

ART WANG
Chief Administrative
Law Judge



STATE OF WASHINGTON

July 18, 2001

OFFICE OF ADMINISTRATIVE HEARINGS

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JUL 23 2001

Superintendent of Public Instruction
Legal Services

In re: Northshore School District - Special Education Cause No. 2001-SE-0042

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:

NORTHSHORE SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2001-SE-0042

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

A hearing in the above-entitled matter was held before Administrative Law Judge Mary L. Radcliffe in Bothell, Washington, on June 5, 2001. The appellants, the interested parents, [REDACTED] and [REDACTED] ("Parents") appeared on their own behalf. The Northshore School District ("District") was represented by Lawrence Ransom, 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

On April 24, 2001, the Parents filed a request for hearing with the Office of Superintendent of Public Instruction. On April 26, 2001, the Office of Administrative Hearings ("OAH") mailed to the parties a notice of Prehearing Conference and Notice of Hearing. On May 2, 2001, the District filed a request for change of administrative law judge ("ALJ"). On May 3, 2001, OAH mailed to the parties an Order of Reassignment of ALJ and a Notice of Prehearing Conference changing the prehearing conference from May 7 to May 15, 2001, a change necessitated by the granting of the District's request for change of ALJ. On May 15, 2001, the prehearing conference was held and the hearing set for June 5, 2001. A Prehearing Order was entered May 15, 2001. The deadline for issuance of a written decision was continued from June 8, 2001 to June 22, 2001. The Parent (father) appeared for and represented both Parents.

On June 6, 2001, the ALJ ordered the District to conduct a formal MDT meeting no later than 6:00 p.m. June 21, 2001 to consider Dr. Adler's evaluation. A telephone conference was scheduled and held on June 26, 2001 in order for the parties to inform the ALJ whether, and how, they would like to submit additional evidence related to the MDT meeting. On June 26, 2001, the District and Parent informed the ALJ that each of them would like to submit additional documents. On June 27, 2001, the ALJ issued a Post Hearing Order on Exchange of Documents and Scheduling of Telephone Conference. The Order also continued the 45 day deadline for issuance of the written decision from June 22 to July 20, 2001 in order to accommodate the parties' requests. The parties exchanged

and filed the documents as scheduled. The telephone conference scheduled for July 9 was continued until July 11 to accommodate a scheduling conflict of the District's counsel.

On July 11, 2001, the hearing reconvened via telephone. The Parent, [REDACTED], (father) appeared on behalf of both parents, as he had done on June 5, 2001. Lawrence Ransom, attorney at law, represented the District. Dr. Sharon Hartung, director of special education, appeared for the District. The proposed exhibits were discussed and admitted, some over the objection of the District. The Parent (father) testified in order to explain his exhibits. The parties made brief closing argument. Both parties agreed to the hearing process and raised no objections as to the manner in which it was set or conducted.

On July 11, 2001, the Parent moved for summary judgment based on the District not conducting math and reading testing after receiving Dr. Adler's diagnosis of ADHD. He relies on WAC 392-172-124. The ALJ denies the Parent's motion.

ISSUES

The Parents' request for hearing takes issue with the District's 2000-2001 reevaluation of the Student which found the Student ineligible for special education services. The Parents assert that the intelligence testing is inaccurate and that if the IQ score were adjusted upward, it would establish the Student's eligibility for services based on a Specific Learning Disability. The Parents also assert that the Student's [REDACTED] diagnosis combined with her academic challenges establishes the Student's eligibility as Health Impaired, pursuant to WAC 392-172-124. The Parents' withdrew the issue of the Student's emotional and adjustment skills, based on a subsequent evaluation conducted by the District. The Parents made additional arguments which are also addressed in this decision. The Parents request that the Student be found eligible for special education.

The issue for hearing is:

Whether the District's evaluation of the Student, which finds the Student ineligible for special education services, is appropriate, and if not, if the Student should be determined to be eligible.

See Prehearing Order, May 14, 2001, Exhibit C5.

