTED]), Dr. Barnard's report also includes his opinion that the student should be evaluated for possible [REDACTED] ([REDACTED]) since she was showing some of the

characteristics of attention and concentration problems possibly helped with medication. None of the individuals involved in these evaluations testified at the hearing.

27. The parents have also presented a report from the [REDACTED] in Englewood, Colorado, dated November 20, 1999. The report addresses the effect of special education services on the student's emotional stability. According to information presented from the parents and the student, the authors express the opinion that the student should not receive special education services. The opinion was based on reports from the parents about behavioral problems with school, strong resistance towards any type of academic work, and fear and hesitation from the student about her own "brain worth" and academic ability. The report noted that the student had responded to any mention of special education, resource room, or extra help at school by calling herself a "retard" and biting herself or pulling her hair out. Her responses would become more hysterical, but would lessen after she became more comfortable with her own ability. The parents had addressed the student's behavior with a closely supervised behavior modification program, structure and routine in the family unit, and a part-time schooling program on evenings and weekends. The authors noted that the parents had gathered substantial information about home-schooling and concluded that the parents' work with the student compensated for a lack of resource room services. The authors of this report did not testify at the hearing.

28. The student has a visual impairment that is corrected with glasses. She needs her glasses for close and far work. The student wore her glasses for the cognitive testing conducted by the CWU students. The evaluation conducted by the Kittitas School District noted that the student had recently been given new glasses. However, it does not indicate whether she was wearing her glasses for the testing. The evaluation review conducted by the Englewood Schools also noted recent vision screening and issuance of glasses, and indicated that the student was not wearing glasses during the evaluation. The step-father states that the student had lost her glasses before the Kittitas School District test.

29. The parents obtained mental health counseling for the student between May 26, 2000, and August 13, 2000. Jaqualyn Johnson is a certified mental health counselor with a Masters degree education. She conducted an intake session on May 26, and counseled the student for eight additional sessions. Ms. Johnson diagnosed [REDACTED] or [REDACTED]. She observed that the student thinks most of the time but has extreme difficulty articulating her needs. She has extremely low self-esteem and considers herself unworthy. Her behavior shows a need for power, control, and attention, and exhibits negative thinking that sabotages success. These behaviors will affect the student's academics. Ms. Johnson does not believe the student is retarded. The student will pretend that she doesn't know how to do something asked of her. The student's major concern is that she has few friends. She

expresses excitement to attend fourth grade and to have the opportunity to meet new people and develop friendships.

30. The parents oppose special education for the student because the delivery of services reinforces the student's low self esteem. The parents consider the student's success in home schooling over the summer, with counseling support, as evidence that she does not need special education. They propose a [REDACTED] grade regular education placement for the student during the [REDACTED] school year, with counseling at school and academic support by the parents at home.

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 392-171 WAC (or Chapter 392-172 WAC for cases arising after November 11, 1995).

2. The 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" (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. 103 S. Ct. at 3041, 3042.

3. 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 parents' 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, ___ U.S. ___, 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 Cir.1985).

Need For Special Education and Related Services; Appropriateness of District's Proposed IEP

4. The student's current need for special education services is supported by the Kittitas School District evaluation determining continuing eligibility with recommendations for an IEP. The step-father participated in the process and signed his agreement to the Summary Analysis. There is no evidence of prejudicial procedural error in the evaluation process. The District's IEP, executed in the parent's absence on April 28, 2000, is consistent with the Kittitas School District evaluation and the student's previous IEP. The parents were provided with appropriate notice of the IEP meeting and declined to attend. The evidence does not reflect any prejudicial procedural error in the IEP process.

5. Regarding substantive objections, the administrative law judge has considered the parents' concern that pull-out services reinforced the student's negative self image. Because the student has changed schools so frequently, there is not sufficient evidence to show that the proposed placement and level of services would be detrimental to the student as argued by the parents. The student's teachers from both the Kittitas School District and the District affirm the need for the services. They did not confirm the level of negative response reported by the parent. The student apparently received benefit from the single session she attended in the District's resource room. It is not clear that

the parent's concerns could not be addressed by presenting the services in a positive manner.

6. While the evidence does not support a finding that the April 28, 2000, IEP would be detrimental to the student, it suggests the need for an additional IEP meeting to address the information presented by the parents and their proposed placement for the [REDACTED] school year. The IEP team should reconvene to consider the mental health evaluation by Ms. Johnson, the [REDACTED] report, and potential counseling needs for the student. Consistent with the [REDACTED] report, the IEP team may wish to consider a regular education placement supplemented by home based instruction and special education services extended in the form of consultation to the parents.

Continued Eligibility

7. A student's continuing eligibility for special education is defined under Washington State law at WAC 392-172-030. The pertinent sections of the regulation are as follows:

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

(a) A group of qualified professionals and the parent of the student, based on a reevaluation determines the student is no longer in need of special education; (In this case, while a disability may continue, and individual accommodations in the general education classroom may be necessary for educational benefit, such services would not represent special education services as defined in this chapter.)

