

Chief Administrative
Law Judge



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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Superintendent of Public Instruction
Legal Services

October 27, 2000

PARENT



Lynda Sharp, Director (A)
Secondary Special Ed
Renton School District
300 SW 7th St.
Renton, WA 98055-2307

Lester ("Buzz") Porter
Dionne & Rorick
2550 Wells Fargo Ctr
999 3rd Avenue
Seattle, WA 98104

RE: Renton School District, Special Education Cause No. 2000-SE-0105

Dear Parties:

Enclosed please find a copy of the Findings of Fact, Conclusions of Law, and Order in the above referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Janice E. Shave".

Janice E. Shave
Administrative Law Judge

cc: Legal Services, OSPI
Mary Radcliffe, OAH ALJ Hearing Coordinator



OCT 27 2000

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

OFFICE OF
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

RENTON SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2000-SE-0105
**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

A hearing was held before Administrative Law Judge Janice E. Shave, in Renton, Washington, on October 12, 2000. The Parent and the Student (hereinafter referred to as the Parent and the Student), attended the hearing. The Renton School District School District (the School District), was represented by Lester "Buzz" Porter, Attorney at Law.

Persons testifying on behalf of the School District included: Brian Lockhart, Gary Sampson, Dean Grimm, Lynda Sharp and Bill Gladsjo. The Parent testified on her own behalf. School District Exhibits 1 through 19 were admitted. The Parent's Exhibits 1 through 3 were admitted, over the objection of the School District.

The Parent did not submit any exhibits prior to the hearing, in violation of Washington Administrative Code (WAC) 392-172-354. The Parent was allowed to testify, over the objection of the School District. The Student was not allowed to testify. The Parent did not submit any proposed witness list or exhibit list, but in a telephone prehearing conference conducted the day before the hearing did identify herself as a witness.

The School District submitted Proposed Findings of Fact and Conclusions of Law on October 19, 2000. The Parent did not submit Proposed Findings or Conclusions.

STATEMENT OF THE CASE

A due-process hearing request was filed by the School District on September 13, 2000 with the Office of the Superintendent of Public Instruction (OSPI). The School District requested parental consent to evaluate the Student for eligibility for special education. The Parent refused to consent to the evaluation. A pre-hearing conference was held September 29, 2000, following notice to the parties. A second pre-hearing conference was conducted October 11, 2000. The decision is due to be mailed no later than October 28, 2000, a Saturday, so the due date is October 30, 2000, the following work day.

ISSUES

1. Whether the School District is entitled to evaluate the Student for eligibility for special education pursuant to Washington Administrative Code (WAC) 392-172-104.
2. Whether the Parent's refusal to consent to the evaluation may be overridden.

FINDINGS OF FACT

1. The Student is currently [REDACTED] years old. She recently began [REDACTED] school in the [REDACTED] grade at [REDACTED] School in the Renton School District for the 2000-2001 school year. The Student attended [REDACTED] School at least during part of [REDACTED] grade, part or all of [REDACTED] grade, and all of [REDACTED] grade. [REDACTED] is in the School District.
2. The Student demonstrated considerable behavioral difficulties during her [REDACTED] grade (1998-1999) and [REDACTED] grade (1999-2000) school years. During her [REDACTED] grade school year, she was referred to the school office for significant behavioral issues in excess of [REDACTED] times. Exhibit School District (SD) 3. The behavioral problems generally involved rude, disrespectful, and/or obscene language or behavior. The

problems also involved defiant and/or antisocial behaviors directed toward fellow students (her peers) and toward adults at school. Generally, the disciplinary referrals arose out of incidents outside of the classroom, and in less-structured settings. These included the playground, the lunch room, and the hallway.

3. In [REDACTED] grade, the behavioral problems resulted in consequences ranging from apology notes and conferences with school staff, the loss of privileges, and two short-term suspensions.