EXHIBITS AND WITNESSES

The Parent called himself, the Student, and Ms. Hartung as witnesses. The District called the following witnesses: Steven Davis, school psychologist, Jerri Tregear, kindergarten teacher, and Richard Adler, M.D.

The following exhibits were admitted:

Findings of Fact, Conclusions of Law and Order
Page 2

District exhibits D-101 through and including D-121

Parent exhibits P-201, P203 through and including P-206, P208 through and including P-212. Due to a mis-numbering of exhibits, there are two P-210 exhibits. One is identified as P-210A and the second as P-210B.

FINDINGS OF FACT

1. [REDACTED], ("Student") was born on [REDACTED]. She resides with her family in Bothell, within the Northshore School District ("District") boundaries. At the time of the hearing, the Student is [REDACTED] years old and attends [REDACTED] at her neighborhood school, [REDACTED] Elementary.
2. The Parents [REDACTED] the Student from [REDACTED] when she was [REDACTED] and a [REDACTED]. She had a history of delayed development, most probably the result of poor nutrition and nurturing in [REDACTED].
3. The Student is friendly, outgoing, eager to please but with her own mind. She is popular among her peers.
4. On October 7, 1997, the Parents referred the Student for evaluation. On November 19, 1997, the multi-disciplinary team ("MDT"), found the Student to be Developmentally Delayed, pursuant to WAC 392-172-114. The evaluation revealed the Student had delayed adaptive behavior, communication, and motor skills. Cognitive testing was not done because the Parents did not have concerns in this area and, at the time, the Student had limited English language skills. As a result of the evaluation, the Student received special education and related services in the District's developmental [REDACTED] for two and one-half years until her current placement in a regular education [REDACTED] classroom in the [REDACTED]. She made great progress.
5. On October 31, 2000, the multi-disciplinary team ("M.D.T."), including the Parent, began the triennial reevaluation process. Steve Davis, school psychologist and educational specialist, served as Assessment Team Leader. The team identified the areas of vision, speech, language, hearing, social skills, and emotional status to be evaluated. The team agreed there were no concerns about intellectual abilities, pre-academic skills, and motor development. Testing was not administered in those areas. The written results of the evaluations were provided by the individuals conducting them: the school registered nurse, the speech and language pathologist, and the school psychologist.
6. An MDT meeting was held on November 14, 2000 to discuss the results of the various evaluations. The MDT determined that the Student was no longer eligible for special education. This determination was summarized in the District's November 14, 2000 Evaluation Report/Determination of Eligibility, which was provided to the Parent.

7. The Parent stayed after the meeting to talk with Mr. Davis at greater length and to request an academic evaluation. Mr. Davis agreed the District would conduct cognitive and achievement testing in order to ascertain whether the Student had an eligible specific learning disability.

8. Mr. Davis holds Master of Arts degrees in special education and school counseling. As a certified state education specialist he is qualified to administer intelligence and achievement testing. He has conducted approximately 150 evaluations of students ten years old or younger for a suspected learning disability or health impairment. Mr. Davis demonstrated expertise in his area of work.

9. On November 20, 2001, the District revised the Student's IEP to reflect her successful completion of the goals and objectives on the previous year's IEP and establish her ineligibility for continued special education services. It noted the Parents' continuing concerns and recommended follow up on areas of concern.

10. On or about December 12, 2000, Mr. Davis administered to the Student the WISC III intelligence test. This test is on the state- approved list of instruments and is suitable for children aged 6 through 16. The Student was just [REDACTED] at the time of the test.

11. Testing revealed the Student's full scale IQ is 84. The mean of the test equals 100 with a standard deviation of 15. The confidence level of the Student's test is an anticipated range of a score between 79 to 90 at the 95% level. Because the Student demonstrated short attention span and low frustration tolerance with some of the more difficult items, the test result may be a low estimate of her true abilities. However, the measure falls within the confidence range of 79 to 90. In calculating an intelligence score, a student's chronological age is considered. Use of a "mental age" would invalidate the test. Specific scaled scores do not directly correlate to the IQ percentile. The Student's score of 7 in arithmetic is within the average range of 7 to 13. So, like an IQ of 85, it is at the bottom of the average range.

