

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

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OFFICE OF
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

RENTON SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2002-SE-0084

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

ANDREA CONKLIN, Administrative Law Judge (ALJ); held a hearing on August 5 and 6, and 20, September 13, October 22 and 24 and November 12, 2002. The Foster Parent (Parent) appeared at all the hearings. The Parent was assisted by Karen Anderson of Parents Are Vital in Education (PAVE) and Deb McNally of the Department of Social and Health Services (DSHS) at the August 5, 6 and 20, 2002 hearing. The Renton School District (District) was represented during the hearing by Michael Rorick, Attorney at Law. Lynda Sharpe, Special Education Director was present during the hearing.

District Exhibits 101 through 113, 120, 123 through 126, 132 through 137, 142, 143, 145 through 147, 151, 159 through 160 were admitted. Parent Exhibits 207, 228, 229, 251, 270, 323, 332, 363, 375 through 376, 380, 381, 388, 388a, 389, 398 through 399, 407, 414, 432, 433, 454 through 456, 510 through 514, and 525 through 541 were admitted.

The District called as witnesses; Gwen Arp (Physical Therapist), Julianna Dauphiny (School Psychologist), Stephanie Nichols (Speech and Language Pathologist (SLP)), Lynda Sharpe (Director of Special Education) and (School Nurse.) The Parent called as witnesses Dr. Kenneth Feldman,

(general education teacher), Mr. Whiman (Child Protection Service (CPS) worker),
Deb McNally (social worker), (Vice Principle of Middle School
(), (para-educator) and (special education teacher.)

STATEMENT OF THE CASE

On May 20, 2002, the Parent forwarded a letter to the District which provides:

If [the Student]'s IEP will not reflect these requests in writing before school is out on June 18, 2002, then please accept this letter as my reason and my request for a [IEE] independent educational evaluation for [the Student] as soon as possible.

D-151. On June 17, 2002 the District requested a hearing to establish the appropriateness of its evaluation. D-153.

The prehearing was scheduled for June 26, 2002 and the hearing was initially scheduled for July 8, 2002 pursuant to a notice of hearing mailed to the parties on June 19, 2002. At the June 26, 2002 prehearing conference the prehearing was rescheduled for July 2, 2002.

At the July 2, 2002 prehearing, the hearing was continued to August 6 and 7, 2002. The 45-day due date for entry of the written decision was extended from August 2, 2002 to September 6, 2002. Another prehearing conference was held on July 11, 2002 and the hearing was set for August 5 and 6, 2002.

The matter could not be concluded on August 6, 2002. Therefore, the hearing was continued to August 20 and 21, 2002. On the morning of August 21, 2002, the Parent did not appear for the hearing, but called the District to say she had an emergency and requested the hearing be continued. On September 3, 2002 an order

was entered granting the Parent's request to continue the hearing scheduled for August 21, 2002. The hearing was scheduled for September 13 and 27, 2002.

The hearing was held on September 13, 2002. Subsequently, the Parent requested the September 27, 2002 hearing be continued as she was suddenly called out of town. On September 26, 2002, the Parent's motion to continue was granted. The hearing was continued to October 22 and 24, 2002.

At the end of the day on October 24, 2002, the parties had not yet completed the case. Also, it was discovered the District had not produced all the Student's educational records to the Parent as she requested. Therefore, the hearing was continued to November 12, 2002. The hearing was concluded on November 12, 2002.

The record remained open for the parties to provide a closing statement and Findings of Facts and Conclusions of Law. The parties both provided closing statements. Neither party provided proposed Findings of Facts and Conclusions of Law. The record closed on November 27, 2002. The forty-five day due date was extended to December 18, 2002.

ISSUES

As set forth in the July 2, 2002 prehearing order, the issue for the hearing is as follows:

Whether the District's evaluation of the Student is appropriate and if the Parent is entitled to an independent evaluation at public expense, pursuant to WAC 392-172-150.

FINDINGS OF FACT

Background

1. The Student has Fragile X Syndrome, the most common cause of inherited mental retardation. Exhibits D-133 and D-136. Fragile X is caused by a chromosomal abnormality by a partial break on an X chromosome called a "fragile site." D-130 and D-133. The Student's behavior is autistic in nature and she has a diagnosis of autism and pervasive developmental disorder.

2. The Student has received special education services since she was two years and eleven months old. She qualified for services under the eligibility category of health impairment, due to Fragile X Syndrome.

3. An evaluation was prepared for the Student by the Seattle School District on January 28, 1993 which established the Student's eligibility. D-101. A reevaluation was performed again by the Seattle School District on March 26, 1996. D-107. Another reevaluation was prepared by the Seattle School District on the Student on March 23, 1999. D-111.

