

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

MAILED
APR 26 2002
Office of Administrative Hearing
Spokane

IN THE MATTER OF:

School District

SPECIAL EDUCATION
CAUSE NO. 2001-SE-0132

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

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Superintendent of Public Instruction

A hearing in the above-entitled matter was held before Administrative Law Judge Wynne O'Brien in Spokane, Washington on March 25 and 26, 2002. Appellants, parents of the Student (Parents), were present at hearing and represented by Devin Poulson, Attorney at Law. The School District (District), was present through Marcia Moon, Superintendent of the District, and represented by Gregory Stevens, 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, through Mr. Poulson, filed a request for due process hearing with the Office of Superintendent of Public Instruction on December 14, 2001. The Office of Administrative Hearings ("OAH") mailed to the parties a Notice of Prehearing Conference and Notice of Hearing on December 19, 2001 with an assigned docket number of 2001-SE-0132. Mr. Poulson requested the District to arrange an independent educational evaluation of the Student at public expense dated January 9, 2001. The District filed a request for due process hearing with the Office of Superintendent of Public Instruction on January 25, 2002 contesting the Parents' request for an independent educational evaluation. The Office of Administrative Hearings assigned a docket number of 2002-SE-0015 to the District's request. Docket numbers 2001-SE-0132 and 2002-SE-0015 were consolidated for hearing upon the request of the parties into Docket number 2001-SE-0132.

At the time of the March 25, 2002 hearing, the deadline for the issuance of a written decision had been extended by prehearing order dated February 6, 2002 to May 11, 2002.

ISSUES

The Parents' request for hearing takes issue with the District's evaluation summary of the Student dated November 21, 2001 which found the Student ineligible for special education services. The Parents assert that the Student suffers from Attention Deficient Hyperactivity Disorder (ADHD) which, by its' nature, impairs the Student's overall educational performance, thereby entitling the Student to special education services. The Parents also assert that the Student's ADHD diagnosis combined with his academic challenges establishes the Student's eligibility as behaviorally impaired.

The District's request for hearing questions the Parents' request for an independent educational evaluation at public expense without the Parents' identifying for the District the specific portions of the November 21, 2001 evaluation summary of which they disagree and/or find inappropriate, and what evaluations and/or assessments the Parents' want conducted.

The Parents request that the Student be found eligible for special education.

The issues for hearing are:

1. Whether the District's evaluation of the Student, which finds the Student ineligible for special education services, is appropriate, and if not, whether the Student should be determined to be eligible for special education services at this time.
2. Whether an independent educational evaluation is necessary.

EXHIBITS AND WITNESSES

Witnesses for the Parents were themselves, Robert Shepard, and W. Craig Hall, Ph.D., as witnesses.

Witnesses for the District were: _____, special education teacher; Melissa Newbill, school psychologist; _____, teacher; _____, teacher; _____, special education teacher; Diane Martin, school nurse; and Marcia Moon, school superintendent.

The following exhibits were admitted:

District exhibits 1 through and including 33.

Parent exhibits A-1 through and including A-85, with any duplicates of the District exhibits deferred to the District exhibit number.

FINDINGS OF FACT

1. The Student was born on _____, _____. He resides with his family in _____, Washington, within the _____ School District No. 200 ("District") boundaries. At the time

Findings of Fact, Conclusions of Law and Order

Page 2

of the hearing the Student was 14 years old and attended 8th grade at his neighborhood school.

2. The Parents moved into the District in approximately July, 1999 when the Student was starting 6th grade. The Parents had retired from the military at that time after 23 years. The Student's elementary education prior to entry into the District had occurred through the military while the family was stationed in Georgia.

3. The Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) in approximately September, 1993 when the Student was in 2nd grade. (Exhibit A-85). The Student was given medication and seemed to be functioning well in school until his entry into the 6th grade with the District.

4. The Student's medication was changed to a time release medication at the time of his entry into 6th grade. The Student is given his medication in the morning and the medication wanes by afternoon. The Parents chose not to give the Student any additional medication throughout the remainder of the day.

