

O State of Washington
A OFFICE OF ADMINISTRATIVE HEARINGS
H One Union Square, Suite 1500
600 University Street
Seattle, WA 98101
(206) 464-7095
FAX (206) 587-5135

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Superintendent of Public Instruction
Legal Services

July 2, 2001

[REDACTED]

William A. Coats
Vandenberg, Johnson & Gandara
PO Box 1315
Tacoma, WA 98401-1315

Andrew H. Sargent
Attorney at Law
600 Winslow Way E. Ste. 131
Bainbridge Island, WA 98110


In re: North Kitsap School District - Special Education Cause No. 2001-SE-0048

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,



Robert P. Kingsley
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:

NORTH KITSAP SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2001-SE-0048

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

A hearing in the above-entitled matter was held before Administrative Law Judge Robert P. Kingsley in Poulsbo, Washington, on June 14, 2001. The interested parents appeared and were represented by Andrew Sargent, attorney at law. North Kitsap School District (District) was represented by William A. Coats, 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 District filed a request for due process hearing with the Office of the Superintendent of Public Instruction (OSPI) on May 3, 2001. The parties were served with a copy of a Notice of Hearing setting this matter for May 29, 2001. A prehearing conference was initially set for May 15, 2001, and continued at the request of the parent to May 29, 2001. As a result of the continued prehearing conference and the unavailability of the parent, the hearing was continued to its current date. The deadline for decision was extended to July 1, 2001 according to WAC 392-172-356.¹

A prehearing conference to determine readiness for hearing was convened on June 13, 2001. At that time an additional issue was recognized for hearing.

ISSUE

The issues for hearing, defined in the District's request for hearing and at the prehearing conference, are:

¹ July 1, 2001, is a Sunday. Consistent with the provisions of WAC 10-08-080, the decision is being mailed to the parties on July 2, 2001.

- a. Whether the District's evaluation is appropriate and, in the alternative, whether the parent is entitled to an Independent Educational Evaluation (IEE) at public expense; and
- b. Whether the District should be allowed to conduct additional testing in the area of language processing.

FINDINGS OF FACT

1. The student is [REDACTED] and transferred into a [REDACTED] grade class in the District from Central Kitsap School District (CKSD) at the beginning of the 2000/01 school year. He was first identified for special education in 1996 under the eligibility category for [REDACTED]. He had last been reevaluated on May 14, 1999, at which time the multidisciplinary team (MDT) determined a continuing need for services according to the eligibility category.

2. The parent had obtained a private evaluation of the student in 1997 by [REDACTED]. The evaluators noticed that the student exhibited a depressive affect during testing and suggested further evaluation. They administered the Woodcock-Johnson Cognitive Battery-Revised (WJR-Cog), the Woodcock Reading Mastery Test-Revised, Form H (WRMT-R), and the Woodcock-Johnson Test of Achievement-Revised, Form A (WJ-R). They identified strengths in processing speed and visual processing and broad-based language difficulties in both receptive language and expressive language. These difficulties included struggling with remembering how to attach the sound of a letter to its visual configuration, and the opposite; matching the visual configuration to the correct sound. He also showed difficulty in producing single word responses and writing sentences. Regarding spoken language, the student struggled with the memory and vocabulary involved in reproducing language that he hears. He showed good skills in listening comprehension where he was asked to listen to a tape of sentences and short paragraphs and to fill in the missing word. The evaluation contained a diagnosis of [REDACTED] as defined at WAC 392-172-126, specifically [REDACTED].

3. According to the [REDACTED] evaluation, [REDACTED] is defined as a specific type of learning disability involving a severe impairment in reading ability which affects and disrupts a person's language development and function. A [REDACTED] is an individual who has trouble with different aspects of language, especially reading.

4. The most recent CKSD IEP signed by the parent was executed on May 14, 1999. It reflected the results of the reevaluation and included goals and objectives in the areas of reading, written language, math, and articulation. The IEP provided, each week, 935 minutes of regular education, 825 minutes of special education in the special education learning center, and 40 minutes of speech language services.