4. During the Student's [REDACTED] grade year (1999-2000), the Student's behavior remained problematic. She was written up for behavioral infractions on many occasions. She was sent to the school office as a result of significant misconduct on 11 occasions. These generally involved non-compliance with directions given by adults, or fights with her peers. Exhibit SD 3. Again, the infractions generally occurred on the playground or in the lunch room, which are both less-structured settings than the classroom. The consequences to the Student included detentions, short-term suspensions, loss of recess, and loss of in-class play money utilized in the teacher's monetary reward system for all students. The 11 behavioral incidents which were written up during the [REDACTED] grade school year were all in addition to other, lower-level misconduct which received only oral or written warnings and had informal resolutions and interventions as the consequence.

5. During the [REDACTED] grade school year, the Student had significant problems forming appropriate relationships with peers. She often antagonized and provoked other students with her annoying behaviors and obscene words (whore and bitch) muttered to the students. The Student demonstrated mood swings, including defiance of authority figures, anger, and depression. On occasion she laughed when other students told sad stories. The Student appeared to be distrustful of school staff.

6. The Student began [REDACTED] grade with relatively acceptable grades, ranging from "B" to "D." Exhibit P3. However, her academic achievement deteriorated as the school year progressed. During the second and third terms of the [REDACTED] grade school year she earned mostly "D" and "F" grades.

7. The Student's citizenship and behavior marks on her report card indicate multiple areas of concern from the beginning of the [REDACTED] grade school year. As early as the end of the first trimester of the [REDACTED] year the School District staff noted several areas of concern, including empathy (getting along well with and understanding others' feelings), respect (follows rules, values others and their property) and using communication strategies to work effectively with others. The Student was rated as "developing/needs practice" in many areas, including being cooperative (takes turns, shares materials and responsibilities), independent (is responsible and uses problem-solving), industrious (applies effort and strives for high-quality/neat work), organized (stays focused, plans/manages time and material), and reflective (explains answers and actions, evaluates own behavior). Exhibit P3.

8. The Student is [REDACTED]. She resides with her mother, who is a single parent, and with her [REDACTED] who was also a [REDACTED] student during the 1999-2000 school year. The Student's [REDACTED] grade teacher, Brian Lockhart, is [REDACTED]
[REDACTED]

9. The Student's [REDACTED] grade teacher, Brian Lockhart, frequently received complaints from other students regarding the Student's unacceptable behavior. The Student herself complained to Mr. Lockhart early in the [REDACTED] grade school year that she had no friends. Mr. Lockhart started a "circle of friends" which was a small group of girls chosen by the Student as individuals she would like to have as friends. The teacher allowed the students to stay together in the classroom during lunch. This was a privilege not accorded other students, who were required to leave the classroom during lunch.

The circle of friends was not successful, since some of the students dropped out, claiming the Student did not appear to be working toward building friendships. The Student reported to her mother that she had dropped out of the group. Whatever the specific cause, the circle of friends proved to be a failure at assisting the Student to make friends with other girls in her [REDACTED] grade class.

10. On many occasions when the Student misbehaved she was sent to the school's Intervention Specialist, Sue Hamilton. Ms. Hamilton supervised [REDACTED] intervention room, where students were sent for time-out and in-school suspension. Despite Ms. Hamilton's many interventions, the Student's behavior did not improve over the [REDACTED]-grade school year.

11. During [REDACTED] grade, the Student was absent an excessive amount of time, including a twelve-day stretch in December, 1999. The Parent had the Student stay home during that December period because the Parent felt things were going too poorly at school, and situation needed time to cool down and change. Throughout the school year, the Student was given many opportunities to make up missed schooling, including during recess and/or take-home. Instead of making up the work, the Student often socialized with other students, or fidgeted about. She rarely stayed on task and rarely finished her school work. She generally did her best work when she was monitored closely by an adult.

12. The Student failed to make any successful friendships with her peers. She seemed to prefer playing with children significantly younger than she was. She did not have any successful relationships with adults at the school during [REDACTED] grade.

