

ART WANG
Chief Administrative Law Judge
November 20, 2001



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

Parent
[REDACTED] One Union Square Suite 1500 • 600 University Street • Seattle WA 98101
[REDACTED] (206) 464-7095 • (800) 845-8830 • FAX (206) 587-5135
web: www.oah.wa.gov

Sue Walker
Chief Student Officer
Student Support Services
Shoreline School District
18560 - 1st Ave NE
Shoreline, WA 98155-2148

James Dionne
Attorney at Law
2550 First Interstate
999 Third Avenue
Seattle, WA 98101

Re: **Shoreline School District, Special Education No. 2001-SE-0064**

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) 725-6133.

Sincerely,

A handwritten signature in black ink that reads "Mattie T. Harvin Woode".

Mattie T. Harvin Woode
Administrative Law Judge

cc: Mary L. Radcliffe
OSPI - Legal Services

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

IN THE MATTER OF:

SHORELINE SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2001-SE-0064

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

A hearing in the above-entitled matter was held before Administrative Law Judge Mattie Harvin Woode in Shoreline, Washington, on September 24, 25, 26 and 27, 2001. The interested parent (Parent) appeared pro se. The Shoreline School District (District) was represented by James Dionne, 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 Parent initiated these proceedings, on behalf of [REDACTED] (hereafter "Student"), with a request for due process hearing received by the Office of Superintendent of Public Instruction on June 7, 2001.

On June 7, 2001, the parties were mailed a Notice of a Prehearing Conference and Notice of Hearing. On June 14, 2001, a Notice of Reassignment of ALJ and a Prehearing Order were entered with Notice of a Prehearing Conference and Notice of Hearing. A prehearing conference was held on June 26, 2001, pursuant to the notice mailed to the parties. A second prehearing conference was held on July 9, 2001, and a second Prehearing Order was entered on July 24, 2001. A readiness telephone conference was held on September 7, 2001, pursuant to the District's August 30, 2001 Motion to Dismiss or Continue the due process hearing. Both parties participated in the conference. The District's motion was denied.

EXHIBITS

The following exhibits were admitted into the record: Parents' exhibits 200-203, 205, 208, 210-212, 214-221, 223-224, 226-227, 229-234, 236, 241-249, 251-257, 260-261

and 263; Shoreline School District's exhibits 100-117, 119-125, 127-131, 133-135, and 137-159; and exhibits 1 through 5.

JURISDICTIONAL FACTS

1. The Parent and the District have previously been parties to three prior due process hearings in Special Education Cause Nos. 00-05, 00-11 and 00-20, which were consolidated for a hearing before Administrative Law Judge Janice Shave in March 2000 during Student's [REDACTED] grade year. Cause No. 00-05 was the District's request for a hearing following the Parent's request for an independent educational evaluation at public expense; Cause No. 00-11 was the Parent's challenge to the adequacy of the District's current IEP for the Student; and Cause No. 00-20 was the District's request to override the Parent's refusal to consent to the District's reevaluation of the Student. These matters were dismissed with prejudice on March 16, 2000 by written Order of Judge Shave after the parties reached a settlement.

2. Parent filed another due process case on April 18, 2000. This due process case was also assigned to Administrative Law Judge Shave under Cause No. 00-47. In that case, Parent renewed his challenge to the District's provision of FAPE and included a new challenge to the District's reevaluation process. After a formal hearing, Judge Shave dismissed these Parent disputes by written Order dated June 20, 2000. In that Order, Judge Shave dismissed Parent's FAPE issues relating to the education of the Student *prior* to the March 16, 2000 dismissal of the previous three cases because they were "...barred by the doctrine of *res judicata*, or issue preclusion." Judge Shave also dismissed Parent's FAPE challenges for issues that occurred *after* March 16, 2000 based on the evidence presented at the hearing; and she dismissed Parent's reevaluation challenges since the reevaluation was incomplete and was not ripe for adjudication. Judge Shave also dismissed other issues raised by Parent for lack of subject matter jurisdiction, which included, *inter alia*, racial discrimination allegations and issues relating to enforcement of the parties' previous settlement agreement.

ISSUES

- A. Whether the District's March 9, 2001 reevaluation of the Student is appropriate.
- B. Whether the District has developed an appropriate IEP for the Student, pursuant to the IDEA and state implementing statutes and regulations. Parent specifically challenges the IEPs implemented by the District during the Student's [REDACTED] grade year.