4. The Student was placed in the Parent's group foster home when she was ten-years old pursuant to an agreement with the legal guardians of the Student. The placement was voluntary and the court system was not involved. When the Student came to the Parent's home, she did not eat with a spoon or fork. She did not speak verbally and was not completely toilet trained.

5. The Student has a very limited verbal vocabulary. The Parent has heard the Student speak some words. The District has only heard the Student speaking words once.

District

6. During the 2000 -2001 school year the Student was 11 years old and attended the District's Elementary School (). At the end of the 2000-2001 school year the Parent requested an exit interview with . Her goal was for the special education teachers at and the special education teachers at the Student's new school, , to meet and discuss the Student. Thus, making the Student's transition to a smooth one. An exit interview with was not performed.

7. During the 2001-2002 school year, the Student attended . The Student was placed in the Life Skills III program. This program is for students who have very low cognitive abilities. In the 2000/2001 school year, Ms. , a certified special education teacher, was the teacher in this classroom. During the 2001/2002 school year Ms. was the teacher in the Life Skills II classroom. The District did not have a special education teacher in the Life Skills III classroom during the 2001/2002 school year. Ms. supervised various substitutes in the Life Skills III classroom. The District refers to Ms. was the "roster" special education teacher in the Life Skills III class.

8. Mr. became the permanent substitute for the Life Skills III class in December of 2001. Mr. is not a certified special education teacher. He is a certificated general education teacher. Mr. 's teaching experience, not including consisted of one year as a general education teacher and a few months as a Physical Education teacher in a private school for children with Asperger's syndrome.

9. In 2001 the District had not received a court order establishing the Parent could make decisions for the Student. Therefore, the District was uncertain who,

under the law, had authority to make educational decisions for the Student. To resolve this question, prior to January of 2002, the District appointed a surrogate parent, Ms. _____ to participate in educational decision making for the Student.

10. By the end of January 2002, the Parent informed the District she had obtained a court order granting her legal guardianship of the Student and granting her the authority to make educational decisions. However, the Parent could not provide the District with a copy of the order. The order was lost and had to be reentered on February 27, 2002. Exhibit D-142. The order was entered *nunc pro tunc* (relating back to the earlier date) as of January 23, 2002. Exhibit D-142 #168. Sometime in March 2002 the Parent provided the District with a copy of the February 27, 2002 order.

Reevaluation

11. Sometime in January of 2002 the District prepared a prior written notice proposing to initiate a reevaluation of the Student. D-134. The proposed action was to be initiated on January 21, 2002. D-134. On January 23, 2002 Ms. _____, the surrogate parent, executed a Consent for Re-evaluation for Special Education Services. D-135.

12. Nine days later, on February 1, 2002, the Parent executed a Consent for Re-Evaluation of the Student. D-137. On the form the Parent wrote "I give consent to the testing only if I am present or if I have met with the person doing the testing." D-137.

13. The reevaluation team consisted of the Parent, Ms. Arp, Physical Therapist (PT), Ms. Dauphiny, School Psychologist, Ms. Nichols, SLP, Ms. _____ School Nurse, Mr. _____ substitute teacher for the Student, Ms. _____, Vice Principle at _____ Ms. _____, para-educator, Mr. _____, counselor, Ms. _____, Principle, and Ms. _____ special education teacher. D-140, D-141, D-144, and 145.

Ms. Dauphiny, Ms. Arp, Ms. _____ and Ms. Nichols all prepared written reports for the reevaluation. D-145.

14. Mr. _____ spoke with the individuals who prepared reports for the reevaluation. He was not asked to submit a report and he was not asked to provide any written documentation to establish his assessment of the Student. Mr. _____ did not believe he was a part of the reevaluation team for the Student. He attended a few minutes of the March 18, 2002 reevaluation meeting and then was asked to leave to provide child care for the Student.

15. Prior to March of 2002, based on Mr. _____'s observations, the Student consistently had tantrums in the classroom. The tantrums were quite loud and somewhat violent. It was suggested to Mr. _____ that perhaps the other students in the classroom should leave the room or the Student should be removed from the room. However, Mr. _____ was not provided assistance from School administration to remove the Student or her classmates. Therefore, Mr. _____ and the Student's one-on-one aide, Ms. _____, attempted to redirect the Student in an effort to deal with the tantrums.

16. Despite extensive efforts, Mr. _____ and Ms. _____ could not determine the reason why the Student was exhibiting tantrums. Both of them tried to track the dates and times and could not determine the reasons for the tantrums. Therefore, Mr. _____ believed the assessment of the school psychologist, Ms. Dauphiny, regarding the tantrums was correct, but they consistently happened. Ms. Dauphiny's assessment is discussed in more detail below.

