

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

IN THE MATTER OF:

FEDERAL WAY SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2001-SE-0107

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

A hearing in the above-entitled matter was held before Administrative Law Judge Jill Geary, in Federal Way, Washington, on January 17, 24 and 25, 2002. The interested parents ("Parents")¹ represented themselves. Federal Way School District ("District") was represented by Tim McCredie, attorney at law. 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 for a due process hearing on October 19, 2001, to dispute the District's decision to not discontinue in-school speech and language therapy services as part of the student's IEP.

Pursuant to notice mailed to the parties on October 23, 2001, a prehearing conference was scheduled for October 31, 2001, and a due process hearing was scheduled for November 9, 2001. On October 31, 2001, the prehearing conference was continued to November 14, 2001, and the hearing date was stricken. The decision due date was continued from December 3, 2001, to December 17, 2001. At the prehearing conference, the Parents were represented by William Dussault, and the District was represented by Buzz Porter, with the law firm of Dionne and Rorick.

On November 14, 2001, the prehearing conference was continued at the request of the parties until December 12, 2001. The decision due date was continued to January 14, 2002.

¹In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student."

On December 11, 2001, the Parents' counsel withdrew from the case.

On December 12, 2001, a prehearing conference was held. The due process hearing was scheduled for January 8, 9, and 10, 2002. The decision due date was extended to thirty days from the close of the record. A prehearing conference was scheduled for December 28, 2001. A prehearing order was issued on December 14, 2001.

On December 27, 2001, the parties submitted joint stipulations. The stipulations were subsequently amended by the Parents. See Exhibits C2 and C3.

On December 28, 2001, a prehearing conference was held. The Parents represented themselves and the District was represented by Tim McCredie, also with the law firm of Dionne and Rorick. The hearing dates, upon the District's motion, were amended to January 17, 18 and 25, 2002. A readiness conference was scheduled for January 10, 2002. A prehearing order was issued on December 28, 2001.

On January 9, 2002, a prehearing conference was held at the agreement of the parties. Another readiness conference was scheduled for January 15, 2002. A prehearing order was issued on January 9, 2002.

The due process hearing was held on January 17, 24 and 25, 2002. The dates were amended at the request of the Parents, due to health concerns. The parties submitted written closing statements on January 29, 2002.

The District filed an objection to the Parents' closing statement on January 30, 2002. On January 31, 2002, the ALL responded by letter that post-hearing factual statements not presented during the hearing would not be considered part of the hearing record. On January 31, 2002, the Parents submitted a response to the District's objections to their closing statement, and the District provided a further objection to the Parents' response. No further information has been submitted.

Evidence Relied Upon:

Exhibits Admitted: District's Exhibits D100 through D133, Parents' Exhibits P200 through P216, and OAH Exhibits C1 through C4.

Witnesses Heard: Mother; Rhonda Larson, Program Specialist, Student Support Services for the District; _____ second grade teacher, _____ Elementary; Barbaralyn Harden, Speech Language Pathologist (SLP) and Assistive Technology Specialist for the District; Amy Huseby, School SLP, _____ Elementary; Amy Faherty, SLP, Puget Sound Therapy Services; _____ former para-educator, Elementary; and Jean Gray, PAVE, Community Liaison Support Person for Parents.

Findings of Fact, Conclusions of Law and Order

ISSUES

The issues for hearing were:

1. Whether the District is providing a free appropriate public education (FAPE) by requiring the Student to attend one hour of speech and language therapy per week during school hours, requiring the Student to be pulled out of her general education class, when the parents are willing to provide private speech language therapy at their own expense during non-school hours.
2. Whether the District should stop providing speech language therapy to the Student during school hours; and
3. Whether the Parents are entitled to their requested remedy or other equitable remedies as appropriate.

See Prehearing Order dated December 14, 2001.

STIPULATIONS

1. The Student is currently eight years old (birth date December 11, 1993) and attends her neighborhood school, _____ Elementary, in the Federal Way School District (District).
2. The Student has a medical history of right frontal encephalomalacia and multiple seizures per day in the past. No seizures have been reported since her brain surgery in August 1999.
3. The Student has ongoing communication issues that are being addressed by speech language pathology (SLP) therapy.
4. The District has been providing SLP services to the Student under an IEP since 1998. In the Student's preschool year, 1998-1999, she received 30 minutes of District provided SLP per week at the community-based preschool she attended. In the Student's kindergarten year, 1999-2000, she began receiving 30 minutes per week of SLP, which was increased to 60 minutes per week starting in January 2000. The 60 minutes per week of SLP has continued since then, through the Student's first grade year, 2000-2001, and into the present second grade year, 2001-2002.
5. In the Student's first grade year, 2000-2001, the Student was to receive SLP from the District's SLP for 60 minutes each week. Due to the schedule implemented that year,

there were some transition difficulties pulling the Student out of her regular education class, which the District took action to remedy by various methods including in-class service, splitting the session into two half-sessions, and moving the SLP services to another day in the week.

6. The current IEP dated June 4, 2001 (not signed by the Parents) for the Student's second grade provides for her to receive her education in regular education classrooms with a one-on-one aide, except for 60 minutes per week of pull-out services for Language Therapy. The IEP also provides that the Student will not participate with non-disabled peers while receiving her language therapy.

7. The June 4, 2001 IEP states: "[Student] is able to transition to task/activity in [SLP] therapy with 4/4 opportunities when therapy is provided in the therapy room. However, this skill was reduced to an average of 2/4 opportunities when therapy was provided in the classroom." After reviewing the Student's progress in communication skills, the IEP states: "[SLP] therapy will continue to focus on following directions, answering wh- questions related to a story, increasing vocabulary skills, categorization, sequencing, and sentence structure. Also social language skills will be addressed to include maintaining appropriate eye contact and verbal turn taking skills."