5. The Parents did not inform the District of the Student's ADHD condition at the time of the Student's entry into 6th grade.

6. The Student was removed from the classroom several times during the 1999-2000 school year for disciplinary reasons. The Student entered into a "No Harm" agreement with the District in February, 2000 and was unable to attend a week-long 6th grade field trip in May, 2000 due to the teacher's concern about the Student's potential behavior.

7. At the beginning of 7th grade, the Student was suspended from the District for two days in September, 2000 and received several removals from the classroom and detentions in September and October, 2000. The Student and his Parents began working with the Department of Social and Health Services reconciliation program in October, 2000 and began attending family counseling sessions with Robert Shepard, mental health counselor. Mr. Shepard dealt with the Student's relationships both at home and at school. These sessions continued through approximately March, 2001.

8. Mr. Shepard testified at hearing that the Student suffered from ADHD and that this diagnosis interfered with the Student's education by limiting the Student's ability to stay focused and socially isolating the Student. Mr. Shepard recommended that the Student would work best in a highly structured setting with daily medication. Mr. Shepard saw this structured setting as one that involved daily reporting by the teachers to the Parents; consistency among the Parents and the teachers; structured time outs; a reward system; and self-management training for the Student.

9. Mr. Shepard has not seen the Student since March, 2001, has conducted no assessment of the Student, nor has reviewed the Student's 504 Accommodation Plan in existence at the time of hearing.
10. The Student received several detentions and classroom removals from October, 2000 through June, 2001.
11. The Student's report card in January, 2001 included two "D-", one "C-", three "B-", and one "B". (Exhibit 2). The Student's report card in June, 2001 included one "D", four "C", one "B-", and one "B". (Exhibit 3).
12. At the beginning of the Student's 8th grade, Diane Martin, school nurse, spoke with the Student's mother on September 5, 2001 about a possible 504 Accommodation Plan (504 or Plan) for the Student. The Student's mother was concerned about such a Plan but agreed to consider it.
13. The Student was involved in a fight with another student on September 12, 2001. The Student had experienced some difficulties with other students in the days preceding the fight. The Parents requested a 504 Plan from Ms. Martin on September 12, 2001.
14. The Parents also referred the Student in writing for special education evaluation on September 12, 2001. (Exhibit 5).
15. The District, through Marcia Moon, superintendent, responded to the evaluation request by letter dated October 8, 2001, informing the Parents that the upcoming meeting of October 10, 2001 would be an educational meeting so that the Parents can learn more about 504 accommodations and special education.
16. The Parents were unhappy with the October 10, 2001 meeting.
17. The Parents provided written consent for an initial special education evaluation on October 17, 2001. (Exhibit 9).
18. The District informed the Parents by letter dated October 17, 2001 that the District proposed evaluating the Student. (Exhibit 10). The proposed areas of evaluation included intellectual ability; academic achievement in reading; hearing; vision; classroom observation; vocational interests/aptitude; and classroom teacher summaries.
19. A 504 Student Accommodation Plan was proposed by the District at a meeting on October 18, 2001. (Exhibit 12). Present at the meeting were the Parents, the Student, Ms. Moon, Diane Martin, school nurse; _____, teacher; and _____, principal. A statement from the Student's medical doctor, Terrance E. Donnal, was

presented at the meeting. Dr. Donnal concluded that the Student suffered from ADHD and was being treated successfully with Ritalin CR 20mg every morning. Academic and communication goals were discussed and recommendations suggested.

20. The 504 recommendations/plan included:

a. Begin positive communication with the Student on a regular basis as a way to develop trust.

b. If Student is 1 assignment behind, notify the Student. If 2 or 3 assignments behind, notify parents.

c. Begin weekly communication with Parents each Thursday. Tom will email teachers as a reminder. Teachers can then email Parents who will then have a list of each teacher's address so that they can follow up.

d. Give class, including Student, a breakdown of large projects showing when each segment should be completed. Please email a copy to Parents.

e. Written classroom rules would be a good reminder for all students if placed where they are visible each day, and referred to by the classroom teacher as appropriate.

f. Reinforce consequences by writing them down, saying them out loud, and having Student and/or other students acknowledge them by repeating in their own words.

g. Teachers can develop non-verbal cues to communicate with Student that they feel will work for them. Student may have suggestions for this as well.

h. Student will begin keeping a calendar of assignments, but will need written reminders from teachers and checking by his parents to help him become successful with this form of organization.

i. This plan will be shared with all of Student's teachers.