- C. Whether the District has complied with its procedural obligations under the IDEA in reevaluating the Student and formulating his IEP.

FINDINGS OF FACT

Background

1. Student is an [REDACTED]-old boy in the [REDACTED] grade. He resides with his father within the boundaries of the District and attends the [REDACTED] grade at [REDACTED] School. The Student had many behavioral issues during his [REDACTED] grade year ([REDACTED] at [REDACTED]). Any requests by his teachers to perform seat work triggered an incident which culminated in weeping, running out of the classroom and down the hall or overturning furniture in the classroom. The Student did not function more than two or three hours in his classroom. He spent a significant amount of time in the office where a staff person would sit with him to calm him down or work with him academically. During this school year, Dr. Robert Gose, the District's psychologist, spent one to two hours per day with the Student in the office.

2. In 1999 the Student was diagnosed with [REDACTED] and [REDACTED] by Parent's clinical psychologist, Robert McKeever, Ph.D. Dr. McKeever ruled out [REDACTED]. Student has never seen any doctor or counselor for [REDACTED] or any other mental disability. Student has also not taken any medication to treat any psychological disability.

3. When the Student returned from summer break to begin his [REDACTED] grade year [REDACTED] his behavior had dramatically improved. Although the Student still exhibited some inappropriate behaviors, he was functional in the classroom and work production had increased. An IEP meeting was held on October 14, 1999, but Parent did not sign the IEP until January 12, 2000.

4. As of January 2000, the Student began receiving special education services under the eligibility category of [REDACTED]. He also met the qualification criteria for the category of [REDACTED]. However, at the time, the multidisciplinary team completing his initial special education evaluation concluded that his learning difficulties were secondary to his behavioral difficulties.

Consent for Reevaluation

5. In January 2000, Dr. Gose spoke to Parent about the Student's dramatic behavioral changes. He mentioned the idea of a reevaluation to better assess the Student's needs since his behavior had greatly improved. Parent did not voice any

objection to a reevaluation. However, he described the Student as [REDACTED] and [REDACTED]. The District decided that a reevaluation was necessary to reevaluate the Student's eligibility and need for special education services and reconcile the District and Parent's view of the Student.

6. The District formally proposed a reevaluation of Student at an IEP meeting on February 3, 2000. The next day Dr. Gose sent Parent a written notice of the reevaluation and a request for parental consent for a reevaluation. On February 15, 2000, Sue Walker, Director of Special Education and Support, sent Parent another Notice of Action and letter requesting parental consent for a reevaluation. On February 17, 2000, Parent sent the District a letter indicating that he would not consent to or cooperate with the reevaluation. Parent had filed a request for due process challenging the sufficiency of the January 12, 2000 IEP that he had just signed.

7. Special Education Cause No. 00-20 was the District's request to override the Parent's refusal to consent to the District's reevaluation of the Student. The parties drafted and signed a settlement agreement. By the terms of that settlement agreement, Parent agreed to cooperate in the District's reevaluation, including a psychiatric evaluation by Dr. Michael Golden, the District's chosen psychiatrist. If Parent so cooperated, the District agreed to pay for an independent evaluation by the Parent's chosen psychiatrist, Dr. Robert Reichler. As a further condition of payment, Dr. Reichler was required to send his individual report to both parties and to make himself available for discussion with the District during the reevaluation process. Parent consulted with his attorney prior to signing the settlement agreement. Parent insisted that the settlement agreement state that Parent's psychiatric evaluation proceed first before the District's psychiatric evaluation. The District agreed to this condition and, pursuant to Parent's request, this language was added to the typed agreement.

8. Dr. Golden met with the Student and his father on April 10, 2000. He did not complete his evaluation because he needed background information on the Student, particularly about his early years. He asked Parent for the telephone number of Student's biological mother who lives in Colorado. Sue Walker wrote several letters to Parent asking him to provide contact information to Dr. Golden. This information was not supplied to Dr. Golden.

9. After the settlement agreement was signed, Dr. Gose, renewed the District's efforts to have Parent sign a consent form to allow the reevaluation. Although Parent initially signed his name to a consent form, he failed to mark the box on that form that indicated whether he did or did not consent to the evaluation. Because Parent did not fully complete the consent form, Dr. Gose informed Parent that he needed to come in and complete the form by filling in that box to demonstrate consent. Because Parent came to the building on an almost daily basis to bring Student his lunch, Dr. Gose left

the signed form with the [REDACTED] school secretary for Parent to stop in and complete the form. On several occasions, Parent came in and picked up the form from the secretary but instead of signing it in front of her, he would take it with him. He never returned the form.