12. Mr. Davis also administered the Woodcock Johnson- Revised (WJ-R) in basic reading skills, reading comprehension, math calculation, math applied problems and broad written language. He also administered the OWLS test on written language achievement. Her WJ-R standard scores ranged between 92 and 83, applied math problems being the lowest. On the OWLS written language achievement she received a standard score of 90.

13. The Student's scores revealed she was delayed in some areas. However, her standard scores do not fall below the criterion level of 72, as defined in the Washington Administrative Code (W.A.C.) regression tables, for identification of a significant discrepancy between the Student's ability and achievement.

14. Even if one were to compensate for the Student's attentional difficulties on the IQ testing, it is highly improbable she would increase her score sufficiently (to a Full Scale IQ of 101) to establish eligibility for a specific learning disability, pursuant to WAC 392-172-130 and -132. Consistent with observed and reported behaviors, teacher reports reflect the Student is on track to meet pre-academic goals established for kindergartners.

15. On January 19, 2001, Mr. Davis completed his evaluation report. Mr. Davis summarized his testing results, and noted his review of the January 19, 2001 OT/PT report by the occupational therapist, which confirms that the Student's motor skills are within her age group norms.

16. On January 19, 2001, the MDT, including the Parent, met to discuss the results. The school psychologist, the principal, the Student's teacher, the special education teacher, and the physical therapist attended. It was the consensus of the team, except for the Parent, that the Student's IQ was consistent with her performance in class and with her teacher's assessment. The members of the team, except the Parent, signed their agreement with Mr. Davis' report that the Student was not eligible for special education services as specific learning disabled, and/or for related OT/PT services. The team recommended continued consultation with the Parents, close monitoring of progress, especially in the areas of math and writing, encouraging the Student to persist with new or difficult tasks, and if concerns at home, a private consultation with the family's medical provider. On January 19, 2001, the District provided the Parents with a Notice of Action consistent with this team decision.

17. The Parents continued to have concerns about the Student's attentional problems and need for services and requested the District fund a psychiatric evaluation. The District agreed. Richard Adler, M.D., board certified child psychiatrist, was selected by the parties as a neutral outside evaluator.

18. Dr. Adler's practice includes identifying students found to be eligible for special education, including those with a diagnosis of [REDACTED] and learning disabilities. He has assessed many children, their educational circumstances, and made recommendations for their educational needs. He did that in this instance.

19. Dr. Adler reviewed and considered the Student's school records, including previous IEPs, District evaluations (1997 and 2000), Mr. Davis' report of ability and achievement testing, a School Health Summary, a November 21, 1997 OT/PT report, completed Behavior Assessment System for Children (BASC) by teachers, and two interviews with the Student and her father.

20. Dr. Adler's evaluation is summarized in his report dated May 29, 2001 and was conveyed directly by his testimony at the hearing. It is not known why the evaluation took four months to complete. There is no report of a complaint by the Parent.

21. In summary, Dr. Adler diagnosed the Student with [REDACTED] combined type, ([REDACTED] most probably caused by her "post-natal, early life malnutrition and possible 'hospitalism,' a syndrome due to lack of stimulation and impersonal perfunctory care." This distinction from the common origin of [REDACTED] does not impact on the Student's treatment or prognosis.

22. The Student does not evidence any significant emotional illness, "other than the general behavioral picture that often accompanies [REDACTED] and some slight immaturity suggested by her drawing." In Dr. Adler's opinion, the Student does not meet the definition of behaviorally disturbed or developmentally delayed. Dr. Adler opined that the Student may qualify for Section 504 accommodations, such as sitting close to the teacher. Dr. Adler clarified that the Student does not have a processing difficulty. Her problem is impulsivity related to her attentional problems.