(Exhibit 12).

21. Diane Martin was assigned the task of overseeing the 504 plan. The Parents gave their verbal authorization to Ms. Martin on October 23, 2001 to proceed with the 504 Plan. (Exhibit 15). The Student gave his verbal authorization to Ms. Martin on October 24, 2001 to proceed with the 504 Plan. Ms. Martin monitored the implementation of the 504 Plan by speaking to the involved teachers and the Vice Principal, _____, on October 31, 2001; November 14, 2001; and December 12, 2001. The teachers all felt that the 504 Plan was improving the Student's educational performance.

22. The Parents understood that the 504 Plan was only temporary in nature until such time that an Individual Educational Plan (IEP) under the special education provisions could be written for the Student.

23. The District continued with their special education evaluation of the Student. A vision and hearing screen was completed by Diane Martin on October 17, 2001. (Exhibit

11). The results indicated that the Student's vision and hearing do not significantly impact the Student's educational performance.

24. Lisa Ranck, special education director for the District, has a Bachelor's degree in Education with an endorsement in special education. She is qualified to administer the Woodcock Johnson Revised academic achievement assessment and to assess a student's need for special education through classroom observation.

25. Ms. Ranck academically evaluated the Student on October 18, 2001 by administering the Woodcock Johnson Revised academic achievement assessment to the Student. (Exhibit 14). The Student was in the 8th grade, third month, at the time. The test took place for 5-6 hours over two days. Student's test behavior was appropriate, attentive, and the Student appeared to give adequate effort. The Student was above grade level in each of the 16 subtests, scoring as high as the 16th grade in writing samples and as low as the 8th grade, 9th month in dictation. Other scoring examples were the 14th grade for broad written language, word attack, and written expression and the 12th grade for passage comprehension and calculation. Ms. Ranck did not specifically test for behavioral issues but did not observe any behaviors during testing that would have qualified the Student for special education. Nor did any behaviors raise a need for further behavioral evaluation.

26. Ms. Ranck observed the Student in the classroom on November 14, 2001. (Exhibit 21). Ms. Ranck observed the Student in his science class from 8:30-9:00 am. The Student sits on the quieter side of the classroom and works quietly. Other kids are goofing off but the Student does not join in. The Student may be socially isolated from peers in the classroom.

27. _____ has a Bachelor's degree in special and elementary education. She has been teaching for 7-8 years. Ms. _____ has, in the past, referred students for special education.

28. Ms. _____ is the Student's 8th grade humanities and english teacher. Ms. _____ evaluated the Student's performance in each classroom. (Exhibit 7, pages 2 and 3). The Student was receiving a "C" grade as of October 19, 2001 in the humanities class, needing some extra help with lessons but finishing most work and behaving very well. The Student was receiving a "B" grade as of October 19, 2001 in the english class, needing some extra help with outlining and adding details to the writing process. Ms. _____ had been using some of the 504 recommendations with the Student in her classrooms, providing extra assistance to get the Student started on task and monitoring the Student to stay on task. Ms. _____ provides the Student with praise. Ms. _____ does not feel that the Student's inability to stay on task, to be isolated, to be late with assignments, and to distract others is any different than most of her other students.

29. _____ has a Bachelor's degree in childhood development. Ms. _____ has been teaching for over 20 years. Ms. _____ has referred students for special education in the past.

30. Ms. _____ was the Student's english and art teacher in 7th grade and is the Student's 8th grade art teacher. Ms. _____ evaluated the Student's performance in her classroom. (Exhibit 7, page 1). The Student was receiving an "A" grade in art as of October 18, 2001, stating that the Student finished most work and behaved very well. Ms. _____ concluded that the Student's behavior had improved from the previous year, there being less turmoil with his peers. Ms. _____ had also been using some of the 504 recommendations for the Student into her classroom. Ms. _____ felt that the Student's behavior, and current improvement, was typical for junior high children. Ms. _____ had removed the Student from her classroom several times in the 2001-02 school year preceding the March 25, 2002 hearing date.