8. The June 4, 2001 IEP has goals and objectives written into it to address the Student's areas of need in receptive language, expressive language and communication. These include the following goals:

a. "[The Student] will improve her receptive language skills to include following directions, answering questions, and vocabulary as measured by SLP data by June 2002."

b. "[The Student] will improve her expressive language skills to include categorization, sentences structure, verb tenses, and sequencing as measured by SLP Data by June 2002."

c. "[The Student] will improve her social language skills to include eye contact and verbal turn taking skills as measured by SLP Data by June 2002."

9. The current practice this school year is for the Student to receive one-on-one SLP services at _____ from _____, a District employee who is appropriately qualified and trained in SLP. Ms. _____, also worked with the Student last year. The SLP session at school occurs every Wednesday afternoon when school is in session from 1:15 - 2:15 p.m. Typically, the SLP therapist meets the Student who is coming from her lunch recess, and accompanies her to the room where they will work together. When the session

is over at the end of the SLP, the Student's aid meets the student in the SLP room and leads her back to the regular education program.

10. Except for the classroom instructional time missed due to the pull-out for SLP services, the Parents agree with the District that the Student requires SLP services.

11. The Parents' reasons for believing the Student does not receive an appropriate education when she is pulled out of the regular education classroom one hour per week to receive SLP are as follows:

a. The Parents believe the transition of the Student to SLP is disruptive to the Student's routine, and removes her from necessary instruction in the classroom with her peers. The Parents believe the focus of the Student's education at school should be on academics, rather than SLP services, since SLP is being provided by an outside private speech provider.

b. The Parents believe the Student is not as comfortable with the District's therapist as she is with the private therapist retained separately by the Parents. As a result, the Parents believe the Student does not perform as well with the District's SLP as she does with the private SLP.

c. The Parents believe the SLP services at school are unnecessary because in late September/early October 2001, the Parents added another hour a week of private SLP for the Student during non-school hours, for a total of two hours of private SLP per week. [The parents add that at the end of August, private SLP services were reduced to one hour per week because the Student was doing so well. The Parents increased the private SLP time back to two hours per week when they thought SLP services at school could be eliminated.]

12. According to the Parents, the primary issue in this due process hearing is whether the parents of a student have a right to provide those services with a private SLP provider of their choice, in order that a student is not pulled out of a regular education classroom one hour a week for SLP services provided by a District SLP therapist.

13. Last year during the Student's first grade, the Parents authorized the District's SLP to communicate with the Student's private SLP, hired independently by the Parent's. The two SLP providers utilized compatible goals and methods.

FINDINGS OF FACT

SLP Evaluation

1. In their written documents, the Parents argue that the District cannot rely on its most recent evaluation as being an appropriate basis for the current IEP.

Findings of Fact, Conclusions of Law and Order

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2. The District completed its last reevaluation of the Student in June 2000. The Speech/Language portion of the evaluation was completed by Jean Lix, MS, CCC-SLP. Ms. Lix assessed the student on May 3 and May 17, 2000. As part of her evaluation, Ms. Lix conducted tests to measure the Student's receptive and expressive language. Ms. Lix also considered the results of tests administered by the Student's private SLP. Ms. Lix also considered the current status of the Student's health condition, including her 1999 brain surgery and the up coming changes in the Student's seizure medications.

3. For speech and language, the evaluation makes the following recommendations for the IEP:

1. Continued therapy for 1 hour a week to be delivered in one therapy session.
2. Placement in a program that will provide opportunities to develop social communication skills with typically developing language children. [The Student] imitates speech and actions from others and learns through this technique.
3. Program modifications to provide small group and individual instruction for practice and reinforcement of specific skills on her IEP.
4. A language-rich environment that encouraged participation verbally in all aspects of the academic and social environment.
5. Continued therapy on specific goals that were introduced this year and will be expanded next year in both receptive and expressive language areas.

See Exhibit D105, page 1.

4. The Mother signed that she was in agreement with the evaluation. The Parents did not present specific evidence or argument with regard to the inappropriateness of the evaluation, other than to question whether it remained a valid basis for the Student's current IEP, given subsequent medication changes. However, the Parents did not present evidence on or explain how those medication changes would render either the evaluation or the current IEP inappropriate.

IEP Goals and Objectives: Speech Language Pathology

October 26, 2000 IEP

5. On October 26, 2000, the IEP team revised the Student's IEP for the first grade. The mother participated as an IEP team member. In the area of communication/speech and language the student had the following annual goal, to "improve her expressive and receptive language skills as measured by SLP data and teacher reports by June 2001."

The following are short-term objectives as listed in the IEP, as well as the progress the Student made as reported by the SLP on the IEP:

- a. To use a picture/word schedule in therapy and in class to encourage transitions, starting October 27, 2000, as measured by criteria of three out of four activities followed in sequence, evaluated daily;
 - i. By April 2001, the student had made progress on, but had not met this objective.
- b. To increase vocabulary/categorization skills by naming six items belonging to category (Name six farm animals), starting October 27, 2000, as measured by criteria of six items in each category in 60 seconds or less, evaluated monthly;
 - i. By April 2001, the Student had made progress on, but had not met this objective.
- c. To use a minimum of four word sentence to request item without prompting of "I," starting October 27, 2000, as measured by criteria of eight out of 10 trials, evaluated weekly;
 - i. By April 2001, the Student had made progress on, but had not met this objective;
- d. To follow verbal turn taking activity (3-5 turns each) without prompts of "my turn, your turn," starting October 27, 2000, as measured by criteria of eight out of 10 trials, evaluated daily
 - i. By December 2000, the Student had made little progress on this objective. By April 2001, she had made progress on, but had not met this objective.
- e. To use a variety of descriptive words to increase mean length of sentence to four words, starting October 27, 2000, as measured by criteria of 80% of responses and comments, evaluated weekly;
 - i. By December 2000, the Student had made little progress on this objective. By April 2001, she had made progress on, but had not met this objective.
- f. To use prepositional concepts to indicate location of people, objects or animals in spontaneous speech, starting October 27, 2000, as measured by criteria of 80% of responses, evaluated weekly;
 - i. By December 2000, the Student had made little progress on this objective. By April 2001, she had made progress on, but had not met this objective.
- g. To follow simple 2 step unpredictable directions without prompts, starting October 27, 2000, as measured by criteria of 75% accuracy, evaluated daily;
 - i. By December 2000 and April 2001, the Student had made little progress on this objective.
- h. To follow classroom type 2-step directions without prompts, starting February 18, 2001, as measured by criteria of 75% accuracy, evaluated daily;

