

ART WANG  
Chief Administrative  
Law Judge



STATE OF WASHINGTON

OFFICE OF ADMINISTRATIVE HEARINGS

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July 2, 2001

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Parents



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**RECEIVED**

**JUL 06 2001**

Superintendent of Public Instruction  
Legal Services

In re: Clover Park School District - Special Education Cause No. 2001-SE-0056

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(e) (Individuals with Disabilities Education Act) or RCW 34.05.510-598 (State Administrative Procedure Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact the Legal Services office at OSPI at (360) 753-2298.

Sincerely,

Mary L. Radcliffe  
Administrative Law Judge

c: Legal Services, OSPI  
Deputy Chief ALJ, Jan Grant  
Mary Radcliffe, OAH/OSPI Coordinator



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

IN THE MATTER OF:

CLOVER PARK SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. 2001-SE-0056

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

**STATEMENT OF THE CASE**

On May 23, 2001, [REDACTED] and [REDACTED] ("Parents"), the parents of [REDACTED], the student at issue, ("Student") filed a request for hearing with the Office of Superintendent of Public Instruction regarding a dispute with the Student's resident Clover Park School District ("District"). On May 24, 2001, the Office of Administrative Hearings mailed to the Parents and District a Notice of Prehearing Conference and Notice of Hearing, with attachments. The prehearing conference was held on May 31, 2001 as scheduled, and a Prehearing Order issued the same day. The hearing was held, as originally scheduled, on June 21, 2001, in Lakewood Washington, at the District's administrative offices, before the assigned administrative law judge, Mary L. Radcliffe. The 45 day deadline for issuance of a written decision, pursuant to WAC 392-172-356, is July 7, 2001.

[REDACTED] the Student's mother represented the Parents. The District was represented by William Coats, attorney at law. Witnesses on behalf of the District were: Karen Stillmaker, special education teacher, and Virginia Alonzo, director of special education. Witnesses on behalf of the Parents were: Brenda Williams, Brenda Coleman, Becky Bowyer, and the Student's Mother.

The Administrative Law Judge, having sworn the witnesses, heard testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

**ISSUES**

Whether the District's intention to change the location of the Student's services from [REDACTED] Elementary to [REDACTED] Elementary for the [REDACTED] school year is a change of placement, and if so, is the change appropriate. If the change is not appropriate, the Parents request the Student remain at [REDACTED] Elementary.

Findings of Fact, Conclusions of Law and Order

Page 1

See May 31, 2001 Prehearing Order.

### FINDINGS OF FACT

1. The Student was born on [REDACTED] and resides with her family within the boundaries of the District. She was initially identified as eligible for special education due to her communication/speech and language delays. On January 21, 2000, the District found the Student eligible under the disability category of [REDACTED] as defined in WAC 392-172-146. At the time of the hearing the Student was [REDACTED] years old and completing her [REDACTED] year.

2. Initially, the Student received special education [REDACTED] services in the Headstart program at [REDACTED] Elementary. [REDACTED] is the Student's home school. By all reports, the Student did well at [REDACTED]. She moved to [REDACTED] Elementary for [REDACTED] the [REDACTED] school year, so that she could attend the Functional Academics Self Contained Special Education Class. Her home school, [REDACTED] does not contain this program. By all reports, the Student has done well in her [REDACTED] program.

3. The Student's evaluation, IEP, and the IEP's implementation are not in dispute. The Parents have not alleged that the District violated any of the notice procedural safeguards afforded parents under the IDEA.

4. On May 11, 2001, the District provided the Parents written notice of its intention to revise the Student's IEP so that the location of the delivery of the Student's services would be changed from the Functional Academics Self Contained Special Education Class at [REDACTED] to the Functional Academics Self Contained Special Education Class at [REDACTED] Elementary. The District provided the Parents with notice of their procedural safeguards and rights to due process at the same time.

5. The [REDACTED] and [REDACTED] programs are the same, including the teacher/student ratio. They are different only in the identity of the teacher and para educator, and the location.

6. The basis of the District's decision to change schools is that [REDACTED] is the closest school to the Parents' home.

7. In making its decision, the District relied on its transportation department's assessment of the shortest, and most reasonable route between the Student's home and [REDACTED] and between the Student's home and [REDACTED]. The District made this determination in order to comply with its IDEA obligations to provide services closest to a student's home. Attending school closest to a student's community creates the greater likelihood of a student making important connections to her local community.