31. Ms. _____ also completed a Behavior Evaluation Scale (BES-2) of the Student on or about October 18, 2001. (Exhibit 17). The BES-2 provides educationally relevant information about the behavior of school-age children and youth and helps to identify any behavior problems that may warrant further diagnostic evaluation and/or special services. The BES-2 consists of 76 questions answered by the teacher and grouped into 5 subscales. The Student's behavior was assessed at just below the mean, but still within the average range, based upon Ms. _____'s answers to the 76 questions.

32. _____ is the Student's 8th grade social studies teacher. She evaluated the Student's academic and classroom performance on October 23, 2001. (Exhibit 7, page 4). The Student was receiving a "B", finishes most work, usually behaves well (although occasionally disruptive), but has improved since the preceding year. Ms. _____ concluded that the Student was getting along with other students more so than during the preceding year and had improved his organizational skills.

33. Melissa Newbill is the school psychologist for the District, on behalf of Educational School District (ESD) 101 and is qualified to administer the Wechsler Intelligence Scale for Children - 3rd edition (WISC-III), and perform comprehensive assessments.

34. Ms. Newbill gave the Student the WISC-III test. The WISC-III is a standard measure of intelligence. It evaluates two general areas: Verbal and Performance. The scores in each subtest are converted to age weighted scores. There were 6 subtests given to the Student in the Verbal area and 5 subtests in the Performance area. The Student tested as above average in the range of intelligence and borderline high average/superior in the Performance area. The Student's weaknesses, although still in the average range, were in associative thinking; verbal concept formation; concentration; planning and organizing; cultural exposure; experiential and environmental background; reasoning;

anxiety; and visualization of parts.

35. Ms. Newbill completed the comprehensive assessment of the Student (Individual Evaluation Summary- IES) on November 6, 2001. (Exhibit 18). Ms. Newbill incorporated the WISC-III and the BES-2 completed by Ms. Sherwood and another teacher, Mr. Cox, in her assessment. Ms. Newbill suggested a list of 10 interventions in the general education classroom to assist the Student with academic learning. Ms. Newbill also reviewed the behavior quotients derived from the two BES-2 assessments and found that in each assessment the Student's behavior quotient was statistically average or typical. While the Student's behavior was not perfect, it is considered to be "normal" or "average" for the students within the normative sample used for the standardization of the BES-2.

36. The Parents completed a family background questionnaire for the District on November 13, 2001. (Exhibit 19). The Parents identified some of the social and behavioral problems of the Student as sometimes aggressive, wants to be alone, has trouble sleeping, is impulsive, and is much too active.

37. Ms. Newbill completed the Specific Learning Disability Severe Discrepancy Documentation supplied by the State of Washington and used in determining whether a student has a disability. (Exhibit 20). The Criterion SS of 89 or below is used by the State to determine whether a student has a severe discrepancy between intellectual ability and academic achievement pursuant to WAC 392-172-130 and -132. Of the five areas considered for the Student, the Student had a SS score of 101 or above as found by the Woodcock Johnson Revised test and the WISC-III. A severe discrepancy was found to not exist for the Student.

38. The Multi-Disciplinary evaluation team (MDT) met on November 21, 2001 and reviewed Ms. Newbill's evaluation summary of the Student. (Exhibit 22). Present at the meeting were Ms. Newbill, school psychologist; Ms. Ranck, special education director; the Parents; and Ms. Moon, superintendent. Considered by the team were the WISC-III; the Woodcock Johnson Revised; the Education Performance reports of teachers Llewellyn, Sherwood, Jones, Elders, and Cox; BES-2 of Sherwood and Cox; the medical documentation from Dr. Donnal; and the Parent's family background questionnaire dated November 13, 2001. The Parents added at the meeting that the Student's current difficulties are his ADHD and staying on task and focusing on traditional educational methods. It was the consensus of the team, except for the Parents, that the Student's IQ was above average; that the Student was performing within the "C" to "A" range in graded subject areas; that no disability exists under the Criterion SS scoring; and that the Student's social, emotional, and adaptive functioning was informally assessed and within normal limits. All of these conclusions were in keeping with the information gathered. The members of the team, except the Parents, signed their agreement with Ms. Newbill's evaluation that the Student was not eligible for special education services under any