10. Dr. Gose called Parent to come into his office to fill out another form. Parent came in to see Dr. Gose on May 22, 2000, and asked Dr. Gose to sign a sheet of paper that confirmed that Parent had signed the evaluation form that day. Dr. Gose cooperated with Parent's request, believing that his cooperation in doing so might help overcome Parent's reluctance to provide consent. However, after obtaining Dr. Gose's confirmation and signature, Parent then told Dr. Gose that he needed to "walk down the hall" for a minute and would bring the signed form back to Dr. Gose. Parent then left with the confirmation letter and the form but did not return to Dr. Gose's office.

11. Parent never signed the consent form at any time during the Student's [REDACTED] grade school year. He never told District staff that he was confused by the consent form, nor did he ever say that he wanted any changes to that consent form. Parent never gave the District any reason or explanation for not signing it. Although Parent testified that he did not sign the form because it did not incorporate the settlement agreement, I do not find his testimony on this issue credible. Parent's testimony was contradicted by Dr. Gose who testified that Parent never gave a reason for refusing to sign the consent form and whenever it was given to him always indicated that he would sign it. The Parent finally signed the consent form on January 9, 2001, during an IEP meeting.

12. At the January 9, 2001 IEP meeting, Parent agreed to an interim IEP pending the completion of the reevaluation. Because the parties agreed that Student's disruptive behaviors had dramatically declined since [REDACTED] grade, this January 9, 2001 IEP discontinued the behavior plan that had been implemented as part of the original IEP. However, that IEP continued special education services for monitoring compliance behaviors with the forms currently being used by Student and by all general education students. The Student would stay in a general education program with no pull-out. The January 9, 2001 IEP also added services for monitoring Student's organization by the special education staff. These services changed the total special education services provided Student from the 15 minutes of the previous IEP to 50 minutes per week.

The District's Reevaluation

13. Dr. Gose obtained a teacher report from the Student's special education teacher, Cynthia McConnelee-Smith. On February 12, 2001, Dr. Gose had the [REDACTED] grade teacher, Joe Peterson, and the [REDACTED] grade teacher, Tom Hayes, fill out several structured behavioral checklists, including the Behavior Evaluation Scale (BES-2), the

Achenbach Child Behavior Checklist (CBC), the Connors rating scale, and the Behavior Assessment System for Children (BASC). These instruments are empirically researched, standardized evaluation instruments, designed to provide objective behavioral descriptions of Student's school-based behaviors. They help quantify the Student's behaviors so that they can be evaluated by comparison with the normed population. These instruments are the best available for evaluating the Student's disruptive behaviors - behaviors that led to Student's "seriously behaviorally disabled" eligibility classification. The BASC and CBC are designed to rank a child's internalized and externalized behavior within a general normal population of children. This test revealed elevated scores in the area of externalizing problems. The Connors rating scales for Males tests inattentiveness and hyperactivity. The responses from Student's [REDACTED] and [REDACTED] grade teachers scored Student above average for [REDACTED] and [REDACTED]. However, the scores do not meet the standard for correlation with a diagnosis of [REDACTED]. The Student's test scores on the BES-II were clinically significant in the areas of [REDACTED]. These scores were far outside the normal range expected for a student his age and correlate to a [REDACTED] category. The behavioral evaluations all indicate that the Student has problems of an external nature in [REDACTED] and some [REDACTED]. However, according to Dr. Gose, the Student's leadership and personal/social skills are well developed.

14. Intelligence testing was not repeated because the Student had been given several previous cognitive tests which established a pattern of his normal functioning. He was given the Wechsler Intelligence Scale for Children - Third Edition (WISC-III) in 1998 and 1999. The Student's verbal IQ score is [REDACTED] performance score is [REDACTED] and his full-scale score is [REDACTED] which is in the top [REDACTED] percent and within normal range. The most recent academic assessment that was completed for him was the Woodcock-Johnson Psycho-Educational Battery-Revised (WJ-R). The test revealed that the Student has a severe deficiency in the area of written expression between his cognitive potential and academic functioning. His academic functioning on the WJ-R is within the normal range in all academic areas, but written expression, is significantly below average.