8. The Parent disputes the District's determination that [REDACTED] is closer. The Parents drive the Student to school most of the time and assert that the drive takes less time to [REDACTED] than to [REDACTED]. Their assessment is based on the nature of their drive rather than the actual distance or the schools' bus routes.

9. The District has a procedure whereby a parent may request a waiver from the assigned school to another school in the District. The District does not provide transportation in waiver situations. The Parents have not requested a waiver because they need to rely on District transportation sometimes.

10. The Parents also assert that the District should be required to identify [REDACTED] as the closest school because of an August 30, 2000 letter sent to them by the District. The letter identifies [REDACTED] as the Student's closest school. The District established that this letter is a form letter, pre-signed by the District administration. It is completed each year by the then current teacher for the next school year. In this case, the Student's Head Start [REDACTED] teacher was new to the District, and she suggested the Parents view [REDACTED] and [REDACTED] and select the school of their choice. Without amending the form letter, the teacher completed it with the Parents' choice of [REDACTED]. The letter was not a determination of the Student's closest school. The District does not determine school assignments based on parent choice except through the waiver process.

11. Prior to the Student's [REDACTED] year, the Parents observed the programs at [REDACTED] and [REDACTED]. The teacher at [REDACTED] told the Parents that [REDACTED] did not need as much attention as older children. The Parents' observations of the [REDACTED] teacher led them to believe that the teacher did not demonstrate appropriate redirection skills and disciplined the children for too long periods of time. Based on this experience, and a positive observation at [REDACTED], the Parents selected the program at [REDACTED]. The Parents have not revisited [REDACTED] in light of the District's proposed change.

12. Currently, when the Student rides the bus, she spends 30 to 40 minutes traveling to school and up to an hour and a half traveling home. The Student has demonstrated problems with the long bus ride, and has sometimes not wanted to get on the bus. The Student's [REDACTED] disability causes her to have greater problems with long periods of unstructured time, and makes sitting without activity difficult.

13. In the fall, the Student begins [REDACTED] grade. She will be attending school six and a half hours per day as opposed to the [REDACTED] class. The increased length of the school day plus the long bus ride concerns the Student's current teacher, who recommends the Student be placed at the school closest to the Student's home.

14. The Student's [REDACTED] disability causes her to have difficulty with transitions and disruptions in routine. Some days she is more able to manage disruptions and transitions

than others. It is likely that transitions and breaks in routine will always be a challenge for her.

15. At the outset of the [REDACTED] school year, the change from [REDACTED] to [REDACTED] (from [REDACTED] to the [REDACTED] program), caused the Student to cling to her Parents, and not be able to stay for the whole program. Everyone agrees that the worst part of the transition was over in two weeks. The Student has been very successful at [REDACTED]. The Parent fears that a transition from [REDACTED] to [REDACTED] will set the Student back, which is not in her best interest.

### 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.

3. A change in classroom or teachers is not necessarily a change in placement for purposes of the IDEA. This issue has not been addressed in the Ninth Circuit. In the Second Circuit, the court in Concerned Parents v. New York City Bd. of Education, 629 F.2d 751 (2d Cir. 1980) considered this issue where handicapped children were transferred among schools within the same district. Reversing a lower court decision, the court concluded that placement under the IDEA does not include a change in location, but refers to the general type of educational program in which the child is placed. The court considered three factors. First, notice and hearing requirements are limited to certain

fundamental decisions regarding the existence and classification of a handicap and the most appropriate type of educational program for assisting a child with such handicap. Second, the legislative history and the regulations implementing federal law, 45 C.F.R. §121:551, use the term "placement" to refer to the general educational programs. Finally, strong policy considerations support a narrow construction of the term. The court defined "educational placement" as:

[T]he general educational program in which the handicapped child is placed and not to all the various adjustments in that program that the educational agency, in the traditional exercise of its discretion, may determine to be necessary.

See also *In Re Child With Disabilities*, 21 IDELR 62, 684 (SEA Mich. 1994), where the hearing officer stated: "clearly, the choice of a placement, a building where a teacher is, is not a prerogative of the parent. Those responsibilities remain with the superintendent or his designee."