- i. By April 2001, the Student had made little progress on this objective.
- i. To answer wh questions related to 4-6 sentence storey, starting February 26, 2001, as measured by criteria of 75% of responses, evaluated daily;
 - i. By April 2001, the Student had made little progress on this objective.
- j. To demonstrate understanding of negation using "not", starting February 26, 2001, as measured by criteria of 75% responses, evaluated monthly.
 - i. By April 2001, the Student had met this objective.

6. According to the IEP, the District was to provide the Parents with copies of the goal pages, a written progress report and other communication notebook, as a means of regularly informing them of the Student's progress on her communication goals and objectives.

a. The SLP uses "Happy Grams" to report to parents something positive that happened in SLP therapy. Normally, the SLP would not complete a Happy Gram for every session. In the Student's first grade, the SLP completed a Happy Gram for the Student on October 19, 2000. Due to the Parents' expressed desire for more feedback with regard to the Student's progress, the SLP started completing more Happy Grams as of April 2001. In the first grade there are also Happy Grams for the therapy sessions that occurred on April 19, 2001, April 26, 2001, May 1, 2001, May 3, 2001, June 8, 2001, June 22, 2001, June 29, 2001. The Happy Grams report the Student's performance on naming items in categories, answering "wh-" questions related to stories, following multiple step questions, using descriptive words for size, shape, color and taste, using prepositions, and sequencing picture cards. The Happy Grams also report the Student's attitudes, preferences and behaviors during the sessions.

b. In the first grade, the SLP also wrote longer notes to the Parents, to inform them of the Student's progress on April 4, 2001, and June 15, 2001. The April progress report discusses the Student's progress on a variety of her goals. The June report discusses the difficulty the SLP had in getting the Student to focus due to her excitement about an upcoming school carnival.

c. In the first grade, the SLP also completed Speech and Language Reports for the Student. In December 2000, the SLP reported that the Student was making good progress, exerting fair effort and had excellent attendance. In the April 2001 Progress Report, the SLP reported that the Student was making excellent to good progress, exerting excellent to good effort depending on the day, and had excellent to good attendance. In the narrative portion of the reports, the SLP provided the Parents with more information of the Student's progress on her goals, and some detail of her progress on specific objectives.

d. The Parents were also informed of the Student's progress in regularly scheduled IEP meetings. In the latter part of the first grade, the IEP team met on April 4, 2001, April 24, 2001, and June 4, 2001. At these meetings, both the SLP and the Parents reported that the Student was experiencing progress in the area of speech.

7. The October 26, 2000 IEP was to be reviewed by June 5, 2001.

8. In February 2001, the IEP team reviewed the Student's progress with regard to SLP services, and determined that she was not making as much progress as possible. The Student was often distracted when the SLP attempted to provide services in the classroom, and would spend much of the time moving around. The IEP team decided to provide the Student SLP services in a pull-out session, for 60 minutes per week. The Student made greater progress on her SLP goals and objectives after she began receiving SLP services in the SLP pull-out room.

June 4, 2001 IEP

9. The IEP team met on June 4, 2001, to discuss the Student's new proposed IEP. Although the Parents attended the meeting, they did not sign the IEP.

10. According to the IEP, the Student's SLP service time was changed to 60 minutes per week in the SLP room. This change reflected the Team's earlier agreement to take SLP services out of the general education environment.

11. The following are the goals and objectives of the IEP, as well as the progress the Student made on the goals and objectives as reported by the SLP:

- a. Goal 1: To improve receptive language skills to include following directions answering questions, and vocabulary as measured by the SLP data by June 2002.
 - i. Objective 1: To follow 2 step complex classroom type directions which include 3 elements in the classroom, starting June 5, 2001, measured by criteria of 3 out of 4 trials, evaluated weekly;
 - (1) By July 20, 2001, the Student had made little progress on this objective. By December 2001, the Student had met this objective.
 - ii. Objective 2: To follow 3 step directions that include 6-7 critical elements in the therapy setting; starting June 5, 2001, measured by criteria of 3 out of 4 trials three session, measured monthly. This objective was subsequently broken down at the Parents' request, so that the Student would first work on directions with 5-6 critical elements and then begin working on 6-7 critical elements starting January 2002.

(1) By July 2001, the Student had made little progress on directions with 5-6 critical elements. By December 2001, she had made some progress on this objective, but had not met it.

iii. Objective 3: To answer "wh" questions (why, who, when, where, what) related to a first grade story; starting June 5, 2001, measured by criteria of 8 out of 10 trials three sessions, evaluated monthly. In October 2000, the Student met this goal, and at the Parents' request, an additional goal was added that the student would answer "wh" questions related to a second grade story. It concerned the Parents greatly that the SLP had not created this goal without their prompting.

(1) By December 2001, the student had not yet started working on the new objective, even though its starting date was November 1, 2001. This is partly explained by the Parents and the Student going on a trip in the latter half of November 2001.

iv. Objective 4: To demonstrate understanding of vocabulary related to the reading curriculum by pointing to the appropriate picture of the definition; starting October 1, 2001, measured by criteria of 8 out of 10 trials each three sessions, evaluated monthly.

