

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. 2002-SE-0098

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

A hearing in the above-entitled matter was convened before Administrative Law Judge Robert P. Kingsley in Poulsbo, Washington, on September 20 and 25, 2002. The interested parents appeared on their own behalf and were represented by Randal Brown, Attorney at Law. North Kitsap School District (District) was represented by William 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 parent filed a request for due process hearing with the Office of the Superintendent of Public Instruction (OSPI) on July 24, 2002. The parties were served with a copy of a Notice of Hearing setting this matter for hearing. A prehearing conference was convened on August 6, 2002. The parties agreed to: (1) a hearing location at the District administrative offices; (2) a date for exchange of documents and witness lists; (3) definition of issues; and (4) hearing dates of September 20 and 25, 2002. The proceedings were reported by Roger Flygare and Associates.

After adjournment on September 25, the record remained open for submission of additional exhibits and post hearing memoranda. Additional testimony regarding the Glen Eden Institute was received in the case of Bainbridge Island School District, OAH Cause No. 2002-SE-0107, involving both counsel as advocates. The parties agreed that this evidence could be considered for findings in this matter.

The parties agreed to extension of the deadline for decision to thirty days after the close of the record. The last memorandum was filed on December 10, 2002. The deadline for decision pursuant to WAC 392-172-356 and the agreement of the parties is January 9, 2003.

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ISSUES

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

- a. Whether the District failed to provide a free and appropriate public education (FAPE) for the 2001-02 school year in the design and implementation of the individualized education plan (IEP);
- b. Whether the student is entitled to compensatory education;
- c. Whether the District's proposed IEP for the 2002-03 school year is appropriate;
- d. Whether the District should be ordered to provide an Independent Educational Evaluation (IEE) at public expense;
- e. Whether the District should be ordered to provide an out of district placement for the 2002-03 school year.

FINDINGS OF FACT

1. The student is fourteen years old and resides within the geographic boundaries of the District. She was born with a congenital heart defect known as .. The condition was surgically repaired at age seven months.
2. The student has attended school in the District since kindergarten. On August 3, 1999, the parents obtained a private evaluation of the student from the Bremerton Naval Hospital Pediatric Neurodevelopmental Clinic. They expressed concern over the student's difficulty completing homework, staying on task, and overactivity since kindergarten. They reported no specific concerns about school except that she was below grade level in reading and writing. They expressed concern about angry outbursts, poor self control, and impulsivity. They noted that she tended to become distracted while doing homework and did better in one on one situations.
3. The evaluation consisted of a physical and neurologic exam and administration of behavioral questionnaires to the parents and the student. The evaluators also considered the student's health, development, behavior, and family history. The behavioral questionnaires revealed significant concerns about depression, adaptability, hyperactivity, conduct, attention, and social skills. The evaluators recommended further review of school records regarding a potential diagnosis of ADHD and psychometric cognitive and achievement tests to identify a possible learning disability.

4. The student was subsequently referred for special education evaluation during the 1999/00 school year. The parents expressed concerns regarding the student's social and emotional status and their effects on her academic skills. The evaluation was conducted by Ron Hunter, school psychologist. He reviewed the student's file, a medical assessment diagnosing ADHD, and a psychiatric evaluation provided by the parents. He also administered a WISC-III cognitive test and a Behavioral Assessment for Children (BASC). The latter involved survey responses from the parents and the classroom teacher.

5. Mr. Hunter determined that the student was not eligible for special education services. Specific Learning Disability was excluded based on results of academic testing within the average to low average range. Eligibility based on the diagnosis of ADHD was excluded because the classroom teacher did not observe significant off-task behavior or distractibility in the classroom. Mr. Hunter also considered eligibility as Serious Emotional Disability. The student had exhibited symptoms of anxiety and depression. These symptoms had been alleviated with medication and the student did not appear to require specially designed instruction or related services to address them.

6. During the 1999-00 school year, the the student was also evaluated for accommodations pursuant to §504 of the Rehabilitation Act of 1973. The referral was based on the student's difficulties with remaining focused and in the classroom. The evaluation identified a disability based on the student's history of anxiety and mild depression. It also identified impacts on her ability to focus on academic tasks and deal with typical social issues. An accommodation plan was developed on June 9, 2000, which included a behavior plan and other accommodations including: (1) placement of desk near the teacher; (2) daily communication system between parents and school; (3) participation in group counseling; (4) plan for weekly meeting with counselor; (5) include student in program to assist resource room teacher with recreational skills for same age special education students; (6) options for breaks during the day to "cool down" and to help younger students during recess, and (7) before school reading lab 2 - 3 times per week. The plan was finalized on September 9, 2000, to be implemented during the 2000/01 school year.