13. Mr. Lockhart sent home weekly, then daily, behavioral reports with the Student, intending them to be delivered by the Student to her mother. The reports were rarely returned to Mr. Lockhart. It is not certain whether the Student gave them to her Parent, as she was supposed to do.

14. At least during the 1999-2000 school year, the Parent and [REDACTED] staff had very poor communications going both directions. The School District asserted the Parent frequently claimed she did not receive materials sent by [REDACTED] so beginning at least as early as the 1999-2000 school year, [REDACTED] adopted the strategy of communicating with the mother primarily by certified mail. The mother agreed with this system of mail communication. However, the teacher's weekly, then daily behavior reports were not sent certified mail, or even regular first class U.S. mail, but were instead sent home with the Student. The School District asserted it had very poor luck communicating with the Parent by telephone, because the Parent did not provide it with valid, up-to-date phone numbers. The Parent asserted she provided the School District with an up-to-date phone number at all times, and also gave the School District two message numbers with friends, in case the School District was unable to reach the Parent directly. Whatever the actual cause, the result was extremely poor communication between [REDACTED] and the Parent. The Student demonstrated she was not trustworthy to carry messages, particularly messages about her poor behavior.

15. The Parent was significantly limited by the School District in the amount of time she was allowed by [REDACTED] to be at the school during school hours. She was further limited by the School District in her ability to visit in her children's classroom. This was apparently due to previous outbursts. The result of the significant limitation on the Parent's presence at school was further deterioration of the communication between the school and the Parent.

16. The Parent did not appear for the November 1999 [REDACTED] grade parent-teacher conference when she was scheduled to appear. Instead, after the conference she contacted the teacher and told him she wanted to meet. The teacher had already scheduled parent-teacher conferences, and was not available to meet on the spur of the

moment. The teacher found it virtually impossible to reach the Parent on the telephone. He did leave messages on occasion, but generally did not receive calls back.

17. During the [REDACTED] grade, the Student's behavior grew worse, and more violent, beginning in approximately February 2000. The Student threw a deodorant case at another student, hitting him in the head, for no apparent reason. She was placed in in-home suspension for two days. On March 9, 2000, she was involved in a playground fight with a boy. Several punches were thrown. Both students had to be physically restrained and pulled apart. A teacher's aide was injured in the leg, and another individual was injured in the shoulder. Three adults overheard the Student state she was going to kill the student with whom she was fighting. Exhibit SD 4. Then, on March 31, 2000, the Student was in an altercation with another young girl. The Student was alleged to have said "just give me a knife so I can kill myself." The Student was embarrassed that her hairpiece had been pulled off her head, and thrown at her. When she was found by adults, she was hiding near cars, and had a shirt wrapped around her head like a turban. School personnel at the site were concerned because the Student seemed quite despondent. No one was able to locate the Student's Parent immediately, and the Principal called the police to resolve the situation. When the Parent arrived at the school shortly after the incident, the Parent was outraged that the police had been called. The Parent asserts the Student was simply embarrassed by the incident, and did not ever intend to threaten suicide, but instead merely engaged in adolescent overstatement by expressing that she was so embarrassed she wished she would die. The Parent was not present when the Student made the statement at issue, and has only the Student's report of the incident to rely upon.

18. [REDACTED] prepared for an emergency expulsion of the Student in early April 2000, apparently because of the Student's increased violence. The [REDACTED] school counselor, Gary Sampson, completed a checklist developed by the National

School Safety Center, which describes characteristics of youth who have caused school-associated violent death. Exhibit SD 6. Mr. Sampson found the Student had demonstrated 11 of the 20 characteristics identified on the checklist. Those include: (1) a history of tantrums and uncontrollable angry outbursts; (2) characteristically resorts to name-calling, cursing or abusive language; (3) a background of serious disciplinary problems at school and in the community; (4) is on the fringe of his/her peer group with few or no close friends; (5) has previously been truant, suspended or expelled from school; (6) has little or no supervision and support from parents or a caring adult; (7) has witnessed or been a victim of abuse or neglect in the home; (8) has been bullied and/or bullies or intimidates peers or younger children; (9) tends to blame others for difficulties and problems she causes herself; (10) is often depressed and/or has significant mood swings; and (11) has threatened or attempted suicide.