4. Where interpreting complex federal statutory programs, federal courts defer to administrative interpretations of such statutes. See *Honig v. Doe*, 484 U.S. 305, 325, 98 L. Ed. 2d 686, 108 S.Ct. 592 (1988). In *Letter to Fisher*, 21 IDELR 992, 993 (OSEP 1994), the Office of Special Education Programs responded to a question from the Tennessee Department of Education whether a change in schools would constitute a change in placement for purposes of the notice and hearing provisions of the IDEA. The change was occasioned by the closing of a school for violation of the least restrictive environment element of the IDEA. According to that letter, determination of whether a "change of placement" has occurred should be analyzed as follows:

Although not defined in either the Part B statute or regulations, a "change in educational placement" refers to a situation in which a student's education program is materially altered, and not an instance which involves only a change in the physical location of the program. The determination as to whether a new placement constitutes a "change in placement" must be made on a case-by-case basis and the effect of the change in location on the following factors must be considered: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.

5. The *Concerned Parents* case and OSEP's *Letter to Fisher* are different from this case in that the court and OSEP were asked to determine whether a school district had the obligation to provide a parent with notice of a proposed change of location. In both situations, it was found that it did not. Here, the District provided that notice to the Parents, and the matter proceeded to hearing. What is relevant to this case, is that if a proposed change is one of location only, it is within a school district's discretion to make the change and does not trigger the written notice requirements or the consent of the parents.

6. In this case, the District has proposed a revision of the IEP for the change of location. However, the Student's IEP can be implemented in either location. It is a change only in the physical location of the program, and, necessarily, the identify of the teacher and para-educator. It does not change the Student's program, her opportunities to be educated with nondisabled peers or to participate in nonacademic and extracurricular services. Both programs fall on the same place on the continuum of alternative placements as defined by WAC 392-172-174.

7. The procedures for establishing educational placements requires a school district to consider, in part, any potential harmful effect on the Student or on the quality of services which she needs. See WAC 392-172-180(2)(d). As to the quality of services, the evidence does not establish a qualitative difference between the [REDACTED] and [REDACTED] programs, in spite of the Parents' preference for one teacher's style over another. As to potential harm, the Student's [REDACTED] will cause particular and unique challenges with a change of location, as it did last year when she changed school locations and programs. However, the evidence established that after a relatively short period of time, the Student was able to get past the most difficult portion of the transition to the new school to go on to make progress and do well in her [REDACTED] year. Weighing that transition period against the challenges for the coming year (the Student's likely problems with an hour and a half bus ride after a six and a half hour school day), the ALJ cannot conclude that the transition period would cause greater harm than failing to make the change of location. It also does not shift the District's decision from a change of location to a change of placement.

8. The District has implemented its policy and the IDEA by electing to serve the Student at her closest school. See WAC 392-172-180(3). While the Parents take issue with which school is closer, it is within the District's discretion to set and implement its policies and procedures, as long as it complies with the IDEA or federal and state special education implementing regulations. In this case, the weight of the evidence establishes that this is a change of location and not a change of placement. It is unfortunate that the [REDACTED] teacher's error was not caught last year, and that the Student will have to transition again to a new school. However, as stated above, the previous error does not justify the compounding or adding to it.

9. According to the above-cited authority, based on an analysis of this situation, the ALJ concludes that it is within the District's discretion to change the location of the Student's services. Therefore, the District may implement its decision to change the Student's program location from [REDACTED] to [REDACTED] Elementary.

#### ORDER

1. The Clover Park School District has proposed a change of location, not a change of placement. It is within the District's discretion to change the location of the Student's program from [REDACTED] Elementary to [REDACTED] Elementary.

2. The Parents request for relief, continued attendance at [REDACTED], is denied.

Dated at Seattle, Washington this 2nd day of July, 2001.



Mary L. Radcliffe  
Administrative Law Judge  
Office of Administrative Hearings

#### APPEAL RIGHTS

This is a final agency decision subject to a **petition for reconsideration** filed within ten days of service pursuant to RCW 34.05.470. Such a petition must be filed with the administrative law judge at his/her address at the Office of Administrative Hearings. The petition will be considered and disposed of by the administrative law judge. A copy of the petition must be served on each party to the proceeding and the Superintendent of Public Instruction. The filing of a petition for reconsideration is not required before seeking judicial review.

Pursuant to 20 U.S.C. Section 1415 (i) (Individuals with Disabilities Education Act) and Chapter 34.05.542 RCW, this matter may be further appealed to a court of law. The **Petition for Judicial Review** of this decision must be filed with the court and served on the Superintendent of Public Instruction, the Office of the Attorney General, all parties of record, and this office within thirty days after service of the final order. If a petition for reconsideration is filed, this thirty-day period will begin to run upon the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). Otherwise, the 30-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.

This certifies that a copy of the above Findings of Fact, Conclusions of Law and Order was served upon the parties or their representatives on 7/2/01, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Parents



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