7. On February 12, 2001, the student's psychiatrist, Dr. Geary Heine, wrote a letter to the principal of the elementary school recommending any action that would address the student's distractibility. He informed the principal that he had been treating the student for Post Traumatic Stress Disorder with Dysthymia and mild to moderate Attention Deficit Disorder (ADD).

8. The student was privately referred to the University of Washington Medical Center for a neuropsychological evaluation. The evaluation was conducted on June 11, 2001, by a team supervised by Brenda Townes, Ph.D. The following tests were administered: WISC-III for children; Wide Range Assessment of Visual-Motor Abilities, WRAT-3; Woodcock

Reading Mastery Passage Comprehension Test, Category Test, Tactual Performance Test, Trail Making Test, Aphasia Screening Test, Continuous Performance Test, NEPSY-A Developmental Neuropsychological Assessment, Multiscore Depression Inventory for Children.

9. The UW evaluation team observed that the student exhibited strengths in intellectual function (within normal limits); visual spatial processing; written arithmetic; verbal and visual learning and memory; ability to sustain attention when she fully understood expectations; and motivation to perform well. Her weaknesses were in processing complex instructions; a hand tremor and lack of fine motor coordination; spelling where achievement is five years below grade level; reading comprehension where achievement was three years below grade level; and significant levels of anxiety and depression. The team recommended a speech and language (SL) evaluation; an occupational therapy (OT) evaluation; access to a computer to compensate for poor writing skills; psychotherapeutic intervention to address her anxiety and depression; and additional time offered by educators to explain expectations and help the student to ask for help when needed.

10. The student's family physician subsequently referred the student for radiologic examination. The exam was completed on September 7, 2001. It was significant for hypoperfusion of the the bifrontal regions of the brain.

11. The student entered seventh grade in the fall of 2001. The parents again referred the student for a special education evaluation on September 5, 2001. They signed a consent form on September 12, 2001. The evaluation was completed on October 5, 2001.

12. The evaluation team included the school psychologist, both parents, a special education teacher, the student's English teacher, an occupational therapist (OT), and a SL therapist. The following academic and behavior tests were administered: Woodcock-Johnson Tests of Achievement-Third edition (WJ-III); BASC and Parent Rating Scales; and Revised Children's Manifest Anxiety Scale (RCMAS). The SL therapist and OT performed independent assessments. The evaluation included a review of the 9/07/01 radiologic examination report, the 6/11/01 neuropsychological evaluation, and the 2000 District evaluation.

13. The findings of the evaluation team were summarized in an evaluation report. Individual evaluation reports were completed by the school psychologist, the SL therapist, and the OT. Each of the members of the team acknowledged agreement with the evaluation reports.

14. The academic testing revealed low average to average skills in basic reading, reading comprehension, math calculation, and math reasoning. Her skills were below average in written expression, with particular concern for writing fluency. She presented as physically

and socially immature for a thirteen year old with demeanor and expressed interests more consistent with a fourth grader. The parents' responses to behavior survey questions revealed clinically significant concerns for hyperactivity, conduct, anxiety, depression, somatization, and attention. These concerns were not reflected in responses from teachers. Behavior scales completed by the student's teachers identified risk areas for adaptive skills, social skills, leadership, and study skills.

15. The evaluation summary incorporated the results of Dr. Towne's cognitive and neuropsychological testing. It also incorporated the medical history of cardiac surgery and biennial reevaluation, and history of medications in the form of Wellbutrin, Lamictal, and Paxil.

16. The school psychologist concluded that the student should qualify for special education under the eligibility category of health impaired, with direct services in the area of written language. He noted that the student's social/emotional development was variable. While the student was frequently personable and cheerful, he agreed with Dr. Towne's assessment of ongoing depression and anxiety, likely related to her early surgical history, recurrent cardiac issues, and reported neurological abnormalities. He anticipated that the student would have difficulty meeting the interpersonal expectations of the junior high school setting. He also recommended formal accommodations in the general education setting to address difficulties with writing fluency, inattentiveness, and poor work completion. While a behavior intervention plan (BIP) was not considered necessary, the psychologist recommended group counseling options and regular opportunities to process emotional crises with a nurturing, supervising adult.