23. As to the Student's IQ testing conducted by Mr. Davis, Dr. Adler opined that it was unlikely that the Student's attentional problems, if alleviated, would produce a statistically significant increase in score, sufficient to establish qualification for a learning disability.

24. Dr. Adler opined, that although the Student did not require remediation for academic delays, she may, like other [REDACTED] students, develop such a need at some point in her school career. Making the Student a "focus of concern" at that time and initiating re-testing would be indicated. At that time, a brief trial of medications to explore the potential impact on her testing performance might be appropriate.

25. Dr. Adler's report, dated May 29, 2001, was provided to the Parent on or about May 30, 2001. The District requested the Parent attend an MDT meeting on Monday, June 4, 2001. The Parent declined to participate given the due process hearing was scheduled for the following day, June 5, 2001. The MDT met informally and concluded that the Student did not suffer an "adverse educational impact" from her [REDACTED] diagnosis therefore the Student did not qualify for eligibility as health impaired.

26. The Student's [REDACTED] teacher, Jerri Tregear, credibly established that the average [REDACTED] class has a broad range of skills and challenges. The Student has strengths and weaknesses in her school performance but is within the expected range for a [REDACTED]. She is in the low average range for math.

27. The Student's progress reports provide areas for the Parents to work on at home with the Student. These are areas that would benefit from extra practice but do not

indicate the Student needs pull out services next year. The teacher provides recommendations to all of the students' parents, to encourage families to see school and homework as a positive activity.

28. At the time of the hearing, the Student had not completed her school year. The Student's teacher was not able to state where the Student would fall on her year end progress report. She felt that the Student still had time to learn new things and make progress, but the Parent disputed this. Because it was the end of the year, there were special activities planned. These are outlined on the "June Special Days" calendar provided by the teacher to the students and families. It is reasonable to conclude from its review that some of the June school days with special activities would not provide the opportunities to learn academic material as would an ordinary school day.

29. In June, 2001, the Parents had the Student's reading and math abilities tested by the Sylvan Learning Center. The Parent provided documents of the outcomes of both tests and explained what transpired at the testing appointments. He gave his opinion about their significance.

30. As to the reading test, the Student was administered the Peabody Picture Vocabulary test. At the hearing, the Parent reports that originally the Student obtained a score of 37. The Parent thought the score high and the Student was immediately retested in front of the Parent. The Student received a score of 18. It appears that either score placed the Student in the 5 to 6 year old receptive vocabulary age level. The Parent asserts that the Student has not learned anything since November 2000, because she also scored 18 on the Peabody test at that time. From the Parent's description of the administration of this test, the validity of the outcomes of this test are questionable and are given little weight.

31. Areas on the reading test indicate that the Student received a 100% on orientation and language experience, and missed one portion of the reasoning section. Word analysis appears to be a deficit area, but it is not possible from the information provided to ascertain what level of deficit exists. The evaluator recommends work on letters and sounds and master blending. This is consistent with the district's assessment that the Student is weak in knowing her letters and sounds.

32. As to the math assessment, the document provided contains no substantive information except to indicate that the Student was administered the California Achievement Test in computation and concepts and applications. The tester does not complete the scoring section, and makes only the following substantive statement:

For [REDACTED] we only to concepts.
.2

Second month of [REDACTED]

From this and the Parents explanation, including that the test was 10 minutes long and that Sylvan's focus of testing and services is on reading, it is reasonable to find that the tester identified the Student's math skills as at the second month of [REDACTED]. It is also reasonable to find that the weight to be given this information is low.

33. The Parent had the Student testify in order to demonstrate her academic challenges. The Parent asked questions like: "Can you count by 5 to 100?" and "Can you skip count to 115?" Dr. Adler was present during this testimony. He credibly established that these types of questions are not standardized and hold very low validity. It is reasonable to find that the Student's responses to such questions add very little, if any, value, as to the Student's academic achievement.