disability category. The evaluation concluded that although there is a documented medical condition of ADHD, there is no significant educational impact on the student's academic performance in basic academic areas and no serious discrepancy between the Student's intellectual potential and academic performance levels. Further, it is concluded that the Student's BES-2 reflect behavior similar to the behavior of most students included in the normative sample. The team recommended that the Student continue with the District's 504 plan with regular program monitoring.

39. The Parents requested a due process hearing by letter dated December 11, 2002. (Exhibit 23). The Parents requested that the Student's "...accommodations remain minimal and only to the extent necessary to level his playing fields with each classroom,...We feel quite confident that the general education classroom teachers can accomplish the adjustments provided for in an IEP."

40. The Parents, through their attorney, requested an independent educational evaluation by letter dated January 9, 2002. (Exhibit 24). The District asked the Parents for additional information regarding their request by letter dated January 14, 2002. (Exhibit 25).

41. The Student received his report card on January 18, 2002. (Exhibit 26). The Student had received one "A"; one "A-"; one "B+"; two "B's"; one "C+"; and two "C's".

42. The Parents responded to the District on February 4, 2002 with a letter listing their areas of educational concern for the Student. (Exhibit 28). The Parents suggestions included the following:

- a. Provide parents duplicate set of text for all classes, assignment modification;
- b. Break up tasks into workable attainable steps;
- c. Provide examples and specific steps to accomplish task;
- d. Preferential seating;
- e. Be willing to repeat expectations;
- f. Clearly define what constitutes an infraction, not just disruptive to educational process;
- g. Allow Student to make copies of text pages and underline, use highlighters or write in margins to emphasize information;
- h. Reduce distractions;
- i. advance assignments;
- j. Removal from class when appropriate, not left in bullpen, subject to ridicule, non-productive; and
- k. Rewards for appropriate behavior, timeliness, organization.

43. The Student was evaluated by Dr. Craig Hall of Neuroeducation, Inc. in March,

2002. (Exhibit 84). The Parents requested Dr. Hall to primarily assess any emotional factors that may interfere with the Student's educational functioning. Dr. Hall performed a series of tests on the Student including the Conners' Continuous Performance Test; the Rey-Osterrieth Complex Figure Test; the Million Adolescent Clinical Inventory (MACI); and the Rorschach Inkblot Test. Dr. Hall also administered the California Verbal Learning Test - Children's, and the Wisconsin Card Sorting Test. All of these tests were given to the Student without medication. Dr. Hall gave the Child Behavior Checklist to the Parents as well as four of the Student's teachers.

44. Dr. Hall found that the Student suffered from ADHD. Dr. Hall made no finding that the Student was eligible for special education. Dr. Hall found that the Student did not suffer from a depressive or anxiety disorder. Dr. Hall found that the Student had "...good cognitive flexibility and the ability to figure out what to do when he encounters a problem with no obvious solution. [The given test] also suggests that he can effectively learn ways to monitor himself with regard to attention-intention." Dr. Hall did conclude that the Student had problems coping with demands and that "he is easily disorganized by stressful situations...The more structured and predictable his environment is, the more effective he is expected to be." Dr. Hall further concluded that even without medication for the ADHD, "[the Student] is capable of attending, learning, and retaining information."

45. Dr. Hall recommended the following:

a. That the Student, his parents and teacher establish an effective working relationship in order to reduce some of the tension and stress that is impacting the Student's attitudes (and possibly his behavior). Suggested was a communication system providing frequent feedback to the Parents regarding the Student's progress, a form to be completed by each teacher for the Parents' regarding behaviors and missed assignments, and regular meetings with all to prevent misunderstandings.

b. That the District provide a period to the Student that could be used to catch up on homework/assignments with supervision.

c. Therapy for the Student and his Parents to work on attention issues.

d. Therapy for the Student to address some of his personality/emotional issues.