19. No evidence was offered in this proceeding regarding the lack of supervision or support from a parent or caring adult, or regarding the Student having witnessed or been the victim of abuse or neglect in the home. The evidence regarding whether the Student actually threatened suicide is not conclusive.

20. The Parent appealed the emergency expulsion and a hearing was conducted April 19, 2000. The emergency expulsion was upheld and the Student was expelled until she could provide [REDACTED] with information that she was not a threat to herself or others and until a behavioral contract could be established between the Student, the Parent, and the school. Exhibit SD 9.

21. Consistent with the emergency expulsion decision issued in April 2000, the Student did participate in a psychological evaluation. The Parent testified at the hearing that the Student has continued with some counseling sessions. The School District was unaware of any of the counseling sessions and therefore unaware of any findings or recommendations made by the Student's counselor or counselors.

22. On April 4, 2000, the Student's classroom teacher completed a Special Education Referral form, requesting that the Student be considered for an evaluation of her eligibility for special education services. Exhibit SD 7. The teacher stated his concern that the Student's ability to learn was hampered by her low social and communication skills, and noted that due to her deficiency in these areas, she was unable to manage her behavior in a classroom setting, which in turn affected her ability to learn. It was noted she had noticeable delays or problems in behavior and personal/social skills and she had received many prior interventions with no positive outcomes. The teacher noted the impending transition to middle school was of concern.

23. The referral form was received by the [REDACTED] Principal on April 5, 2000, and a notice informing the Student's Parent of the referral was sent, certified mail, to the Parent on that same day. Exhibit SD 8. The Notice of Referral (Notice) explained that the School District's concern was based on the Student's academic difficulties, the impending transition to middle school, the Student's inability to maintain any adult or peer relationships, and the demonstrated lack of respect for authority. The Notice included a copy of the School District's pamphlet explaining special education procedural safeguards and time-lines.

24. A notice dated April 28, 2000 was prepared, advising the Parent of a planned meeting of the [REDACTED] Multi Disciplinary Team (MDT), a team comprised of educational specialists from [REDACTED] Exhibit SD 11. Two possible dates were proposed for the meeting - May 4 or May 5, 2000. The certified mail receipt for this letter shows that the Parent did not receive the notice until May 13, 2000, after the meeting was scheduled to be held. The Parent did not appear for that meeting, the School District did not proceed with the meeting on May 4 or 5, 2000, and instead rescheduled the meeting for May 16, 2000. The Parent was then sent notice of the meeting for May 16, 2000.

25. On the morning of May 16, 2000, at approximately the same time that the MDT began to meet at [REDACTED] the Parent called [REDACTED]. She informed the school secretary she wanted to reschedule the meeting, and stated her opposition to special education for the Student. The message was delivered to the Principal during the MDT meeting. However, the MDT proceeded with the discussion of the referral without the Parent.

26. Persons participating in the MDT meeting included the Principal, the regular-education teacher (Mr. Lockhart), the school counselor (Mr. Sampson), the School District's director of special education for [REDACTED] school (since retired), the school psychologist assigned to [REDACTED] School (Dean Grimm), and other [REDACTED] staff members, including a speech and language pathologist (SLP), an educational associate, and an occupational therapist/physical therapist (OT/PT). The Student's cumulative file and disciplinary file were reviewed and discussed by the participants at that meeting, along with Mr. Lockhart's referral form. The MDT participants' observations of the Student's behaviors at school were also discussed.