17. The SL therapist concluded that the student's overall language performance was near the lower limits of the average range, with the expressive portion of one of the tests *slightly* below average. She recommended that the student receive therapy to target areas interfering with academics and social interaction: understanding multiple word meanings, making inferences and auditory sound sequencing. The SL therapist noted that deficits in these areas were less than the eligibility threshold for direct language intervention.

18. The OT therapist concluded that the student's ability to perform fine motor tasks, such as handwriting, was below age expectations. Her fine motor abilities seemed impaired by a mild tremor. She did not recommend services, concluding that the student's impairment could be effectively accommodated by allowing her extra time to complete writing assignments. She also encouraged access to computer technology if it could result in a more carefully constructed and legible document and the basic requirements of the class assignment were not changed.

19. On November 28, 2001, the parents participated in an IEP meeting with the school psychologist, who also acted as a representative for the District, the general education

teacher, a special education teacher, and the SL therapist. They agreed to an IEP placing the student in a general education setting, with fifty minutes per day of written language instruction in a resource room and a weekly twenty-five minute session with the SL therapist. Goals and objectives were established in writing, communication, and reading. Accommodations were noted for mandatory statewide testing. Special media, materials, and modifications were identified. These modifications included adaptations in pacing, environment, presentation of subject matter, materials, motivation and reinforcement, self management tools, testing adaptations, and assignments. The adaptations were consistent with the recommendations in the UW evaluation and the District evaluation.

20. The IEP did not identify goals and objectives regarding the issues of depression and anxiety. In the description of the student's disability, the IEP referred to the need for access to a nurturing, supervising adult, and suggested exploration of group counseling options through the many junior high school offerings.

21. The student did not progress well during the first semester. Her class schedule included Science, English, Band, Social Studies, Reading, and Pre-algebra. Her progress report for November 6, 2001, reflected below average grades in all classes except Band and Pre-algebra.

22. In January, 2002, the student incurred several disciplinary referrals. The student had left school without permission on January 14, 2002, and had failed to attend lunch time detention imposed as a result of the incident. She had also threatened two other students on January 24. Her progress report for January 25, 2002, reflected failing grades in Social Studies and Reading. The low grades in both classes were attributed to her failure to complete assignments.

23. The parents met with the District staff on January 30, 2002. The parents reported that the student complained of treatment from other children while in the class and in the hall. She had become extremely anxious about attending class, leading to her leaving school without permission. Her anxiety also led to her failure to complete homework. She complained of teasing during band class. The band teacher had told the student to "deal with it" and had denied any responsibility for referring to her IEP during a parent teacher conference. The school principal addressed this issue by conferring with the band teacher.

24. The conference resulted in an amendment to the student's IEP on January 31, 2002, agreed upon by the parents. It provided for a revision of a communication benchmark, a shift of responsibility for coordination of the student's specialized instruction, and addition of assistive technology considerations. An assistive technology assessment resulted in recommendations for technology options for writing and low technology options for organization. Examples of appropriate low technology options are hi-lighting pens and sticky notes.

25. According to the revision, special education teacher [REDACTED] became primarily responsible for coordination of the student's program. The student was placed in her resource room for one half of her school day. Ms. [REDACTED] resource room is designed to provide a more restrictive setting for students needing specialized instruction. There were between six and twelve students assigned to the room during the 2001-02 school year. Two aides were assigned to the room and additional aides were available for tests or to accompany the student to a general education class. Ms. [REDACTED] taught the student English with specialized instruction, reading, and included instruction in math according to the standard curriculum.

26. The student adjusted well to Ms. [REDACTED] room. Ms. [REDACTED] assisted the student with building friendships. She emphasized social skills with the student, capitalizing on moments throughout the day when the student was presented with a difficult situation. The student initially had difficulty understanding comments from other children and believed that she was being teased. The student began to approach Ms. [REDACTED] and ask for assistance with difficult situations. She developed friends in the class and became comfortable there. During the course of the year the student stayed overnight at a friend's house for the first time.

27. Ms. [REDACTED] designed an agenda to assist the student in proceeding from class to class. She introduced an alphasmart keyboard and a PC with writing software to assist with the student's writing goals. The student's writing improved during the remainder of the year. She was initially unable to understand a writing prompt and at the end of the year was able to describe writing goals.