15. At the Parent's request, Dr. Gose referred the Student for an occupational therapy evaluation to determine if there were any motor or perceptual delays which affected the Student's written expression. The occupation therapy evaluation was performed on February 28, 2001, by Deborah Hall, a certified occupational therapist. Based on her evaluation, the Student has no delays in motor skill or perceptual abilities. His keyboarding is not adequate and therefore not a viable alternative to writing. This is not unusual, given the Student's age. She also concluded that the Student could use remedial help with his grammar and cursive formation.

Findings of Fact, Conclusions of Law and Order

16. The Student's hearing and vision is normal and he does not demonstrate either a significant delay in his motor skills or a significant delay in his perceptual abilities that would explain his difficulties with written language.

17. The District also considered verbal information it obtained from Dr. Golden the previous school year. On June 8, 2000, Dr. Golden had met with several of the Student's teachers, the principal, Dr. Gose and Ms. Walker to share information that he had regarding the Student. However, Dr. Golden had not completed his evaluation because he was waiting on contact information for Student's biological mother and waiting for Dr. Reichler to complete his report first, per the settlement agreement.

18. As part of the reevaluation, the District obtained and reviewed Dr. McKeever's complete file. Dr. Gose also had a telephone conversation with Dr. McKeever in June 2000 before receiving his records.

19. As part of the reevaluation, Parent also signed releases for the District to obtain documents from the three psychiatrists — Dr. Reichler, Dr. Golden and Dr. Adler — who each had seen Student after the March 15, 2000 settlement agreement was signed. The District provided Parent with four sets of the Student's school records, one for Parent, and the others for Drs. Reichler, Golden and Adler. Dr. Reichler has not provided the District with any information or report. Parent did not want the District to see or to incorporate any evaluation information from Dr. Adler. Dr. Adler gave the District no documents. And Dr. Reichler also gave the District no documents. Instead, he called Sue Walker on March 20, 2001 and apologized for "dropping the ball."

20. The District's draft evaluation was presented to Parent at an IEP meeting on March 9, 2001. The District staff decided to use the IEP meeting to also discuss the results of the reevaluation with the Parent. On February 22, 2001, Parent was given notice of this meeting, which was scheduled at a time selected by Parent. The notice indicated that the purpose of the meeting was to "reevaluate IEP service." The notice did not mention that the reevaluation meeting would occur at the same time.

21. At the March 9, 2001 meeting, the reevaluation team, which consisted of Dr. Gose, Cynthia McConnelee-Smith, Tom Hayes, and Deborah Hall, discussed the data that had been gathered, as well as their own interaction with the Student. Neither the Conners nor the BASC test scores met the criteria to diagnose [REDACTED]. According to District staff, the Student only acts out when he can not start or complete his written work. The District staff also found that the Student's educational performance was adversely affected by an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, and by inappropriate types of behavior or feelings under normal circumstances. They also

found that the Student's difficulty with academics led to the inappropriate behavior. The District staff also had school behavioral reports from the Student's [REDACTED] grade year and eight months of his [REDACTED] grade year. This showed a constancy over time in the reduction of Student's disruptive and immature behaviors. Since Student was now participating and learning in a classroom setting, and since time had ruled out behavioral changes being temporary, this data further helped alleviate the need for a psychiatric evaluation.

22. At the time of the reevaluation, the Student still met the eligibility criteria for [REDACTED]. However, despite his elevated scores on certain testing, the behavioral reports from Student's [REDACTED] and [REDACTED] grade years showed a reduction in the Student's disruptive and immature behaviors. It was the consensus of the multidisciplinary team that the Student's behavioral difficulties are secondary to his learning difficulties in the area of written language. Therefore, the team determined that the Student's eligibility category should be changed from [REDACTED] to [REDACTED]. The team came to this conclusion because the Student's disability primarily affects his completion of seat work involving written expression in the general education setting, and secondarily affects his school related interpersonal relationships and results in inappropriate behavior in the classroom setting.

23. The team concluded that the Student still needed specially designed instruction. However, they recommended that instruction should shift from a focus on behavioral interventions to habilitative assistance in written expression. Father wanted Student to remain in the general education program with no pull-out. The team recommended that the habilitative assistance would continue to be provided to the Student through the resource room program, specifically to assist him in improving his seat work completion rate.

24. The Student does not need any related services, supplemental services, extended school year services, specialized materials or equipment or specialized management strategies.