27. The MDT unanimously recommended the Student be evaluated to determine whether she was eligible for special education. The school counselor proposed the evaluation would consist of intellectual, academic and adaptive behavior assessments, such as all or a portion of the Wechsler Intelligence Scale for Children – Third Edition (WISC III), the Wechsler Individual Achievement Test (WIAT), the Woodcock-Johnson Achievement Test, the Behavior Assessment System for Children (BASC) and classroom observations. The exact type and scope of the evaluation proposed by the School District was not communicated to the Parent until the due-process hearing conducted October 12, 2000.

28. The School District sent a completed Notice of Action and a blank Consent for Initial Evaluation form and another copy of the procedural safeguards notice

on or about May 18, 2000. The School District's Director of Special Education Services for ██████████ Schools sent correspondence to the Parent regarding the request for consent and the proposed evaluation.

29. The Parent did not respond to the request for consent or the attempt to meet to discuss the evaluation.

30. During the Spring, Summer and Autumn of 2000, the Parent and the School District were involved in other legal proceedings involving the Student and her ██████████, related to the significant absences of the children from school. The truancy court required a mediation session be conducted over the summer regarding truancy issues. The School District attempted to raise the special-education evaluation issue during the summer truancy mediation, but the Parent resisted the efforts to do so. During the summer of 2000, the School District again asked the members of the ██████████ MDT team to confirm whether they still believed an evaluation of the Student was necessary. The MDT team members confirmed their concerns about the Student were too great and the evaluation should take place.

31. On August 25, 2000, the School District's Director of Special Education for Secondary Students sent a letter to the Parent, via certified mail, requesting consent to evaluate and inviting communication. The letter included another Notice of Action, blank Consent for Evaluation form, and Notice of Procedural Safeguards. Exhibit SD 19. Also included was a self-addressed stamp envelope. The letter further notified the Parent of the School District's intent to request a due-process hearing in the event the Parent did not respond.

32. The Parent did not respond to the School District's letter of August 25, 2000, and the School District therefore requested this due-process hearing and notified the Parent by letter dated September 12, 2000. Included with the School District's letter was a copy of the request for due-process hearing, another blank

Consent for Evaluation form, another Notice of Action form, and another Notice of Procedural Safeguards.

33. The Student began the 2000-2001 school year at [REDACTED] School. Her progress reports from the first six weeks of school identify she is doing somewhat better this school year ([REDACTED] grade) than she did last school year. Exhibit P 1. However, the Student is still noted to have frequent unexcused tardiness, to be positive when encouraged, but not otherwise, rarely giving answers even when asked, and to have incomplete work and to be failing in some of her classes. It was noted that she does not talk to her peers in a respectful way, and does not treat her peers well, but expects to have them treat her well. She was doing very well in her music survey course, on target to receive an "A" in that class, but frequently was tardy, and it was noted that the tardiness may affect her grade.

34. During the 1996-1997 school year, the School District administered the Cognitive Abilities Test (CogAT) as part of the screening for entry into the School District's Gifted Student program. The Student's test scores indicated average to above-average intellectual capabilities. Exhibit SD 2.

35. During the spring of 1999, the School District administered the Washington Assessment of Student Learning (WASL), an academic achievement test administered statewide to all [REDACTED] grade students. The Student met the standard for performance in reading and listening, and was just slightly below the standard in mathematics and writing. Exhibit SD 1.

36. Based upon these standardized assessments, as well as evidence offered by the Parent and Student's [REDACTED] grade teacher, the Student has demonstrated she has the intellectual ability to learn and achieve at or above grade level. She is most successful in completing assignments and in staying on task when she has an adult sitting with her, helping her to maintain focus on the assignment.

37. Despite the Student's previously demonstrated ability to achieve academically, she has demonstrated considerable behavioral difficulties in school which have interfered with her ability to perform at grade level.

38. The Parent alleges the [REDACTED] principal, Bill Gladsjo, in essence poisoned the communications, and discouraged or barred school personnel from speaking with the Parent. The Parent asserts School District personnel are not concerned about the Student's progress, but instead are trying to improperly retaliate against the Parent for complaints she has filed against various School District personnel.