(1) By December 2001, the student had not worked on this objective.

b. Goal 2: To improve expressive language skills to include categorization, sentences structure, verb tenses, and sequencing as measured by SLP data by June 2002.

i. Objective 1: To state a minimum of 8 items belonging to categories in 60 seconds or less, measured by criteria of 8 out of 10 trials 3 sessions, evaluated monthly;

(1) In July 2001 and December 2001, the Student had made little progress on this goal.

ii. Objective 2: To sequence up to 5 picture card scenes and retell story in correct sequence, measured by criteria of 8 out of 10 trials in 3 sessions, evaluated monthly;

(1) In July 2001 and December 2001, the Student had made little progress on this goal.

iii. Objective 3: To use the present progressive (verb -ing) and the regular past tense verb form in words when shown a picture, sentences, and conversation, measured by criteria of 8 out of 10 trials in 3 sessions, measured monthly;

(1) By December 2001, the Student had made progress on this objective, but had not met it.

iv. To use grammatically correct sentences that contain the articles (a, an, and the) in words when shown a picture, sentences, and conversation, measured by criteria of 8 out of 10 trials 3 sessions, evaluated monthly.

(1) By December 2001, the Student had made progress on this objective, but had not met it.

c. Goal 3: To improve social language skills t include eye contact and verbal turn taking skills as measured by SLP data by June 2002.

i. Objective 1: To maintain eye contact with the conversational partner while generating her thoughts/ideas with no more than 1 prompt of (look at me) in 15 minute intervals, measured by criteria of 3 out of 4 trials three sessions, evaluated weekly;

(1) In July 2001, the student had made progress on this objective, but had not met it. By December 12, 2001, the Student had met the objective.

ii. Objective 2: To use appropriate verbal turn taking skills in SFA while partner reading, measured by three out of 4 trials 3 sessions, evaluated weekly;

(1) By July 2001, the Student had made little progress on this objective. By December 2001, she had made progress on this objective, but had not met it.

iii. Objective 3: To use appropriate verbal turn taking skills in the general education classroom measured by criteria of 3 out of 4 trials 3 sessions, evaluated weekly.

(1) By July 2001, the Student had made little progress on this objective. By December 2001, she had made progress on this objective, but had not met it.

12. According to the IEP, the Parents were to be notified of the Student's progress on her communication goals by receiving copies of the goal pages, getting written progress reports and in parent conferences.

a. The District reported the Student's progress to the Parents on the IEP with regard to the Student's goals and objectives. The SLP also included information in the general comment portion of the IEP with regard to the Student's progress.

b. The SLP continued to write Progress Reports for the Student. In the July 2001 Progress Report, the SLP reported that the Student was making good progress, exerting good effort and had excellent attendance. In the December 2001 Progress Report, the SLP wrote that the Student was making excellent progress, exerting excellent effort and had excellent attendance in therapy. In the narrative portion of the notes, the SLP wrote about the student's progress on certain

objectives, as well as general comments with regard to the Student's progress on her annual goals.

c. In the Student's second grade, the SLP wrote Happy Grams to the Parents for all the Student's the therapy sessions, which occurred on September 13, 2001, September 19, 2001, September 26, 2001, October 10, 2001, October 17, 2001, October 19, 2001, October 24, 2001, November 7, 2001, December 12, 2001, January 9, 2001, and January 16, 2001. The Happy Grams reported the Student's progress on following 3-step directions, making eye contact, taking verbal turns in conversation, answering story related questions, sequencing picture cards, using -ing endings, using articles, using regular past tense verbs, taking turns with other students, and categorizing items. The Happy Grams also reported when the Student was unable to keep to task or was uncooperative.

d. In the second grade, the SLP also kept detailed records of the speech services she provided to the Student on September 12, September 19, September 26, October 3, October 10, October 17, October 24, November 7, and December 12, 2001, and January 9 and January 16, 2002. The records indicate the different objectives the SLP worked on with the Student during the sessions. The SLP would take data on three to four objectives in a session.

e. In the second grade, the SLP also prepared monthly progress reports for the Student in October and December 2001, which documented the Student's progress and status on each of her named IEP objectives.

f. The SLP also attended IEP meetings that occurred on September 28, 2001, and October 10, 2001, and had an opportunity to report on the Student's progress at those times.

13. In order to complete the written progress reports in both the 2000-2001, and 2001-2002 school years, the SLP relied on the data she had collected on the Student during her SLP sessions. There is no record of specific data for the Student's first grade year, and not all of the Student's SLP sessions were held in that year. However, in the Student's second grade year (2001-2002), all but one of the SLP sessions were held and data was taken on the specific objectives worked on by the SLP. It is the District's testimony that it will make-up the one SLP session missed by the Student in the second grade.

14. During the October 10, 2001 IEP team meeting, the Parents explained that they had increased private SLP time by one hour and as a result wanted the District to discontinue in-school SLP services. It was the Parents' position that by eliminating in-school SLP services, the Student would spend more time in academics and would have fewer transitions during her day. The SLP responded by offering different therapy options. The

options included: continuing 60 minutes in the SLP room; providing two 30 minute sessions in the SLP room; providing 30 minutes of therapy in class and 30 minutes in the SLP room; two 30 minute sessions in class; one 30 minute session in class, and one 30 minute session on the playground; or reducing SLP to one 30 minute session in either the class or the SLP room. The SLP also stated that the Student was making progress on her goals and objectives, and did not have a difficult time making the transition. The SLP disagreed with the Parents' desire to stop in-school therapy for the Student, because the Student had been identified with a communication disorder. The SLP said that they would continue to provide speech language therapy, and the Parents said they would take the issue to due process hearing.