25. Dr. Gose properly followed evaluation procedures for making this determination and the District evaluators were all properly qualified as experts in their educational fields by their certificates and training and experience.

26. At the March 8, 2001 meeting, Parent asked about the psychiatric evaluations of Drs. Golden and Reichler. Dr. Gose explained to Parent that since Parent had required Dr. Reichler's evaluation to go first, Dr. Golden could not finish his written report until Dr. Reichler first finished his report. Otherwise, the District would violate the settlement agreement. Parent then assured Dr. Gose that he would contact Dr. Reichler

to "get the ball rolling." Parent had no other comments about the reevaluation at the March 8, 2001 meeting.

The IEPs

27. Shortly after the March 9, 2001 meeting, Parent asked to change the Student's teacher from Tom Hayes to Susan Rahkonen. Parent also asked for another meeting to discuss the reevaluation. That meeting was held on March 27, 2001. At that time, Parent indicated his displeasure with comments by Tom Hayes that were included on page 2 of the teacher evaluation report. Parent expressed disagreement with the section of this report where Mr. Hayes commented as follows: "He tends to have tantrums. Other students are scared of him, especially as he escalates. He uses coarse language toward students and adults." These were Mr. Hayes' candid evaluation appraisal of student.

28. Parent and district staff met again on March 27 and April 27, 2001, to discuss both the reevaluation and the IEP. To appease Parent's concerns, the District agreed to transfer Student into Ms. Rahkonen's class and to discontinue having Student stay after school to do unfinished written work. The District also agreed to modify the reevaluation documents by adding some positive comments that Ms. Rahkonen and Cynthia McConnelee-Smith agreed to draft.

June 18, 2001 IEP

29. At the request of Parent, the Student's IEP was again amended during another IEP meeting on June 18, 2001. Parent requested keyboarding be added to the IEP as a special education service and be offered in place of Student's participation in an instrumental music class. The District agreed. This final IEP includes 90 minutes of special education per week, all of which is provided in the regular education classroom. Parent has not raised any objections to that IEP except that Parent thought that Student missed that instrumental music class for two months before this IEP change was made. Parent was mistaken: Student continued in this music class until the IEP was formally amended. The District implemented these █ grade IEPs; and Student has made progress on these IEPs.

30. The IEP contains a clear and detailed description of the Student's present levels of performance and lists three measurable annual goals, each with several short-term objectives. The goals and objectives address the Student's written language skills and organizational skills. The Student is not in need of any supplementary aids and services. The program that the District recommended for implementing the IEP is the general education classroom with in-class assistance with organizational tasks.

However, the IEP incorrectly states that the special education services will be provided in the special education classroom.

31. Parent contends that the District did not properly assess the Student for a diagnosis of [REDACTED]. However, the evidence does not support this. Based on the longitudinal behavior data, Dr. McKeever's diagnosis (which ruled out [REDACTED]), and Dr. Golden's feedback to the District, there is no objective data existing to support Parent's suspicion of [REDACTED].

32. Parent also contends that the reevaluation is not appropriate because it does not mention the alleged discriminatory action against Student by [REDACTED] staff during the Student's [REDACTED] grade year. Parent, however, raised this issue with the District staff at every IEP meeting concerning the Student.

33. In reaching the above findings and conclusions below, the ALJ relied heavily upon the District's employees and the testimony of its expert witnesses. Their expertise and experience were well established. To the extent their testimony was in conflict with the testimony of the Parent, the ALJ resolves credibility issues, conflicting testimony and opinions, in favor of the District's witnesses. In doing so, the ALJ weighed and considered all the evidence, including the credibility of the witnesses; their motivations; the extent, nature and quality of their relevant respective specialized training and experience; the reasonableness of the evidence presented; and the totality of the evidence presented.

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 "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.

The District's Reevaluation of the Student is appropriate

4. The IDEA requires educational agencies to "conduct a full and individual initial evaluation... before the initial provision of special education and related services." 34 CFR 300.530. See also WAC 392-176-108. The purpose of this evaluation is "to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." 34 CFR 300.500(2). See also WAC 392-172-108 (2) (a) and (b). Similarly, the purpose of a reevaluation is to determine whether the student continues to be a special education student, whether the student continues to be in need of special education and related services, and whether any additions or modifications to the student's special education program are needed to enable the student to meet the annual goals set out in the student's IEP. As part of a reevaluation, a District must review existing evaluations and, if necessary, additional data on the Student including evaluations and information provided by the parents, and current classroom-based assessments and observations. WAC 392-172-186(1)(2). The evaluation team should include qualified professionals selected by the District and knowledgeable about the student and the suspected areas of disabilities. WAC 392-172-108(2)(a).