39. Mr. Lockhart was not instructed by the Principal not to speak with the Parent. He was advised by the Principal it was his option whether to speak with the Parent or not.

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 United States Code (USC) Section 1401 *et seq.* (Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) 300 *et seq.*, and Chapter 392-172 Washington Administrative Code (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 U.S. 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 Education for All Handicapped Children Act. 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. Pursuant to this extensive statutory and regulatory scheme, a school district may request a due-process hearing to show the appropriateness of a proposal by a school district to initiate evaluation of a student. WAC 392-172-350(1)(a). Indeed, in order to comply with the Individuals with Disabilities Education Act (IDEA), 20 USC 1400 *et seq.*, school districts have an affirmative obligation to establish procedures by which they can identify and evaluate students suspected of having a disability, who therefore might be eligible to receive special education instruction and related services.

4. Local school districts are required to have policies and procedures in effect that describe the methods the school district will use to conduct child find (locate) activities for students suspected of being eligible for special education services. WAC 392-172-100. Each school district is required to have time-lines for specific action, starting when a student who is suspected of having a disability is brought to the attention of school personnel. The school district is required to document the referral and provide to the student's parents written notice that the student has been referred because of a suspected disabling condition and the school district, with parental input, will determine whether there is good reason to believe the student is a good candidate for evaluation. WAC 392-172-104.

5. Washington State has enacted a regulatory scheme that implements federal educational requirements for special education issues. These regulations require that the school district seek consent from the parent. "Consent" means that the parent has been fully informed of all information relevant to the activity for which consent is sought, and the parent understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records that will be released, and to whom. WAC 392-172-040(3). In the present case, the notice to the Parent regarding the type of evaluation sought was somewhat sketchy, since it did not specifically identify the type of testing proposed. A brief and understandable description of the types of assessment being proposed would normally be material to a decision to consent to an evaluation, as the School District concedes. However, in the present case it was not the type or scope of evaluation which the Parent objected to and which caused her to withhold her consent.

6. The regulations adopted relating to parental consent require that the school district provide a description of the action proposed by the school district. The School District complied with all requirements in completing the April 2000 referral,

providing written notice to the Parent that the Student had been referred, collecting and examining existing records and reviewing the referral, and in determining whether the Student was considered a candidate for evaluation within 25 school days of receiving the referral. WAC 392-172-104. The School District promptly reported its decision in writing and sent notice to the Parent. The Parent was given the opportunity to participate in the meeting, which was rescheduled in an attempt to obtain the Parent's attendance. WAC 392-172-105. The School District appropriately went forward with the meeting even though the Parent did not participate.

7. The School District provided the Parent with appropriate written notices of its proposal to evaluate, including procedural safeguards and other required elements of the proposed action, except that the School District did not provide an adequate description of the evaluation (testing) the School District intended to undertake.

8. The Parent was ultimately fully informed of the nature and scope of testing proposed by the School District, and she continued to object. The procedural defect of the paucity of description of the exact type and scope of testing sought is determined not to be fatal to the School District's proposal to evaluate the Student.

9. When a student is suspected of having a disability and that suspicion is brought to the attention of school personnel, the school district's duty to evaluate is owed to the student, not to the parent. If a school district has a reasonable suspicion that a student has a disability, that school district may not simply take "no" from a parent for an answer. Further, conclusive proof of a disability is not necessary to establish a good reason to evaluate a student. WAC 392-172-104.

10. In the present case, good reason does exist for this Student to be evaluated. The Student is not achieving academic grades commensurate with her intellectual abilities. She has not experienced success or progress in developing the social skills necessary to succeed in or out of school. She is most successful in highly-

structured environments with fewer distractions and greater attention from adults. Her social and academic problems are increased in less-structured environments, which in [REDACTED] school included playgrounds, lunch rooms and hallways. [REDACTED] school has significantly more unstructured time than does [REDACTED] school, and [REDACTED] school presumably still more. An evaluation is necessary to provide information regarding the nature and type of the Student's abilities and performance deficits. The Student should be able to make progress, both academically and socially/emotionally. If there is a disability which makes it difficult for her to achieve that progress and success, it is important to learn about it as quickly as possible.