15. On October 23, 2001, the IEP team met, including in part, the Parents and the SLP. The reason for the meeting was to discuss evaluation planning. The notes indicate that there was no discussion of the Student's SLP

School Speech Language Therapy: Scheduling

16. The Student's SLP services have occurred at different times. In the first grade, the SLP occurred in the class during the math period. The IEP team eventually determined that this was not the most productive time for SLP services to occur, and it was decided that SLP therapy would be provided in the SLP room for the Student's second grade. For most of the second grade, the Student has received SLP services on Wednesdays, during the period from 1:15 p.m. to 2:20 p.m., when the regular classroom teacher is working on extracurricular activities such as listening, art, health and writing, as opposed to core academic courses, such as reading and math. Wednesdays is the day when many of the pull-out activities are scheduled for the Student's classmates, so the general education teacher attempts not to use the Wednesday period for projects that all students will be expected to accomplish.

17. The Parents have concerns that the Student is being held responsible for activities that she misses due to her SLP. The Parent refers to a poor grade the Student received on an art project. The general education teacher credibly testified that the Student is not held responsible for things she misses due to therapy, but may still get bad grades because she is not always willing to use the time she has to work on assigned projects.

18. The SLP session has not always been conducted during the extracurricular activity time. In the past, the general education teacher taught a phonics program during the time the Student was in SLP. The Parents believe the Student would have been better served to participate in the phonics program rather than SLP therapy. This assertion is not supported by the record. The general education teacher credibly testified that the phonics program was designed for small group settings, and that she experimented teaching the phonics program to the entire class. She eventually determined that the program was not

effective in large group settings, and discontinued teaching it to the entire class. Therefore, the Student would not have been better served participating in an ineffectual phonics program over her SLP therapy.

19. Given SLP therapy's current placement between two recesses, the Student does not have difficulty making transitions between the SLP room and the general education environment. When the SLP meets the Student at the end of the lunch recess, the Student is happy to see the SLP and goes with her willingly to the SLP room. Even when the SLP meets the Student in the classroom, the Student easily leaves the classroom and goes to the SLP room. There is no evidence that the Student is currently uncomfortable with the District SLP.

20. The Student is scheduled to receive 60 minutes of SLP per week. The SLP is not always able to get the Student to attend to direction for a full 60 minutes. The SLP has followed suggestions from the Student's private SLP on how to best work with the Student. The private SLP recommended that the District SLP use a format where she and the Student take turns being the teacher. This works at times to keep the Student focused on her SLP therapy. During some sessions, the District SLP has had the Student's one-on-one aide come into the therapy room to work on home work with the Student. The SLP would do her notes during these times, and would occasionally direct the aide with ways to frame questions. The aide did not consider the SLP's comments to be formal direction. However, any direction the SLP gave the aide was assistance in the instruction of the Student, even if it was not during a meeting called for that purpose. Further, it would have been helpful to the SLP to see how the Student was interacting with her aide in performing regular school work, even if the SLP was not engaged in activities directly related to the Student's listed goals and objectives for a full 60 minutes.

Speech Language Pathology: Public vs. Private

21. The Parents maintain that the private SLP is primarily, if not entirely, responsible for the progress the Student has made in the areas of speech and language. However, neither the private SLP, the District SLP or the expert SLP were able to testify that credit for the Student's progress could be quantified in that way. The private SLP testified that the progress the Student has made with regard to speech and language has been due to the collaborative efforts made on the part of the private SLP, the District SLP and the Parents.

22. The District SLP and the private SLP have different professional duties. Whereas the private SLP has the duty to improve a person's speech, language and voice to the greatest extent possible, the District SLP has the responsibility to provide services to a student so that he or she has access to the general education curriculum.

23. The Parents dispute that the school SLP has any advantage over the private SLP in providing services because the school SLP conducts her therapy in a pull-out room, in a one-to-one situation similar to private therapy. However, the school SLP also regularly sees the Student outside of the SLP room, either in the halls, at recess, or when the SLP goes to see the general education classroom, which happens about once a day. On those occasions, even though she is not specifically taking data on the Student's progress on IEP objectives, the SLP is able to gather useful information about the Student with regard to her performance in the classroom, and her interactions with peers and adults. Further, even though it is not the type of information that is documented, the SLP and the general education teacher are able to quickly share information with each other that they can use in their instruction of the Student. Further, when necessary to document achievement on a goal or objective, the school SLP easily observes the Student working with peers, such as when working on verbal turn taking, reading to each other or eye contact objectives. Another advantage the school SLP has is that she sees on a daily basis how the Student is generalizing the skills she is learning in the SLP room to the general education environments, and can make modifications to her instruction as necessary.

24. The Parents assert that the school SLP does not make the same progress with the Student as the private SLP. As of August 2000, the Student was using sentences 2-3 words in length in private therapy, whereas she was using sentences of 1-2 words in length in school SLP sessions. This is not necessarily an indicator of the effectiveness of the relative SLP sessions, but rather an indicator of how well the Student was able to generalize skills she was learning in private therapy into the school setting. Another area where the Student was showing more progress in private therapy as of August 2000, was with eye contact. Although identified as an area that needed to be addressed in school, the private SLP did not see any problems in that area. This supports the ultimate finding that it is important to the Student to have SLP provided in the school setting, where the District SLP has an opportunity to see how the Student is generalizing skills across a variety of settings.

25. In August 2000, the Parents provided a release to the District and private SLP's so that they could communicate. It was the Parents expressed desire that the private and District goals be brought in line. The District attempted to meet the Parents' wish that the private and IEP goals be in conformity. To do this the District SLP had to take the private goals, which had a duration of three months, and attempt to change them so they would be suitable for an annual IEP goal. Just because the District SLP is working with the Student on goals and objectives that were designed in part by the private SLP, does not mean that she is not responsible for any progress the Student makes because of in-school SLP instruction.