5. The reevaluation team reviewed current classroom based assessments and observations from the Student's teachers, medical records of Dr. McKeever, school behavioral reports and parental input. Parent input was provided through numerous discussions with the Father throughout the year and during the March 9, 2001 meeting. The evaluation team was properly constituted with qualified professionals that were knowledgeable about the Student and his suspected areas of disabilities. Therefore, I conclude that the District's reevaluation of the Student is appropriate and the District has complied with most of its procedural obligations surrounding the reevaluation.

6. In considering the appropriateness of the reevaluation, the administrative law judge notes that Parent was not given proper notice that the Student's reevaluation report would be discussed at the March 9, 2001 meeting. Given Parent's lack of cooperation in the past, it is understandable that the District chose to discuss the reevaluation and IEP in one meeting. However, pursuant to WAC 392-172-1500(2), notice of a meeting must include the purpose of the meeting. The district's notice (Exhibit 115 p.1) does not put Parent on notice that the reevaluation results would be discussed. Although this is a procedural error, it is not prejudicial to Parent. Procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE. *Target Range, id., Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990). Here, the District took subsequent steps which insured the Parent's ability to participate in the process. The District was responsive to parents concerns raised at the March 9 meeting and staff met with the Parent on at least two occasions subsequent to the reevaluation meeting to address Parent's concerns. Therefore, the procedural error was non-prejudicial and did not result in a denial of FAPE.

Parent's Arguments - Reevaluation

7. Parent asserts that the reevaluation was inappropriate because the District did not consider the Student's entire history, particularly the allegations of [REDACTED] and [REDACTED] that Parent made against the staff of [REDACTED] while Student was in [REDACTED] grade. However, the evidence establishes that Parent had discussed this concern with the District at "each and every IEP meeting," and that the District had considered these concerns. The fact that the Reevaluation Summary did not mention Parent's allegation or discuss them, does not render the evaluation inappropriate, especially given the fact that the Student's behavior had markedly improved. The District was not required to insert in its written report allegations against staff at another building which allegedly occurred years before. Especially, when there is no evidence that Student is "traumatized" or is suffering from [REDACTED] as Parent claims. Therefore, I conclude that the District had sufficient information to prepare an

appropriate evaluation which became the foundation for the present levels of performance listed in the IEP.

8. Parent objected to the District's reevaluation determination that Student has a learning disability. Parent did not offer any testimony as to what he believed was the appropriate classification. He contends that information was left out of the evaluation report (specifically allegations of harassment and discrimination), and therefore, the reevaluation is inappropriate. However, the facts do not support this. Dr. Gose and the other District evaluators properly followed evaluation procedures for making the determination that Student had a learning disability. Based on the evaluation data they collected and reviewed, Dr. Gose and the evaluation team properly exercised their professional judgment that Student has a mild learning disability in written language that qualifies him for special education. Parent has provided no expert opinion to rebut those expert opinions. Moreover, the facts also support the opinion of District witnesses. While some behavioral problems persist with Student, the last two years of teacher observations confirm that these behavior problems are now secondary to a learning disability, and are primarily exhibited when Student is challenged to produce the written work which he finds difficult. Therefore, I conclude that the District properly changed the Student's eligibility classification from [REDACTED] to [REDACTED].

9. Parent also asserts that no parent information was used in the reevaluation assessment or identification of the student's disability. As previously discussed, the facts do not support this argument. Parent was present at the reevaluation meeting on March 8, 2001, and had an opportunity to provide input during the meeting. Parent has participated in many meetings with the District regarding both the reevaluation and the IEPs. Parent has provided input into both the reevaluation and the IEPs at these meetings and through many other individual contacts with District evaluation and IEP team members. The District has considered Parent input and modified their evaluation plan, reevaluation results and the IEPs based on that input. The District has satisfied its duty to provide for parent participation in the identification, evaluation, and IEP of student.