34. The Parent testified that he was a certified special education teacher for grades K-12, and an expert in autism and audiology. He opined that [REDACTED] was next to autism on a continuum of disabilities and that the minor variations between left to right ear in the Student's hearing (which is within normal limits) established that the Student had [REDACTED]. The Parents assertions were not substantiated in follow up questions. Based on the totality of the evidence, the Parent's asserted expertise in the subjects under discussion in this matter is not established and carries little weight. The Parent's testimony as a lay person and parent has credible value.

35. On June 6, 2001, the ALJ ordered the District to hold a formal MDT meeting, no later than June 21, 2001, to consider Dr. Adler's diagnosis, recommendations and report.

36. On June 19, 2001, the MDT, including the Parent, met to consider Dr. Adler's report and diagnosis of [REDACTED]. The team included the school registered nurse, the student's regular education teacher, the school psychologist, the principal, the Title I reading specialist, and a special education teacher. An "Assessment Feedback" report summarized the contributions made by each participant to the discussion. The team discussed the medical diagnosis and examined the Student's abilities to learn in the school environment.

37. The Title I reading specialist reported her screening of the Student for [REDACTED] grade. She found that the Student had a deficit in the number of sounds and letters she knew compared to her peers. The score was not sufficient for eligibility for special education but did "red flag" the Student for [REDACTED] grade Title I reading assistance. The red flag qualified the Student for small group reading work. The Student will participate one hour four days a week in the special reading group, working on phonemic awareness.

38. The team also discussed the Parent's report of the Sylvan tests. Ultimately, the District staff unanimously determined that the Student did not suffer adverse educational consequences from the health condition, [REDACTED] that required specially designed instruction. The Parent disagreed. Absent the Parent's agreement, the MDT determined that the Student did not meet the standard for health impairment eligibility for special education.

39. On the same day, the District provided the Parent with a written Determination of Eligibility. It denies the Student eligibility for special education but provides for eligibility for extra reading help through the regular education program in the [REDACTED] grade, monitoring of the Student's progress, and recommended initiating Section 504 accommodations as the need arises. All participants, save the Parent, signed in agreement.

40. On June 20, 2001, the District mailed the Parent a written Notice of Action. It provides that the reevaluation was completed and that the District denied the Student eligibility for special education.

CONCLUSIONS OF LAW

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

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

First, had the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the state has complied with the obligations imposed by Congress and the courts can require no more. 103 S. Ct. at 3051.

3. A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA (formerly the EHA).

4. The District bears the burden of proving compliance with the procedural requirements of the IDEA. *Clyde K. v. Puyallup Sch. Dist.*, 35 F.3d 1396 (9th Cir. 1994).

5. In this case, the Parents' concerns revolve around eligibility for special education under two possible disability categories: specific learning disability and health impaired. The Parents take issue with the validity of the intelligence and achievement testing and assessment information. They also assert several procedural errors committed in conducting the evaluations.

6. The general procedural requirements for conducting an evaluation to determine eligibility for special education are found in the state regulations WAC 392-172-102 through -111. Eligibility criteria for specific disabilities are found in WAC 392-172-114 through -148. The relevant specific suspected disabilities regulations are found in WAC 392-172-124 (health impaired); and 392-172-126, -128, -130, and -132 (specific learning disability).

General Evaluation Requirements

7. The District has 25 days from the receipt of the referral of a focus of concern to decide whether the Student is a candidate for evaluation. It then must complete an evaluation within 35 days of its receipt of the Parent's written consent. See WAC 392-172-104 (1) and (2). Here, the District established that it conducted its' November 2000 and January 2001 evaluations within these time frames. It is unknown why the evaluation by Dr. Adler, agreed to in mid-January 2001 was not completed before May 29 and brought to closure by the MDT in June 2001. This constitutes a failure to meet the 35 day requirement.

8. The District is required to include the Parent in meetings and must provide notice. See WAC 392-172-105. Here, the District established that it provided notice and that the Parent participated meaningfully in the process. The team considered and responded to concerns raised by the Parent, and expanded the evaluation process each time the Parent requested.