5. The last CKSD IEP was completed on May 16, 2000. It did not reflect the parent's signature. In the present levels of performance, the IEP team noted that the student had been absent a number of times and was resistant to doing what was asked of him. While continuing goals and objectives in the same areas, the IEP reduced the level of service to 675 minutes per week in the learning center and 30 minutes per week of speech language therapy.

6. The school psychologist for the District met with the student in June, 2000, in anticipation of his entry into [REDACTED] School. The student's records were reviewed in the fall, and provided to the special education teacher and speech-language therapist. The speech-language therapist conducted an evaluation of the student on September 14, 2000. Testing included the Arizona Test of Articulation and the Test of Word Knowledge. She identified significant standard score deviation from the norm in articulation and both expressive and receptive language skills. Receptive language weaknesses were noted in the student's difficulty with synonyms, figurative usage, and word opposites. In the area of expressive language, difficulty was noted using language for descriptive purposes, to define words, and to recall multiple word meanings. He also showed difficulty with social language skills.

7. The IEP was to be formally reviewed by October 20, 2000, but was postponed while a WJ-R achievement test battery was administered. The tests were administered on October 19, 2000. The IEP meeting was convened on November 30, 2000. The IEP team included the school psychologist, the general education teacher, the special education teacher, and the speech-language therapist. Goals and objectives were continued in the areas of reading, writing, math, and speech language, and services were set at 600 minutes per week in the resource room and thirty minutes per week of speech language therapy. Regarding speech-language, additional goals were identified for communication skills, including semantics and complex sentence structures. The parent did not agree to the IEP.

8. The District conducted an assistive technology assessment of the student on January 25, 2001. The assessment included administration of the Evaluation Tool of Children's Handwriting (EICH) and trials on various computer software supports for writing. The student's academic skills, study skills, and oral communication were also considered. The evaluator incorporated the findings in an assessment report. The conclusion of the evaluation was that the student required and derived benefit from computer software that included graphic mapping of ideas and word prediction.

9. The parent was dissatisfied with the student's progress and the nature of the testing performed in October. On January 25, 2001, the parent notified the District in writing that she disagreed with the District's current evaluation and requested an IEE. She specifically requested that the District arrange for testing by [REDACTED] and noted their previous

evaluation. She subsequently agreed to withdraw her request for an IEE in return for the District's agreement to conduct a reevaluation of the student.

10. The parents signed a consent to reevaluate on February 2, 2001. The evaluation involved the school psychologist, the student's general education teacher, the special education teacher, the school principal, and the speech-language therapist. Each professional member of the group is certified by the State of Washington in his or her respective field.

11. The school psychologist reviewed the records and administered cognitive and academic testing. He used the WJ-III Cog and the W-J-III Achievement. He chose the WJ-III Cog. because of the parent's reference to the evaluation of READ, Inc., in her letter requesting an IEE. He supplemented his testing with observation of the student in his general education classroom. He reviewed the language testing from September, 2000, and the assistive technology assessment. The cognitive tests scores were significantly lower than those from the 1996 evaluation, and somewhat lower than the scores from the [REDACTED] evaluation. The pertinent scores are as follows: 1996 WISC verbal - 95, Full Scale - 101; 1997 WJ-R Cog. General Intellectual Ability - 89; 2001 WJ-R III Cog. General Intellectual Ability - 83.

12. The school psychologist wrote a summary analysis of the group's conclusions. A signature page, identifying the group as the multidisciplinary team (MDT), reflected the agreement of the professional members of the evaluation group. There were no dissenting statements.

13. The speech-language therapist had written an evaluation report regarding her September, 2000, evaluation. The summary analysis incorporated the substance of the report, noting that the student's scores were more than two standard deviations below the mean in articulation, expressive and receptive language. It also incorporated the conclusions and report of the assistive technology assessment. A statement was included that there was no inconsistent or contradictory data/opinions, and no known cultural, environmental, economic, or behavioral factors.

14. In the summary analysis, the school psychologist analyzed the discrepancies between the three cognitive testing results. He noted that the student exhibited a reluctance to perform the tests that had not been reported in the previous evaluations. He administered the test over a number of days in order to accommodate the student's reluctance. His attitude was most apparent in areas of weakness, and he appeared more engaged on tasks he felt confident about. While acknowledging that the student's lack of effort might affect the reliability of individual subtest scores, the psychologist concluded that the scores revealed a valuable basis for assessment in the relationship of subtest scores to each other and to age norms.