28. The student's progress report in April, 2002, showed improvement in all subjects except Science. Each of the teachers noted her positive and friendly attitude in the class.

29. The student was disciplined for aggressive behavior on one more occasion in May, 2002.

30. On May 21, 2002, the parents again met with the District staff. They discussed the student's progress. The parents reported that the student still had difficulty with the students in her band class and in the general education setting. Ms. [REDACTED] resolved lunch time issues by arranging for the student to attend lunch with the eighth grade class where she had made a friend.

31. The student's performance in Science was affected by the size of the class. The teacher adjusted the student's work load but the student did not respond. The student's grade at the end of the year was a D.

32. Ms. _____ arranged for an aide to be available on an emergency basis to assist the student with social issues during class or transitions between classes. The student did not find the aide to be helpful.

33. The IEP team met on June 5, 2002. The District presented a proposal to the parents for services during the 2002-03 school year. The proposal provided for daily resource room instruction in communication and written language, and SL services on a weekly basis. The IEP proposal identified goals and objectives in the areas of writing, communication, and behavioral restraints in group and social settings. The parents inquired about the availability of Extended School Year (ESY) services. The staff did not believe that ESY services were warranted. The parents indicated that they were seeking an independent assessment of the student and the meeting was adjourned.

34. The parents consulted Dr. Ronald Seifert, Ph.D. Dr. Seifert has earned a Ph.D. in physiological psychology and has extensive experience in biofeedback principles and techniques. He does not have significant experience in special education. He manages a private educational facility in Poulsbo, Washington, known as the Glen Eden Institute. Dr. Seifert reviewed the student's special education evaluation, IEPs, neuropsychological evaluations, and a developmental history provided by the parents. He proposes a treatment approach to reduce the student's anxiety by teaching self-regulation. He suggests weekly psychotherapeutic sessions or enrollment in his educational facility.

35. The Glen Eden Institute is approved as a Private School and Non-Public Agency by Washington State. It follows a program begun in British Columbia, Canada, in 1984.

36. The program is designed as an alternative for complex youth who have not been successful in the regular classroom. The program founder is Dr. Frederick V. Brennan. Dr. Brennan has earned a Ph.D. in developmental psychology and has experience as a school psychologist. He initially developed the program in response to students with complex disorders who had experienced long histories of failure in the public school system.

37. The Poulsbo facility is located in a small suite of offices. There are four rooms; Dr. Seifert's office, two rooms available for classroom work, and a lunch area. Dr. Seifert is available on an ongoing basis for consultation with students. The office is equipped with a biofeedback instrument. The rooms are connected by a short hallway and small common area. One of the rooms contains computer equipment for students. Although available, computer use is minimized to foster socialization. Students have access to the internet by going to the Poulsbo public library located nearby.

38. Students attend the program from 9:00 AM to 3:30 PM, Monday through Thursday, and 9:00 AM to 1:00 PM on Friday. They will be assigned to a staff member either one on one, or in a small group of one to five students.

39. The first stage of the program is to provide a setting in which a student's behavior in an academic setting can be observed and monitored. The staff member will offer academic instruction using a grade appropriate curriculum. Performance expectations are minimized. Behavioral responses such as motor movement, internal arousal, verbal engagement, affect, methods of thinking, are recorded from moment to moment according to codes developed for the program. The data is then graphed and charted for analysis. The codes reflect the student's metamotivational state (empathy, negativity), level of arousal (anxiety or sensory stimulation), task difficulty and mastery, expression, and non-social behavior. Stimulating factors are slowly reduced and subsequently reintroduced in a controlled approach. Staff seek to identify moments of self-regulation with the goal of teaching the student how to consistently replicate the state.

40. The program emphasizes self-regulation over implementation of IEPs. Students generally require one to three years to learn self regulation techniques. The initial period of observation commonly requires one year. SL and OT services are available by independent contract. The program also has contracts for physical education programs

41. The basic tuition for the program is \$4,500 per month plus fees for optional activities. There are currently four male students, ages 16 to 11.

42. The student entered the District's eighth grade program in the fall of 2002. Ms. has continued as the student's special education coordinator. The student receives only English in her class. She receives specialized instruction in math in another resource room, and has an aide available to assist her in Social Studies.