8. The parents have not established that a finding of ineligibility should be made at this time. The evidence of ineligibility consists primarily of the opinion testimony of the mental health counselor, a psychoeducational evaluation conducted by students at [REDACTED] and a supplemental report and evaluation by Dr. Barnard. Ms. Johnson did not conduct a psychoeducational evaluation of the student and her opinion that the student is not retarded is unsupported by testing or other qualification. The evaluations by [REDACTED] and Dr. Barnard reflect psychoeducational testing and the opinion that the student does not qualify for special education. Dr. Barnard concludes that the student is not eligible since she is not three years delayed in any of the three basic areas of reading, spelling, or arithmetic. However, these reports are insufficient to support the proposed finding.

Findings of Fact, Conclusions of Law and Order

9. The reports from [REDACTED] and Dr. Barnard constitute hearsay evidence, normally inadmissible under Superior Court rules of evidence. See ROE 801- 804. While hearsay evidence is admissible in an administrative hearing, it may not be relied upon exclusively for a finding of fact unless the administrative law judge determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. See RCW 34.05.452 and 34.05.461(4).

10. The administrative law judge concludes that the hearsay reports are not sufficiently reliable to support a determination of ineligibility at this time. Without testimony and cross examination, several significant issues remain unresolved.

11. First, Dr. Barnard appears to have relied on an incorrect eligibility definition for mental retardation.

WAC 392-172-134 provides, in pertinent part:

Definition and eligibility for mental retardation. Students with mental retardation are those who demonstrate significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects their educational performance and requires specially designed instruction.

...

A three year delay is not the eligibility standard for mental retardation. Therefore, there is a question regarding the foundation for Dr. Barnard's opinion.

12. Neither of the psychoeducational evaluation reports address the discrepancy between results of the [REDACTED] cognitive testing and the results of cognitive testing by Kittitas School District and the Englewood Schools. The parents argue that the discrepancy reflects the student's use of glasses in the [REDACTED] testing. The District argues that the score discrepancy may be attributable to the student's learned response to the questions. Without resolution of this discrepancy, the administrative law judge cannot conclude that the current evaluation is invalid.

13. Finally, Dr. Barnard suggests that the student should be further evaluated for [REDACTED]. This suggestion raises the possibility that the student remains eligible under the category Health Impaired. See WAC 392-172-124. A finding of ineligibility cannot be made without resolution of this question.

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Reevaluation

14. While the evidence does not establish that the student should be determined ineligible, it is sufficient to support a finding that the student should be reevaluated by the District. A student should be reevaluated every three years or "if conditions warrant reevaluation." WAC 392-172-182. The unresolved evidence regarding cognitive testing results and a suspicion of [REDACTED] are conditions warranting reevaluation. Consistent with WAC 392-172-182, the District shall consider the assessments and testing data provided by the parents and determine whether the student continues to be eligible for services and whether the current IEP is appropriate. The reevaluation should explore the discrepancies in the cognitive testing data and resolve the inconsistencies. The District should seek the parents' consent as required by WAC 392-172-185. Consistent with WAC 392-172-108(13), the MDT shall consider whether a medical or other evaluation should be conducted regarding the suspicion of [REDACTED]

Reimbursement for Private Evaluation

15. The administrative law judge has considered the parents' request for an order directing reimbursement of private evaluation expenses and has concluded that the request should be denied. These expenses were incurred after the request for due process hearing was filed. While the evaluations support the need for reevaluation, they were not sufficient to resolve the issues before the administrative law judge in the parents' favor. Furthermore, the parents did not initiate a request for private evaluation at public expense prior to the request for hearing. Therefore, the District did not have an opportunity to consider whether it should fund a private evaluation, offer to conduct further evaluation activities, or to request a hearing regarding the appropriateness of the current evaluation according to WAC 392-172-150. The administrative law judge concludes that an order for reimbursement under these circumstances would be inequitable.

16. The administrative law judge has considered all arguments made by the parties. Arguments that are not specifically addressed have been duly considered but are found to have no merit or to not substantially affect a party's rights.

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ORDER

IT IS HEREBY ORDERED:

1. The parents' request for a finding of ineligibility for special education services is denied. The student should receive appropriate special education services as required by the IDEA and Washington state law.
2. The District shall conduct a reevaluation of the student and, consistent with WAC 392-172-182, shall consider the assessments and testing data provided by the parents in determining whether the student continues to be eligible for services and whether the current IEP is appropriate. The District shall seek the parents' consent as required by WAC 392-172-185. Consistent with WAC 392-172-108(13), the MDT shall consider whether a medical evaluation should be conducted regarding the suspicion of [REDACTED]
[REDACTED]
3. The District's IEP is appropriate pending reevaluation of the student, subject to one or more additional IEP meetings which shall be convened to address the mental health counseling recommendations by Ms. Johnson and the report from the [REDACTED]
[REDACTED]. The parties may also consider alternative service delivery options, including a regular education placement supplemented by home based instruction and special education services extended in the form of consultation to the parents.
4. The parents' request for reimbursement of private evaluation expenses is denied.

Dated at Seattle, Washington this 20th day of September, 2000.


ROBERT P. KINGSLEY
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 9/26/00, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Parents


Jim Ayers II, Director of Special Services
Ellensburg School District
506 N Sprague
Ellensburg, WA 98926-3177