9. The District is required to evaluate the Student in all suspected areas of disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. WAC 392-172-106(1). The evaluation shall be sufficiently comprehensive to identify all of the student's special education and any necessary related services needs, whether or not commonly linked to the disability category in which the student has been classified. WAC 392-172-106(2).

10. Here, the District demonstrated that its November 2000 re-evaluation addressed the identified suspected areas of disability: vision, hearing, social skills, and emotional status,

and communication skills. The January 2001 re-evaluation identified other suspected areas of disability: general intelligence, academic performance (potential learning disability) and motor abilities. The June 2001 re-evaluation was a psychiatric evaluation. The District demonstrated that it addressed each suspected area of disability or possible related service need raised by the Parents. The District was not required at the outset of the re-evaluation to address all of the suspected areas of disability ultimately evaluated, as the Parent requested additional areas of testing only in response to completed evaluations of previously suspected disabilities.

11. The District is required to comply with the specific evaluation procedures, outlined in WAC 392-172-108. The first relevant requirement is that the evaluation activities be conducted by qualified professionals selected by the District, and knowledgeable about the suspected areas of disabilities. See WAC 392-172-108(2)(a).

12. As to the November 2000 evaluative activities, the school registered nurse conducted the vision and hearing tests and health summary. The District's speech and language pathologist conducted the speech and language assessment. The school psychologist conducted the social skills/emotional evaluation. As to the January 2001 evaluative activity, the school psychologist, who is a certified education specialist, conducted the learning disability tests: the intelligence and achievement testing. As to the third evaluative activity, the District hired a qualified, board certified child psychiatrist to conduct the psychiatric evaluation. The ALJ concludes that the District has demonstrated that each professional was qualified to conduct the evaluation related to its identified suspected disability. The Parent's assertion that the school psychologist is not qualified to administer intelligence and cognitive testing because he does not have a doctorate is found to be without merit. The District established that a school psychologist, who is certified by the State as an education specialist, and has conducted many such evaluations, is qualified to conduct such testing.

13. When deciding whether the Student was eligible as the result of a learning disability, the District must include the following persons: the parent, a general education teacher, an individual qualified to conduct individual diagnostic exams, such as a school psychologist, pursuant to WAC 392-172-108(2)(b). Here, the January 19, 2001 MDT meeting, which pertained to the suspected learning disability, included all of the required persons.

14. Each member of the evaluation group must be licensed, registered, credentialed, or certificated according to professional standards. WAC 392-172-108(3). The District established that the school psychologist, the member of the team the Parent asserted was not qualified to conduct testing, was and is, appropriately certificated according to professional standards and state regulation.

15. 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).

16. The District's evaluation may not be a single procedure, tests and other evaluative materials must be selected and administered so as to not be racially or culturally discriminatory, and not be selected so as to test a student with limited English proficiency's difficulty with English but rather so as to test the extent of a suspected disability. See WAC 392-172-108(5), (6) and (7). These factors are not disputed by the Parent, except to the extent that he asserts the WISC is for children older than the Student. The ALJ concludes, based on the evidence presented, that the tests were appropriately selected and administered to address the intended suspected disability.

17. All standardized tests and other evaluation materials shall be validated for the specific purpose for which they are used and shall accurately reflect whatever factors of the tests are designed to measure. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report. See WAC 392-172-108(8). All tests shall be administered by trained and knowledgeable personnel in conformance with the instructions of the test producer. See WAC 392-172-108(9).

18. Here, the Parent asserts that the school psychologist should not have selected the WISC because the Student was only [REDACTED] did not appropriately administer the test, and/or that the reported Student's loss of focus and frustration interfered with her performance such that her intelligence testing is inaccurately low. The school psychologist established that the WISC administered was for children beginning age [REDACTED] and that it was the preferred test for the Student at age [REDACTED]. The District staff also established that the Student's behaviors did affect the Student's performance but within the standard confidence range. Dr. Adler, whose qualifications and neutrality are not in dispute, credibly confirmed this. The ALJ concludes that the District has established that it complied with this requirement, as well as with Requirements found at WAC 392-172-108(9), (10), (11) and (12).