43. There have been no discipline problems during the 2002-03 school year. Ms. uses the English class to address social skills. She has observed that the student has been able to respond with humor to situations that had previously created anxiety or anger. The student is resistant to a full-time aide and has relied on a variety of people in different locations to coach her through difficult situations. Aides have been available to supervise issues at lunch and in the hallway during transition between classes. As of the date of the hearing, the student was not keeping up with her homework because she believed that she would be attending a private school in the near future. Her October 14, 2002, progress report reflected failing grades.

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).

FAPE During 2001-02 School Year

Evaluation

4. The student entered seventh grade and was immediately evaluated and found eligible for special education. The evaluation team included both parents, the school psychologist, OT and SL therapists, and the student's English teacher. Based on the student's history, the evaluation team appropriately reflected qualified professionals knowledgeable of the student and the areas of suspected disability. WAC 392-172-108J(2)(a), (b).

5. Assessment activities included academic testing, SL and OT assessment, and review of previous evaluations. Each of the individual professionals separately documented their assessments and the summary evaluation report was signed by each of the members of the team. The report included the elements required by WAC 392-172-10905.

6. The determination of health impaired incorporated the student's medical history and findings of the neuropsychological evaluation. The team included recommendations for specialized instruction and related services designed to address the student's documented depression and anxiety. Significantly, the evidence shows that these conditions were also being addressed with medication. See WAC 392-172-10905(3).

IEP

7. The parents participated in development of an IEP. They acknowledged in writing their agreement to the IEP developed as a result of this process.

8. An IEP must establish annual goals and objectives and identify necessary related services for meeting the student's needs that result from the student's disability. WAC 392-172-160 (a), (b), (c). The IEP appropriately addressed the student's academic needs in communication, reading, and writing. Strategies to reduce the student's anxiety about class participation and work were appropriately identified in a statement of necessary modifications. However, the IEP did not adequately address the student's social and

emotional difficulties impacting her ability to function in a junior high school environment. While the IEP description of the disability included reference to the need for access to a nurturing, supervising adult, the reference was not appropriately developed with goals, objectives, or specific services to satisfy this need. The evidence reflects that this defect substantively interfered with the student's progress where the student failed to progress in her academic settings during the first semester and her placement was substantially changed for the second semester.

9. While the IEP was flawed in its design, the Administrative Law Judge concludes that the student did not suffer a substantial loss of educational opportunity during the 2001-02 school year. The evidence shows that the modifications to the student's program occurring after the January conference appropriately addressed the student's needs for a more controlled environment and assistance with the social aspects of the educational environment. The student's academic progress improved and she developed significant friendships, as well as supportive relationships with professional personnel. "Appropriate public education" does not mean the absolutely best or "potential maximizing" education for a child. *Gregory K. v. Longview School District*, 811 F.2d 1307, 1314 (9th Cir. 1987). The evidence establishes that the student received FAPE during the 2001-02 school year despite the flaws in the IEP.

Proposed IEP - FAPE During the 2002-03 School Year

10. The proposed IEP presented to the parents in June, 2002, includes goals and objectives directed at the student's behavioral and social issues. However, it does not identify any instructional or related services to accomplish those goals. Services provided this year have included social skill discussion during the special education English. Based on the UW evaluation and testimony of Dr. Seifert, consideration should be given to regular neuropsychological or psychotherapeutic consultation and a functional behavioral assessment (FBA). The Administrative Law Judge concludes that these considerations are necessary to assure a permanent basis for the student's social adjustment in the general education setting. While the evidence shows that the District has identified short term solutions to address immediate crises, the student's history as reflected in the evaluations shows that additional services are necessary for the student to make meaningful progress toward a successful transition to high school and beyond.

Independent Educational Evaluation (IEE)

11. The District may be required to provide an IEE at public expense where it has failed to provide an appropriate evaluation and the IEE is either requested by the parent or ordered by the administrative law judge as part of a hearing. WAC 392-172-150. Counsel for the parents argues that the District should be ordered to provide an IEE at public expense specifically including a Functional Behavioral Assessment (FBA).

Findings of Fact, Conclusions of Law and Order

12. The evidence does not establish a need for an independent educational evaluation at this time. The student's current evaluation sufficiently documents the student's neuropsychological and therapeutic history to provide the basis for meaningful educational planning. The parties may conclude that a FBA is necessary to appropriately identify behavioral/social goals and objectives, and related services. This decision may be made in the IEP consultation process. However, the Administrative Law Judge concludes that an appropriate foundation for an IEE at public expense has not been established at this time.