11. The Student has exhibited several behaviors and characteristics which raise questions whether the Student would be eligible for special education services under the emotionally/behaviorally disabled student category, WAC 392-172-118. The inquiry before us in this proceeding is not whether the Student is eligible for special education services as an emotionally/behaviorally disabled student. Instead, it is limited to the single question of whether the Student should be evaluated for special education eligibility. The fact that the Student has been observed to have demonstrated some of the criteria for emotionally/behaviorally disabled students serves as a reason or justification to do the evaluation. She has demonstrated an inability to learn, which so far appears to be unrelated to intellectual, sensory or health factors. She has demonstrated an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, and she has demonstrated inappropriate behaviors and feelings under normal circumstances. She has demonstrated a general pervasive mood of unhappiness or depression while at [REDACTED], as well as impulsivity, attention and work completion problems. These are all factors which should be evaluated.

12. Further, the Student has failed to respond positively to standard interventions which are frequently successful with others. The "circle of friends" was

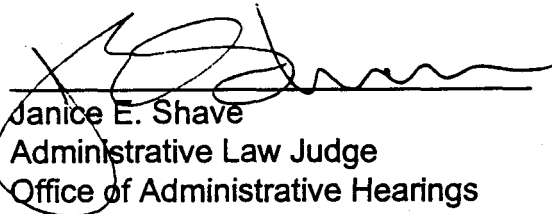
unsuccessful in [REDACTED] grade. The weekly and daily behavior reports were unsuccessful, and the repeated school discipline measures, including detentions, suspensions and interventions, as well as conferences with school personnel, were unsuccessful. The behavior contract between the school, the Parent and the Student was also unsuccessful. For all of the above reasons, it is appropriate for the Student to be evaluated.

13. The Parent alleges the School district is motivated to request evaluation of the Student because of a desire to retaliate against the Parent. No credible evidence of this motivation was perceived during the hearing. Even if there were an inappropriate motivation on the part of the School District for testing, the inquiry would still be whether sufficient evidence exists to warrant evaluation of the Student, independent of the school's motivation. It is clear the history and pattern of communication between the Parent and the School District is poor, at best. The School District's or teacher's choice to send daily or weekly disciplinary reports home with the Student, where communication was already poor, was not a good choice. This is especially the case where the School District had already determined it would communicate with the Parent through certified mail due to problematic communication. The Parent is correct that the early involvement of the Parent in the discipline problem would have been better for resolving the behavioral issues. However, this issue alone does not excuse all of the Student's behaviors, and does not mean the blame for the Student's behaviors falls on the shoulders of the School District. The Student's behaviors were sufficiently unacceptable, and continued over such a long time, that it is appropriate to evaluate the Student, even where the communication between the School District and the Parent were short of ideal.

ORDER

IT IS HEREBY ORDERED that the refusal of the Parent to grant consent for the evaluation of the Student should be, and hereby is, overridden. The School District shall fully evaluate the Student and arrive at a decision pursuant to WAC 392-172-154 within thirty-five (35) school days from the date of this Order.

Dated at Seattle, Washington this 27th day of October 2000.


Janice E. Shave
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 RCW 28A.225.230(3) and RCW 34.05.510 through 34.05.598 this matter may be further appealed to a court of law by filing a petition for review in superior court of either Thurston County or county of the petitioner's residence within thirty (30) calendar days of the date of mailing this decision.

Certificate of Mailing

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 October 27, 2000 by depositing a copy of the same in the United States mail, postage prepaid, addressed to the following:

PARENT



Lynda Sharp, Director (A)
Secondary Special Ed
Renton School District
300 SW 7th St.
Renton, WA 98055-2307

Lester ("Buzz") Porter
Dionne & Rorick
2550 Wells Fargo Ct
999 3rd Avenue
Seattle, WA 98104