26. During the hearing, the private SLP testified that she is unable to act as a school SLP for the purposes of implementing an IEP because she does not hold the proper

certification. She further testified that she is unwilling to contract with districts to work only on IEP goals and objectives.

The Student

27. Over the course of her first and second grades, the Student has improved greatly in the areas of speech and communication, and this has had great and positive impact on her ability to participate in school, academically and socially. At the beginning of her first grade, the Student was unable to participate in group activities, because she was often distracted. When she needed to go to the bathroom, she would point to get permission. She did not interact socially with her peers. The District personnel had concerns about some of the Student's inappropriate behaviors.

28. By February 2001 in the Student's first grade, she was talking about herself, her friends, things she liked and places she liked to go. She was also able to summarize stories. Although she was still distracted at times, she was able to provide clear spoken responses to questions. As the Student was better able to communicate her needs, her behavior in the school environment became more appropriate.

29. By second grade, the Student's interactions with her peers had become even greater. She was initiating relationships. The Student's progress on her speech language goals have also helped her in academic areas because she is better able to follow her general education teacher's directions and answer her general education teacher's questions. The specially designed instruction that the Student receives as speech language therapy assists the Student to make better progress in all areas of her education.

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.

Rowley at 103 S. Ct. at 3041, 3042.

3. In the present case, it is the Parents' goal to have the District discontinue providing speech and language therapy to the Student, given that they are providing additional, private speech language therapy at their own expense. This gives rise to two different lines of analysis. If the District is not providing a FAPE, and the Parents' private option is one that can provide an appropriate education, then the Parents would not only have the right to reject the District's services, but the District would then be responsible for paying for the appropriate private services. See *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993); *Sch. Comm. of the Town of Burlington v. Dept. of Educ. of Mass.*, 471 U.S. 359, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985).

4. However, the question is different if the District is providing a FAPE to the Student. Under that scenario, the question becomes more directly whether a parent who is willing to purchase private services can require a district to discontinue otherwise appropriate services.

5. In order to analyze either scenario, it is necessary to determine whether the District is providing a FAPE with regard to the Student's speech and language therapy. In determining whether a FAPE has been provided, the first step in the analysis is whether the District has procedurally complied with the requirements of the IDEA. See *W.G. v. Board of Trustees of Target Range Sch. Dist.*, 960 F.2d 1479 (9th Cir. 1992).

Procedural Compliance with the IDEA

6. Generally, procedural error will constitute a denial of FAPE only where it results in the loss of educational opportunity, or seriously infringes the parents' opportunity to participate in the IEP formulation process. See *W.G. v. Board of Trustees of Target Range Sch. Dist.*, 960 F.2d 1479 (9th Cir. 1992); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994, (1st Cir. 1990), cert. den., 499 U.S. 912, 111 S.Ct. 1122 (1991); *Hall by Hall v. Vance County Bd. Of Educ.*, 774 F.2d 629, 635 (4th Cir. 1985).

7. In the Parents' list of complaints against the District, the Parents identify the following procedural errors: whether the District has failed to test or evaluate the Student in the area of SLP in a timely manner; whether the District failed to properly adjust the student's goals and objectives; whether the District provides the Parents sufficient data of the Student's progress on her goals and objectives; and whether the District is serving the Student in the least restrictive environment. Each alleged error will be addressed in turn.

Evaluation

8. In the Parents' opening statement, they argue that the District's evaluation of June 2000 is not a sufficient basis for the Student's current IEP with regard to SLP services, citing possible changes in the Student's condition due to medication changes. See Exhibit C4, page 3.

9. The Washington regulations require that a student be reevaluated at least every three years. WAC 392-172-182. A reevaluation should also occur if conditions warrant or at the request of a student's parent or teacher. *Id.* The District's reevaluation of June 2000 falls within the required three year reevaluation period, and there is no evidence that either the Student's teacher or parents requested a SLP reevaluation be performed by the District. Further, even if the Student's condition did change due to adjustments in her medications, there is no evidence that indicates that the change was sufficient to warrant an SLP reevaluation. Therefore, the District has not committed a procedural error with regard to its testing or evaluation of the Student.

Adjustment of Goals and Objectives

10. In the Parents' opening and closing statements, they set forth their argument that in order to provide FAPE, District is obligated to constantly amend the Student's goals and objectives, as the private SLP does. This is not a correct standard.

11. According to state regulation, at a minimum, the IEP team is obligated to annually review an Student's IEP, and then revise it as necessary. WAC 392-172-156. An IEP is to include a statement of measurable annual goals and objectives, including short-term objectives. 34 CFR § 300.347(a)(2), WAC 392-172-160. "The annual goals in the IEP are statements that describe what a child with a disability can reasonably be expected to accomplish within a twelve-month period in the child's special education program." 34 CFR § 300.346, App. C, No. 38. Short term objectives need not be as detailed as an instructional plan, but should be "projected out over an extended period of time (e.g., an entire school quarter or semester." In contrast, instructional plans "generally include details not required in an IEP, such as the specific methods, activities, and materials. . .that will be used in accomplishing the objectives." *Id.*, No. 39.

12. With regard to the Student's IEP, the District did not commit procedural error by not initiating amendment of the Student's goals and objectives more often, when annual revision is the minimum required. Further, the District did not commit procedural error by not having each of the goals and objectives broken down into the smallest measurable increments. The District's goals and objectives, patterned at the Parents request on the private SLP's goals and objectives, were appropriate for the Student as demonstrated by her progress over the whole year. In the Student's first grade, she made varied progress on her different SLP goals and objectives, and in the second grade she made progress and met some of her goals. The District had no obligation to continually amend the goals and objectives as the Student demonstrated progress. Further, when the Parents requested that short-term goals and objectives be changed or broken down further, the District was willing to make the changes requested.