46. Dr. Hall did not conclude that the Student had a learning disability.

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 284.155

RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR 300et. 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 funds 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 v. Rowley*, 458 U.S. 176, 103 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.

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

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

GENERAL EVALUATION REQUIREMENTS

4. The evaluation of any student being considered for special education must be performed under the procedures set out in Chapter 392-172 Washington Administrative Code (WAC), specifically WAC 392-172-108.

5. When deciding whether the Student is eligible for special education as the result of

Findings of Fact, Conclusions of Law and Order

a learning disability, the District must include the following persons in the decision process: the parent, a general education teacher, and an individual qualified to conduct individual diagnostic exams, such as a school psychologist. WAC 392-172-108(2)(b). Each member of the evaluation group must be licensed, registered, credentialed, or certificated according to professional standards. WAC 392-172-108(3). The members of the November 21, 2001 MDT meeting met these requirements.

6. The District used a variety of assessment tools and strategies to gather relevant functional and developmental information about the Student, including information provided by the Parents, that assisted in determining whether the Student is a special education student, as required by WAC 392-172-108(4). The District's evaluation did not solely rely upon any single procedure. *Id.* at (5). The tests given and procedures used by the District were appropriately selected and administered to address the intended suspected disability.

7. The District is required to complete an evaluation report and document the determination of eligibility consistent with WAC 392-172-10905 through 392-172-111. See WAC 392-172-108(14). WAC 392-172-10905 provides the requirements for an evaluation report and documentation of determination of eligibility. The District has established compliance with this regulation.

8. The ALJ concludes that the District established its compliance with the general evaluation regulations as required by WAC 392-172-104(2).

QUALIFICATION FOR SPECIAL EDUCATION

9. A student qualifies for special education if: (i) they have been identified as having a disability, (ii) the disability adversely affects the student's educational performance, and (iii) the student's unique needs cannot be addressed exclusively through education in general education classes with or without individual accommodations and is determined to be eligible for special education services. WAC 392-172-035(2). A student is not qualified for special education "[i]f it is determined through an appropriate evaluation that a student has one of the disabilities identified in WAC 392-172-114 through 392-172-148 **but** only needs a related service and not specially designed instruction..." WAC 392-172-035(3), (Emphasis added). Therefore, in order to be eligible for special education a student must be in need of specially designed instruction.

The Student in this case has a disability, ADHD, that meets the first prong of the special education test. However, the Student is not in need of specially designed instruction and is not eligible for special education.

10. Specially designed instruction is defined as organized and planned instructional activities that adapt the content, methodology or delivery of instruction to the needs of

eligible students. Such instruction must be carried out or overseen by qualified special education certificated staff. WAC 392-172-045(4)(a).

The Student's instructional needs can be met within the general education class and provided by general education teachers. The Parents' expert witness, Dr. Hall, recommended that the District establish an effective communication system with the Parents and the Student, including frequent feedback regarding the Student's progress and regular meetings to discuss any problems. A qualified special education staff person is not required for this recommendation. Dr. Hall also suggested that the District provide some additional supervised time for the Student during the school day to catch up on homework/assignments. A qualified special education staff person is not required for this recommendation. Dr. Hall suggested therapy for the Student and the Parents to address various emotional/behavioral issues. Again, a qualified special education staff person is not required for this recommendation.

Despite Mr. Shepard not having seen the Student for over a year, Mr. Shepard's recommendations for the Student also did not require the involvement of a qualified special education staff person for implementation. Mr. Shepard's recommendations include daily reporting by the teachers to the Parents; consistency between the Parents and the teachers; structured time outs; a reward system; and self-management training for the Student.