10. Parent also asserts that the District improperly deleted the diagnosis of [REDACTED] from the reevaluation without medical documentation. However, the evidence establishes that only Dr. McKeever, who is not a medical doctor, made this diagnosis. Dr. Gose is a psychologist just like Dr. McKeever. Dr. Gose reviewed sufficient data, none of which supported a [REDACTED] diagnosis of [REDACTED]. Moreover, Parent is relying upon a diagnosis made by a psychologist several years ago. On the other hand, Dr. Gose' opinion is based upon more current evaluations, assessments and longitudinal observations of the Student. Parent has not presented any expert opinion to rebut Dr. Gose's opinions and conclusions. Therefore, the Parent's argument is not supported by the facts.

11. Parent also alleges that the District made errors in using the wrong teacher's name, in changing dates on assessments, and lacked professionalism - all which Parent contends led to the Student being erroneously classified. All of these allegations lack merit. Moreover, Parent has not presented any evidence or expert testimony to show that the Student has been erroneously classified.

The Student's IEP is appropriate

12. In order to satisfy the IDEA's requirement of a FAPE, an IEP must be "reasonably calculated to enable the child to receive educational benefit." citing *Rowley*, 458 U.S. at 207. The substantive test of *Rowley* does not require the absolutely best or potential-maximizing education for the individual child. The states are obliged to provide a basic floor of opportunity through a program individually designed to provide educational benefit to the handicapped child. *B.S.*, 82, F.3d at 1500, quoting from *Union School District v. Smith*, 15 F.3d 1519, 1524 (9th Circuit, 1994). "[T]he basic floor of opportunity provided by the Act consists of access to specialized instruction and related services. . . ." *B.S.* 82, F.3d at 1500; *Rowley*, 458 U.S. at 201. However, 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).

13. The IEP is the cornerstone of the provision of special education services under the IDEA. WAC 392-172-160 requires an IEP to contain: a statement of the student's present levels of performance; a statement of measurable annual goals and short-term objectives; a statement of the specific special education, related services, supplementary aids and services and program modifications or supports to be provided, an explanation as to the extent to which the child will participate in the general education environment; a statement of any modifications in the administration of state or district-wide assessments, the proposed initiation date of modifications and services and the expected frequency, location and duration of those modifications and services; a statement of how the student's progress toward the annual goals will be measured; for students age [redacted] a statement of the transition service needs of the student; aversion interventions, if applicable; and extended school year services.

14. Here, the evidence establishes that the District's proposed IEP is reasonably calculated to enable the child to receive educational benefit. The present levels of performance contain adequate statements of the Student's present levels of performance in all areas of need, as required by 34 C.F.R. § 300.346(a)(1) and WAC 392-172-160(1)(a) and specify the nature of his difficulties. The goals and objectives are individualized to meet the Student's particular needs and his level of special education and placement is appropriate. The IEP is designed to confer educational benefit to the Student. Accordingly, in considering all of the above factors, I conclude that the District's proposed IEP provides the Student with a FAPE.

Parent's Arguments

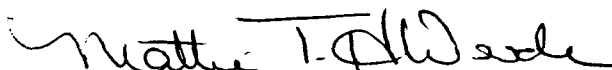
15. Parent asserts that the IEP team refused to recognize any of his concerns about the IEP and the reevaluation. As discussed above, the evidence establishes that the District did consider the Parent's concerns raised during the March 8, 2001 meeting. The District also recognized all of the Parent's concerns raised regarding the IEP and amended the IEP on several occasions to address Parent's concerns. Moreover, at the request of the Parent, the District changed the behavior reporting forms on several occasions throughout the [REDACTED] grade year. Therefore, I conclude that the District has recognized the Parent's concerns raised about the Student's IEP.

16. 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.

THEREFORE, IT IS HEREBY ORDERED:

1. The District's March 8, 2001 reevaluation of the Student is appropriate.
2. The District provided the Student with a FAPE during the [REDACTED] school year. The District's proposed IEPs during the Student's [REDACTED] grade year are appropriate.
3. The District shall amend the Student's IEP to appropriately reflect that special education services will be delivered in the general education classroom.

Dated at Seattle, Washington this 21st day of November, 2001.



Mattie T. Harvin Woode
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 11/21/01, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Parent

[REDACTED]

Sue Walker
Chief Student Officer
Student Support Services
Shoreline School District
18560 - 1st Ave NE
Shoreline, WA 98155-2148

James Dionne
Attorney at Law
2550 First Interstate
999 Third Avenue
Seattle, WA 98101