15. The student's achievement test scores revealed that the student was unable to compete at grade level in the general education setting. His scores for reading, written language, and math were in the low average range. He was consistently weak on tasks requiring him to provide written responses within a limited time. While he had trouble correcting letter reversals and simple math errors, problems notably consistent with [REDACTED] delays not related to [REDACTED] reversals were noted in retrieval speed, fluidity, and the oral language component. The psychologist considered the achievement scores to be roughly consistent with the cognitive scores.

16. The appropriate eligibility category for the student was discussed. A chart was included documenting the discrepancies between the student's intellectual ability and academic achievement. A severe discrepancy was not found in any of the academic areas of reading, writing, or math. The professional members of the evaluation group concluded that the student's eligibility should be changed to [REDACTED] from [REDACTED]. The decision was based on the comparison of cognitive test scores to achievement test scores, the results of the speech language assessment, and the history of service under both categories. The psychologist concluded that language delays, both written and oral, represented the core issues affecting the student's education performance. He recommended that the student's services be focused upon these delays and that they include support from the speech-language therapist and assistive technology department and that specially designed instruction include help with language input and output.

17. The school psychologist has since reviewed the student's test scores and determined that a significant standard deviation exists in the area of math calculation meeting the criteria for [REDACTED] eligibility. This conclusion would not affect the design of services.

18. The MDT met with the parent on April 18, 2001. The group met with the parent and notified her of the results on the same day. The parent was not satisfied with the results of the evaluation and immediately renewed her request for an independent evaluation at public expense. Her letter stated that she was told that the student should be exited from special education as having an [REDACTED].

19. The student has made progress during the year, although he continues to lag behind his grade level. His general education teacher has noted gains in written language, including improved fluency and essay writing. His reading comprehension improved from a 3.9 grade equivalence level to a [REDACTED] grade equivalence. She also identified improvement in his math calculation, although he remained well below grade level in this area.

20. The student will be moving to [REDACTED] school in September, 2001. The speech language therapist has not been able to quantify his progress and the District has requested the parent's consent to administration of the Clinical Evaluation of Language

Fundamentals-R (CELF) and the Test of Adolescent/Adult Word Finding (TAWF). She anticipates that these tests will provide data that will aid in educational planning in a new setting. The parents have not consented.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. Section 1401 et seq. (Individuals with Disabilities Education Act (IDEA)), Chapter 28A.155 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR 300 et seq., and Chapter 392-171 WAC (or Chapter 392-172 WAC for cases arising after November 11, 1995).

2. The IDEA (formerly the Education for All Handicapped Children Act) and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Hendrick Hudson District Board of Education vs. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

First, had the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the state has complied with the obligations imposed by Congress and the courts can require no more.

103 S. Ct. at 3051.

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

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

and the other items of the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act. 103 S. Ct. at 3041, 3042.

3. In an administrative hearing, the District bears the burden of proving compliance with the procedural requirements of the IDEA. *Clyde K. v. Puyallup School District*, 35 F.3d 1396 (9th Cir. 1994). Generally, only procedural flaws which result in the loss of educational opportunity, or that seriously infringe the parents' opportunity to participate in the IEP formulation process, will result in a denial of FAPE. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 (9th Cir. 1992); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir.1990), cert. denied, ___ U.S. ___, 111 S.Ct. 1122, 113 L.Ed.2d 230 (1991); *Hall by Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 635 (4th Cir.1985).

4. One of the procedural requirements of the IDEA is the parent's right to an IEE. A parent is entitled to an IEE if he or she disagrees with the District's evaluation. A parent is entitled to an IEE at public expense if: (1) the parent disagrees with an evaluation obtained by the school district or other public agency, (2) the parent requests an IEE at public expenses, (3) the school district or other public agency initiates a hearing to determine the appropriateness of its evaluation within fifteen days of the parent's request, and (4) the final decision in the hearing is that the agency's evaluation is not appropriate. WAC 392-172-150(4), (5). In this case, the parent's formal request for an IEE occurred on April 18, 2001. The District initiated these proceedings on May 3, 2001. The District has responded to the parent's request in a timely manner.