11. The Parents themselves have asked for the following:
 - a. Provide parents duplicate set of text for all classes, assignment modification;
 - b. Break up tasks into workable attainable steps;
 - c. Provide examples and specific steps to accomplish task;
 - d. Preferential seating;
 - e. Be willing to repeat expectations;
 - f. Clearly define what constitutes an infraction, not just disruptive to educational process;
 - g. Allow Student to make copies of text pages and underline, use highlighters or write in margins to emphasize information;
 - h. Reduce distractions;
 - i. advance assignments;
 - j. Removal from class when appropriate, not left in bullpen, subject to ridicule, non-productive; and
 - k. Rewards for appropriate behavior, timeliness, organization.

None of these suggestions require a qualified special education staff person for implementation. The Parents have also admitted that any accommodations suggested can be accomplished by the general education teachers.

12. The District has implemented a 504 Plan that incorporates many of the

communication recommendations of both Dr. Hall and Mr. Shepard. The 504 Plan includes:

- a. Begin positive communication with the Student on a regular basis as a way to develop trust.
- b. If Student is 1 assignment behind, notify the Student. If 2 or 3 assignments behind, notify parents.
- c. Begin weekly communication with Parents each Thursday. Tom will email teachers as a reminder. Teachers can then email Parents who will then have a list of each teacher's address so that they can follow up.
- d. Give class, including Student, a breakdown of large projects showing when each segment should be completed. Please email a copy to Parents.
- e. Written classroom rules would be a good reminder for all students if placed where they are visible each day, and referred to by the classroom teacher as appropriate.
- f. Reinforce consequences by writing them down, saying them out loud, and having Student and/or other students acknowledge them by repeating in their own words.
- g. Teachers can develop non-verbal cues to communicate with Student that they feel will work for them. Student may have suggestions for this as well.
- h. Student will begin keeping a calendar of assignments, but will need written reminders from teachers and checking by his parents to help him become successful with this form of organization.
- i. This plan will be shared with all of Student's teachers.

The District implemented this Plan in November, 2001. Testimony at hearing has indicated that the Student's behavior has improved since November, 2001 up through the date of hearing. The Student has been receiving higher grades and has had fewer disciplinary problems since that date. It appears that the Plan is working. The Plan has been implemented without the need for the involvement of a qualified special education staff person and covers many of the same requests made by the Parents and their experts.

INDEPENDENT EDUCATIONAL EVALUATION

13. An independent educational evaluation at public expense may be requested by a parent who disagrees with the school district's evaluation of the student. WAC 392-172-150. A parent is not entitled to an independent educational evaluation at public expense if it is determined that the school district's evaluation of the student is appropriate. Id at (6).

14. The District's evaluation of the Student is appropriate. The evidence significantly supports the conclusion that the Student is not in need of special education. There has been no showing that the Student needs anything more than the 504 accommodations already being administered by the District. The weight of the evidence overwhelmingly indicates that all parties are basically on the same page but are just approaching the same

goals from different angles. Even the independent evaluation paid for by the Parents, that of Neuroeducation Inc., supports the conclusion that the Student is not in need of special education and that the 504 Plan is proposing those recommendations found in the Neuroeducation report. The totality of the evidence indicates that the District's evaluation of the Student is appropriate and that the Student is not entitled to an independent educational evaluation at public expense.

SUMMARY

15. Based on the foregoing facts and analysis of the law, the ALJ concludes that the District's initial evaluation of the Student beginning in October, 2001 and concluding in November, 2001 were appropriate. Accordingly, the District's determination that the Student is not currently eligible for special education is also appropriate.

16. Finally, it is important to note that the District does not dispute that the Student has challenges. They recommend Section 504 accommodations as needed, and the careful monitoring of the Student's progress. The evidence demonstrated that the District is receptive and responsive to issues raised by the Parents. The Student is also fortunate to have his Parents as staunch advocates for his continued success at school.


ORDER

1. The District has complied with the procedural and substantive requirements related to the November, 2001 initial evaluation of the Student, and appropriately determined that the Student is not currently eligible for special education.

2. The Parents' request to find the Student eligible for special education and/or related services is **DENIED**.

3. The request for an independent educational evaluation at public expense is **DENIED**.

Filed on the date of mailing.


Wynne O'Brien Persons
Administrative Law Judge
Office of Administrative Hearings