Taking Data and Providing Progress Reports

13. One of the concerns raised by the Parents was whether the District properly took data on the Student's progress under the IEP. According to regulation, an IEP is required to include a statement of how a student's progress on goals and objectives will be measured, and how a student's progress on annual goals will be reported to the parents. WAC 392-172-160(g).

14. Reviewing the District SLP's data collecting and reporting for the 2001-2002 school year, there is no question that the District is currently meeting the procedural obligation set forth in WAC 392-172-160(g). The Student's IEP explains how the Student's progress will

be measured, and the SLP is regularly taking detailed data on the set forth criteria. Further, the progress is regularly being reported to the Parents per the requirements of the IEP. There is a question about whether the evaluations on each of the goals and objectives is occurring as frequently as required by the IEP (for example, work was to begin on Objective 4 of Goal 1 by October 1, 2001, but by December 2001, no evaluation on the objective had occurred). However, this procedural error is de minimus, and does not support the conclusion that the Student is experiencing an educational loss, or that the Parents have not had the opportunity to participate in the IEP formulation process. See *W.G. v. Board of Trustees of Target Range Sch. Dist.*, 960 F.2d 1479 (9th Cir. 1992). The error does not support a conclusion that the Student was denied FAPE.

15. The Parents' concern with this issue is also focused on how the District is able to prove that the Student made progress under the IEP in the 2000-2001 IEP, when it cannot provide the Parents with written data collected on the Student's progress on the stated objectives for that year. It is the Parent's argument that because the District is unable to prove that it took the data required, or prove that it held all the sessions required by the IEP in the 2000-2001 school year, that the Student was denied FAPE, and therefore, the Parent's placement decision to drop in-school SLP should be granted. This argument is without merit.

16. Given that it is the Parents' ultimate goal to replace the IEP with their own placement option, the Parents need to demonstrate that the District is currently failing to provide the Student FAPE. If the Parents were asking for compensatory education for speech language services that were not provided or properly documented in the 2000-2001 school year, then an analysis of the District's actions with regard to that activity would be appropriate. However, because the Parents want to discontinue the District's current SLP program, the focus of our analysis must remain on whether the District is currently providing FAPE. Therefore, whether the district properly accumulated data on the Student's IEP goals in the 2000-2001 school year is determined to be irrelevant for the purposes of this hearing and the Parents requested remedy.

Least Restrictive Environment

17. Although the Parents have not asked as an alternative that the Student's in-school SLP services be provided in a less restrictive environment, their concerns about whether the Student should be taken out of the classroom for an hour once a week gives rise to the question of whether one hour of pull out services are the least restrictive environment for the Student.

18. The IDEA requires a school district to implement an eligible student's IEP in his or her least restrictive environment. State regulation also requires that a school district provide services to each special education student in his least restrictive environment.

WAC 392-172-172. That means to the maximum extent appropriate, services should be provided in the general education environment with nondisabled students. A student should only be pulled out of general education when the "nature and severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily." WAC 392-172-172(2).

19. In *Sacramento Unified Sch. Dist. v. Rachel Holland*, 14 F. 3d 1398 (9th Cir.), *cert denied*, 114 S. Ct. 2679 (1994), the Ninth Circuit Court of Appeals set forth a four-part test to consider in determining whether a placement is in the least restrictive environment. The factors to consider are:

- (1) the educational benefits available to the student in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom;
- (2) the non-academic benefits of interaction with children who were not disabled;
- (3) the effect of the student's presence on the teacher and other children in the classroom; and,
- (4) the cost of mainstreaming the student in a regular classroom.

20. In the present case, by serving the Student in the pull-out SLP room, the District is providing the Student with SLP services in the least restrictive environment. When the District attempted to provide SLP therapy to the Student while in the classroom, it was determined by the IEP team that the Student was not making the kind of progress that they would expect. After experimenting with a change from in-class therapy to pull-out therapy, the Student's progress increased measurably. In considering the benefits of interaction with other children, it is clear that the Student has ample opportunity to engage with her nondisabled peers during the course of her week. The hour of pull-out services have no negative impact in this regard. Rather, the record demonstrates, that with her progress in speech and language, the Student has become more socially interactive with her peers. With regard to the classroom, there is some evidence that the Student's behavior during SLP, when it was in the classroom, was disruptive. However, neither this or the cost of mainstreaming are determinative factors in this case. Applying the four-part test of *Holland*, the District has established that one hour per week of pull-out SLP is the least restrictive environment for the Student.

21. The Parents argue that the transition between the SLP room and the general education classroom is disruptive to the Student. However, given the current scheduling of the SLP session, this complaint does not have merit.

Summary of Procedural Violation:

22. The Parents' alleged several procedural violations with regard to the District's evaluations, the District's development of goals and objectives, the District's collection of data and reporting, and the Student's placement in the least restrictive environment. Having reviewed the allegations, it is determined that none of the allegations support a conclusion that the District failed to comply with the procedural requirements of the IDEA. Therefore, the next step in the analysis of whether the District has provided a FAPE to the Student is whether the District's program substantively complied with the requirements of the IDEA. See *Rowley*, 103 S. Ct. at 3051; *Target Range*, 960 F. 2d 1479.

Substantive Compliance with the IDEA

23. Reviewing the Parents' documents, they allege a number of reasons for why they believe that the SLP services being provided by the District are inappropriate. However, the Parents' primary argument is that because the private SLP and the District SLP are working on substantially the same goals and objectives with the Student, the District is unable to prove that the SLP services it has provided has conferred any educational benefit to the Student or that it should be allowed credit for any of the progress the Student has made in the area of speech and language.