19. The District is required to provide a medical evaluation, at the expense of the District, if the team suspects the Student has a health impairment that may affect her eligibility and need for special education and any necessary related services. WAC 392-172-108(13). Here, at the request of the Parent, the District obtained the services, at its expense, of a child psychiatrist to assess whether the Student had a health condition, thereby complying with this requirement.

20. 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).

21. WAC 392-172-10900 outlines the process by which the qualified professionals and parents review existing evaluation data, identify additional needed data, and administer appropriate tests as needed to produce the data, and the necessity to invite the parent if the group meets to make these decisions. The District has established that it complied with this process when the school psychologist met with the Parent to identify concerns and discuss appropriate areas of testing and evaluation. The District complied each time the Parent raised new areas of suspected disability.

22. WAC 392-172-10905 provides the requirements for an evaluation report and documentation of determination of eligibility. In this case, the District was conducting a triennial reevaluation and had available to it a lot of information about the Student, her challenges and achievements. Each evaluator who conducted an assessment documented the information they considered, the outcomes of the tests, and wrote a report. The team issued a joint evaluation report and determination of eligibility with which they each signed their agreement. This was done each time the evaluation scope was reopened and added to at the request of the Parent. The District has established compliance with this regulation.

23. The ALJ concludes that the District established its compliance with the general evaluation regulations, with the exception of missing the 35 day time line with Dr. Adler's evaluation, as required by WAC 392-172-104 (2). The effect of this error will be addressed below.

Specific Suspected Areas of Disability Evaluation Requirements

24. In addition to the general evaluation requirements cited above, there are additional regulations that define certain specific suspected areas of disability. The purpose of which is to set uniform state standards by which school districts can consistently identify whether a particular student would fall within the eligibility definition. The categories include emotionally/behaviorally disabled (WAC 392-172-118), health impaired (WAC 392-172-124), and specific learning disability (WAC 392-172-126, -128, -130, and -132). Other specific categories were not identified at any time by the Parents, nor does the evidence demonstrate any relevance to them, therefore, they not addressed. The ALJ addresses each of the above categories raised by the Parents.

25. At the outset of this process, the Parent asserted that the Student may be emotionally or behaviorally disabled. Later he withdrew that assertion and did not argue it at hearing. It should be noted that the school psychologist conducted a social

skills/emotional evaluation as did Dr. Adler. Neither found that the Student exhibited over a long period of time and to a marked degree, an inability to learn which cannot be explained by intellectual, sensory, or health factors, or an inability to build or maintain satisfactory interpersonal relationships, inappropriate behavior, a pervasive mood of unhappiness, or fears associated with school, nor that the student is schizophrenic. At least one or more of these must be identified to qualify as having an emotional/behavioral disability, pursuant to WAC 392-172-118.

26. The definition of health impaired provides:

Students with health impairments are those who have limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment due to chronic or acute health problems, such as a heart condition, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, lead poisoning, leukemia, or diabetes, that adversely affect their educational performance and require specially designed instruction.

All students being considered for eligibility for special education and any necessary related services under this category shall be evaluated in all areas of suspected disability and in accordance with the procedures in WAC 392-172-106 through 392-172-111.

See WAC 392-172-124.

27. The Parent strongly asserts that the Student is health impaired due to her [REDACTED] and educational challenges. The District does not dispute the Student's diagnosis of [REDACTED] and that it is a qualifying health condition. The question here is whether the Student's health condition adversely affects her educational performance and requires specially designed instruction. The District staff credibly established that in their considered opinion the educational challenges the Student does have are not sufficiently affecting her educational performance such as to keep her from staying within the range of her [REDACTED] peers such that she needs specially designed instruction. Moreover, Dr. Adler, whose credibility and expertise are not at issue here, and who has a great deal of experience assessing children's disabilities, agrees with team's determination.