Compensatory Education

13. Compensatory education is an award of educational services or reimbursement that may be ordered where a student has been denied FAPE. Compensatory education is a remedy to compensate a student for a violation of statutory rights while he or she was entitled to those rights, and is an appropriate relief in the context of the IDEA because such an order "merely requires [the defendants] to belatedly pay expenses that [they] should have paid all along." *Lester H. v. Gilhool*, 916 F.2d 865 (3rd Cir. 1990), cert. denied, 111 S.Ct. 1317 (1991); *Miener v. State of Missouri*, 800 F.2d 749, 753 (8th Cir. 1986) (citing *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985)). Equitable considerations are relevant in fashioning relief. *School Comm. of the Town of Burlington v. Dept. of Educ.*, 471 U.S. at 374 (1985). The conduct of both parties must be reviewed to determine whether relief is appropriate. See *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d at 1485-6. The IDEA imposes no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. *Parents of Student W. v. Puyallup School District, No. 3*, 31 F.3d 1489 (9th Cir. 1994).

14. As previously discussed, the District failed to design an appropriate IEP during the 2001-02 school year. However, the Administrative Law Judge has considered the fact that the parents acknowledged their agreement to the plan. Further, the District responded promptly when the program deficiencies became apparent and the student progressed appropriately during the remainder of the year. The District has included appropriate goals and objectives in its proposal for the 2002-03 school year. Prospective relief in the form of modifications to the IEP should be sufficient to address the student's needs. Under these circumstances, the Administrative Law Judge concludes that an award of compensatory education is not an appropriate remedy.

Private Placement for 2002-03 School Year

15. The parents are requesting an order directing an out of district placement at public expense at the Glen Eden Institute during the 2002-03 school year. Their request is based on the right of parents to be reimbursed for costs incurred in placing a child in private

special education when a school district has failed to offer a child a FAPE and where the private placement is appropriate. 34 C.F.R §300.403; WAC 392-172-231. See also *Burlington School Comm. v. Massachusetts Dep't of Educ.*, 471 U.S. 359, 369 (1985). The conduct of both parties must be reviewed to determine whether relief is appropriate. *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1485-6 (9th Cir. 1992). Reimbursement may be ordered even though the private institution does not satisfy the state education standards. *Florence County Sch. Dist. Four v. Carter*, id. at 114 S.Ct. 361, 365. See also *Union School District v. Smith*, 15 F. 3d 1519 (9th Cir. 1994). The right to reimbursement may be reduced or denied upon a judicial finding of unreasonableness with respect to actions taken by the parents. 34 C.F.R §300.403; WAC 392-172-231(2)(d).

16. Although the Administrative Law Judge has concluded that the District's June 15 proposal for the 2002-03 school year did not offer appropriate services, the evidence in this case does not establish that the Glen Eden Institute is an appropriate alternative placement for the student. The Institute is a highly restrictive placement which may be appropriate to students with severe neurological impairments requiring at least a temporary removal from a general education environment. The evidence does not show that the student in this case is sufficiently neurologically impaired to require a full removal from the public school environment. She has shown improvement in her social adjustment with a restricted setting within the school where she can form supportive friendships. Day to day access to general education students, in a controlled setting, is appropriate to her needs. The parents request for an order directing out of district placement at public expense at the Glen Eden Institute should be denied.

17. 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

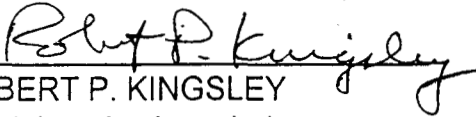
IT IS HEREBY ORDERED that:

1. The District failed to design an appropriate IEP for the student during the 2001-02 school year. The student was not denied educational opportunity where the District remedied the flawed design with a modification to its services during the second semester.
2. The District has not offered appropriate services to the student for the 2002-03 school year to implement appropriate social and behavioral goals and objectives. The District shall convene an IEP meeting to review or revise the behavioral goals and objectives and identify appropriate related services including consideration of a

functional behavioral assessment and regular neuropsychological or psychotherapeutic consultation for the student. The parties may resolve any disputes arising from this process with a request for due process hearing.

3. The parents' request for compensatory education is denied.
4. The parents' request for out of district placement at public expense at the Glen Eden Institute is denied.

Dated at Seattle, Washington this 10th day of January, 2003.


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.