24. The District has the responsibility of providing specially designed instruction that is reasonably calculated to confer educational benefit. *Rowley*, 103 S. Ct. at 3051. The substantive test of *Rowley* does not require the absolutely best or 'potential-maximizing' education for the individual child. A FAPE is provided if the student derives more than minimal or trivial progress in a placement, considering the student's unique characteristics. *Florence County Sch. Dist. Four v. Carter*, 950 F.2d 156, 160 (4th Cir. 1991), affd. 510 U.S. 7, 114 S.Ct. 361, 365 (1993).

25. It is undisputed that the District is providing specially designed instruction to the Student in the area of speech and language. It is also undisputed that the Student has shown great progress in the area of speech and language. One of the Parents' main concerns is that the District is unable to distinguish the speech language progress the Student has made under the IEP versus the progress she has made in private therapy. However, none of the speech language therapists who testified during the hearing were able to attribute a greater portion of the Student's progress to either the private or District SLP. Rather, the Parents' witness in this regard acknowledged that the Student's progress is attributable to a collaboration between the Parents, the private SLP and the District SLP.

26. That the District SLP has used goals and objectives that are similar to the private SLP goals and objectives does not mean that the Student is not receiving specially designed instruction. Nor does it mean that the District SLP should not receive credit for

the progress that the Student makes due to any of the SLP services that she receives at school.

27. According to the reports prepared by the District SLP, the Student has either made progress on or met many of her specified goals and objectives. For these reasons, the ALJ concludes that the Student has made progress under her IEP, and that progress has not been minimal or trivial.

Summary of Whether a FAPE has been Provided

28. In reviewing whether the District's actions met the standard set forth in *Rowley*, it is our conclusion that the District has provided the Student a FAPE with regard to her speech and language services. The District has complied with the procedural requirements of the IDEA, and the Student has been provided SLP under an IEP that has resulted in her receiving more than minimal educational benefit in the area of speech and language. Therefore, because the District is providing the Student a FAPE, it is not obligated, under the reasoning of the *Burlington* and *Florence* decisions, to substitute in the services provided by the Parent.

29. However, the question remains whether, when a District is providing a FAPE, the Parents have the ability to require the District to discontinue certain portions of an IEP.

Parents' Right to Cease Appropriate Services

30. The question of whether a parent can require a district to not provide certain services under an IEP brings different regulations into conflict. Ultimately it is the responsibility of the district to provide, not just offer, a free appropriate public education. WAC 392-172-030. Normally, what is considered appropriate for a student is set forth in the IEP, which is developed through a team process. See WAC 392-172-153 through WAC 392-172-160. Parents are an important part of the IEP team, and they are to be given an opportunity to have input into every placement decision. WAC 392-172-15705. Although the regulations are clear on the importance of parental participation, there is nothing in the regulations or case law that allows a parent to have the final say on whether an IEP should be implemented either in whole or in part. See *Dreher v. Amphitheater Unified Sch. Dist.*, 797 F. Supp. 753, citing *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir. 1998), cert. denied, 488 U.S. 925 (1988). If a parent disagrees with what the district is offering as an appropriate placement, rather than withholding consent to placement, the parent has the right to go through mediation or a due process hearing. WAC 392-172-230.

31. In contrast to the school district's obligation to provide FAPE, a parent has the ability to forego the educational placement being offered by a district, and choose to place

a student in a private school. WAC 392-172-230. If a parent chooses to place a student in a private placement when a district is offering a FAPE, then the district does not have any obligation to reimburse the parent for the private placement, as was discussed above. *Id.* Although the regulation gives clear instruction on fiscal responsibility when a parent chooses to forego school services, it does not provide a clear statement about whether a district is obligated to discontinue services at a parent's request.

32. There is no case law or hearing officer decisions that support the conclusion that a parent has the right to unilaterally discontinue appropriate services. When a district has discontinued services at a parent's request, the only issue addressed is whether a parent later had a right to reimbursement. In those cases, if the district was offering the student a FAPE when the parent asked that the services be discontinued, then the district was ultimately found not responsible for either reimbursement for private services or compensatory education. See *Hatfield Pub. Sch.*, 34 IDELR 168 (SEA MA 2001); *Bd. of Educ. of the Jericho Union Free Sch. Dist.*, 29 IDELR 135 (SEA NY 1998); *West Milford Bd. of Educ.*, 24 IDELR 608 (SEA NJ 1996).

33. Contrary to the idea of a parent's right to terminate appropriate services, the hearing officer in the *Hatfield* case concluded that because the student regressed after occupational therapy/physical therapy was discontinued, the district had the obligation to recommence services, in spite of the parent's objections. However, as stated above, the district was not determined to be in error for originally discontinuing the services at the parent's request.

34. With regard to the issue at hand, the most that can be concluded from the applicable regulations and the above-cited decisions, is that a district will likely not be held responsible for either tuition reimbursement or compensatory education later, should it discontinue services at the request of a parent. This conclusion does not mandate the District to discontinue SLP services, and the ALJ declines to make such an order.

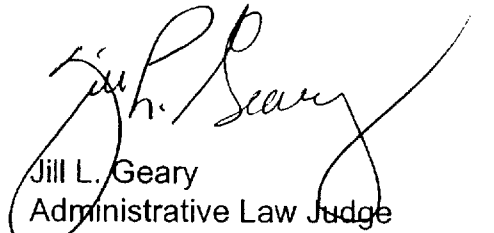
35. It is important to note, that should the parties agree to discontinue in-school SLP services, the District would not be free of all obligations to the Student in the area of SLP. The District would have an on-going obligation to re-evaluate the Student in all of her areas of suspected disability, including SLP, and would have the continuing obligation to make a FAPE available to the Student, should the Parents request the District to again provide SLP services.

ORDER

1. The District is providing the Student a FAPE in the area of speech language services; and

2. The District shall not be ordered to discontinue speech language therapy services to the Student.

Dated at Seattle, Washington this 8th day of March, 2002.


Jill L. Geary
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.

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 March 8, 2002, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

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