28. The Parent's assertion that WAC 392-172-124 requires the District to re-administer the intelligence and achievement testing after Dr. Adler's diagnosis of [REDACTED] is without

merit. The District had conducted previous testing which was still current. The team was entitled to rely on that testing, in conjunction with other information it considered, in making its decision as to the lack of adverse educational impact and need for specialized instruction. Moreover, Dr. Adler considered those testing results in his own opinion as to the effect of the Student's [REDACTED] on her educational environment. The ALJ concludes that the District complied with the regulations pertaining to assessment of a health impairment.

29. The Parent has strongly asserted that the Student is eligible for special education as specific learning disabled. A specific learning disability is defined as:

(1) Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

See WAC 392-172-126.

30. The evaluation procedures for a specific learning disability are found at WAC 392-172-128. In relevant part, it requires that a student not achieve commensurate with her age and ability levels in one or more areas. It requires establishing a severe discrepancy between achievement and intellectual ability in one of seven areas, including reading skills, comprehension and math calculations and reasoning; and documentation, in part, through a review of student performance through classroom work, teacher observation and judgments. Documentation of the existence of a severe discrepancy between ability and achievement must be recorded, the tests for which must be reliable, normed, and selected and individually administered in accordance with the general requirements of WAC 392-172-106 through -108. The regulations also provide the discrepancy tables for determining severe discrepancy and the method for documenting it. See WAC 392-172-130 and -132.

31. In this case, the ALJ concludes that the District conducted the appropriate tests and discussed in the MDT meeting, with the Student's teacher and others, the Student's demonstrated ability to do work within the Student's age group as represented by progress reports, observations, testing, and classroom participation. The testing conducted by Mr. Davis, previously held to be appropriate selections, were appropriately administered and scored. Mr. Davis applied the discrepancy tables and the method of documenting a severe discrepancy. The team members of the specific learning disability evaluation group signed the evaluation report as in agreement with Mr. Davis's documentation and lack of eligibility for a specific learning disability, thereby complying with WAC 392-172-130 and -132.

Effect of Procedural Error

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

33. The ALJ identified one procedural error committed by the District: it took longer than 35 school days for the psychiatric evaluation. It was initiated in January 2001 and completed May 29, 2001. The MDT meeting took place in June, 2001. The ALJ notes that there was no objection by the Parent to this period of time, as the focus of the Parents' efforts are directed to services in the upcoming, [REDACTED] grade, school year. The ALJ also notes that there is no evidence that the procedural error was the result of District conduct, nor that it denied the Student an educational opportunity, or the Parents the right to participate in the evaluation process. That being the case, the ALJ concludes that, in this case, the error is a minor one, and does not deny the Student a FAPE.

Summary

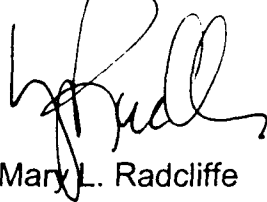
34. Based on the foregoing facts and analysis of the law, the ALJ concludes that the District's re-evaluations of the Student beginning in November 2000 and concluding in June 2001 were appropriate. Accordingly, the District's determination that the Student is not currently eligible for special education is also appropriate.

35. Lastly, it is important to note that the District does not dispute that the Student has challenges. They recommend Title I reading assistance for regular education students, Section 504 accommodations as needed, and the careful monitoring of the Student's progress. Dr. Adler also indicated that many children with [REDACTED] need special education services at some time in their educational careers and that the District should be vigilant in its monitoring of the Student's needs. The evidence demonstrated that the District is receptive and responsive to issues raised by the Parents and has successfully met the Student's special education needs in the past. From the evidence presented, there is no indication that it will be otherwise in the future. However, the Student is also fortunate to have her Parents, staunch advocates for her continued success at school.

ORDER

1. The District has complied with the procedural and substantive requirements related to the 2000-2001 reevaluation 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.

Dated at Seattle, Washington this 18th 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.

Certificate of Mailing

This certifies that a copy of the above Findings of Fact, Conclusions of Law and Order was

served upon the parties or their representatives on 7/18/01, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

[REDACTED]

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