5. The administrative law judge concludes that the District has met its burden of showing that an appropriate evaluation has been conducted. The pertinent procedural elements of an appropriate reevaluation are set forth at WAC 392-172-106 through -111, -120, -126 through -132, and -182 through -190. In response to the parents' request for reevaluation, the District convened a reevaluation group which included the members of the IEP team. The professional members of the group are appropriately certified in their respective fields of expertise. The group reviewed and analyzed the student's prior evaluations, including an independent evaluation obtained by the parents. The school psychologist chose the same cognitive tests administered by the private evaluators and administered supplemental academic tests, basing his choice on the parents' letter requesting an independent evaluation by [REDACTED]. The group issued their conclusions in an evaluation

report.² Each member of the group that conducted an assessment incorporated his or her findings in an individual report of the assessment.

6. The school psychologist observed the student in his classroom setting. He analyzed the data based on the history of [REDACTED] and determined that the student's test scores no longer supported a finding of severe discrepancy as required by the Washington Administrative Code. He articulated the basis for changing the student's eligibility category from [REDACTED] to [REDACTED]. The psychologist's analysis of the applicable eligibility categories incorporated data from the student's tests, academic performance, the psychologist's observation, the assessment conducted by the speech language therapist, and the student's history. The evidence supports the professional judgment exercised in the course of the evaluation.

7. The parents have expressed concerns that the District is attempting to exit the student from special education. A change of the eligibility category does not provide a basis for depriving the student of special education services. In this case it has changed only the focus of the services, not the extent. The evidence shows that the student was receiving services in the academic areas of reading, writing, and math. The evidence also shows that the student should continue to receive services in all areas, supplemented by specialized language processing services. The school psychologist has acknowledged that the student's scores in math calculations would support a finding of severe discrepancy in that area. This reconsideration of the data is not prejudicial to the student's educational planning and can be addressed by review of the finding by the evaluation group. There is no evidence that the District's reevaluation would support a notice that the student should receive no special education services.

8. The parent has also expressed her opinion that the District is ignoring the previous diagnosis of [REDACTED]. The evaluation group has not disregarded the diagnosis. A student does not necessarily qualify for the eligibility category of [REDACTED] if there has been a diagnosis of [REDACTED]. An essential element of eligibility is a severe discrepancy between achievement and intellectual ability shown by a comparison of cognitive and achievement testing. See WAC 392-172-128(2), -132. The District's test data supports the conclusion that a severe discrepancy no longer exists in the areas of reading and writing. The reevaluation incorporates the symptoms supporting the diagnosis of [REDACTED] and is consistent with those findings in that it emphasizes weaknesses in the student's language development. The evidence shows that the student has responded positively to the

² The forms used by the District reflect use of the term "multidisciplinary team." The term "multidisciplinary team" has been replaced with "evaluation group" in the most recent amendments to the Washington Administrative Code.

specialized language instruction. The District has therefore incorporated the diagnosis of [REDACTED] into its educational planning.


9. The District's request to perform further testing to confirm the extent of the student's speech-language progress is appropriate. The evidence shows that this data would provide valuable information for planning during the student's transition to [REDACTED] school in the fall.

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

ORDER

IT IS HEREBY ORDERED that the District's reevaluation is appropriate and the parents' request for independent educational evaluation at public expense is denied. The evaluation group shall review the reevaluation and determine whether the student's eligibility should reflect the eligibility category of [REDACTED] in the area of math calculations. The District's proposal to administer the Clinical Evaluation of Language Fundamentals-R (CELF) and the Test of Adolescent/Adult Word Finding (TAWF) is appropriate and the tests may be conducted after appropriate notice to the parents.

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


ROBERT P. KINGSLEY
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

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

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

CERTIFICATION 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 7/2/01, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:



William A. Coats
Vandeberg, Johnson & Gandara
PO Box 1315
Tacoma, WA 98401-1315

Andrew H. Sargent
Attorney at Law -
600 Winslow Way E. Ste. 131
Bainbridge Island, WA 98110