17. At the reevaluation meeting Mr. _____ did not mention the Student's extensive tantruming because it was so loud and so consistent he believed everyone knew about the tantruming. Mr. _____ believed the Vice-Principal, Ms. _____,

and the special education teacher in the adjoining classroom, Ms. _____, could hear the Student tantruming.

18. The Student's tantruming behavior stopped approximately one and one-half months prior to the end of school, which would be May of 2002. Mr. _____'s only explanation for the improvement in the Student's behavior is she received hair extensions. When the Student became upset, Mr. _____ commented on how good the Student looked, the Student would touch her hair extensions and then would calm down.

19. Ms. _____ witnesses the Student running into a cabinet on a few occasions. Based on this observation, he believes the Student may have some vision problems. Mr. _____ did not share his concerns regarding the Student's vision with the school nurse because she did not ask him. Ms. _____, the school nurse, did not ask Mr. _____ about the Student's vision because she believed, that if there were a problem, he would tell her about it.

20. The reevaluation team met on March 18, 2002 to discuss the reevaluation. Prior to the meeting, Ms. Dauphiny provided the Parent with a copy of her report. Ms. _____ and Ms. Arp provided the Parent with a copy of their report at the meeting. Ms. _____ did not complete her report until after the meeting, as she did not have all the medical information needed. Ms. _____ completed the report in May of 2002. Each report will be discussed separately.

Ms. Dauphiny

21. Ms. Dauphiny taught special education in a self-contained classroom from 1976 to 1986. She received her Masters in Educational Psychology from the University of Washington in 1992. She received her endorsement in School Psychology from Seattle Pacific University in 1995. As a school Psychologist, Ms. Dauphiny has

evaluated many students in the areas of academics, cognitive, social, emotional and adaptive behavior.

22. From September 2001 through March 2002, Ms. Dauphiny observed all the Students in the Life Skills III classroom, on the average, once or twice a week. Ms. Dauphiny could not specify exactly how many hours she specifically observed the Student.

23. Ms. Dauphiny based her reevaluation of the Student on observations of the Student. To prepare the reevaluation, Ms. Dauphiny also had discussions with the teacher in the classroom and discussions with Ms. , the roster teacher. In addition, Ms. Dauphiny interviewed the Parent. Ms. Dauphiny, also reviewed the Student's records from other schools as well as data sheets prepared at regarding the Student's progress on her IEP goals and objectives.

24. Ms. Dauphiny does not have any specific educational training regarding students with Fragile X Syndrome. She has read a few articles from the internet about Fragile X Syndrome and she had some exposure to the syndrome during her graduate work. Fragile X Syndrome has similar characteristics to Autism. Ms. Dauphiny has extensive experience with students with Autism, both in her education and her practical experience.

25. Ms. Dauphiny did not perform any type of testing, standardized or otherwise, on the Student. Ms. Dauphiny stated there were tests that could have been performed on the Student to assess her abilities. However, Ms. Dauphiny could not name any such tests. Ms. Dauphiny did not perform any type of testing because she believed her observations, document review and discussion with those involved with the Student were sufficient to prepare her reevaluation.

26. Regarding the Student's cognitive ability, Ms. Dauphiny believed the cognitive assessment of the Student completed when the Student was three years old was sufficient. She believed, based on the Student's performance, the Student's IQ had not changed in the last ten years. Ms. Dauphiny also believes "an intellectual assessment would not add significant new data. . ." D-145, Stamp 175.

27. Ms. Dauphiny's report states the Student's academic performance has increased since her previous evaluation. The 1999 evaluation from the Seattle School District regarding the Student's academic behavior provides:

[Student] has great difficulty with group activities. She cannot focus for long and can be disruptive. She prefers to be alone and will work at sorting shapes. With assistance she will imitate certain behaviors such as clapping. She still needs much verbal cuing to participate in activities.

D-111. Ms. Dauphiny's 2002 report states:

[Student] is in the process of learning to match food labels with food products. This task, when mastered will give [Student] a tool to communicate nourishment needs and make choices for greater independence. She is in the process of learning to communicate choices through pictures. [Parent] guardian indicated that Student could more easily identify color pictures. Black and white pictures are either more difficult for her to see or the black and white does not resemble the object closely enough. Identifying pictures and making choices based on the picture will in the future transfer to making choices through pressing a key or button. Academic skills need to be based on practical community skills and independent care skills. For example, matching socks is more practical than matching shapes on a board.

D145, Stamp 175. In comparing the reports, it is not clear how the Student's academic performance has increased since her previous evaluation.

28. Ms. Dauphiny noted in the reevaluation report that the Student demonstrates more adaptive behavior at home than at school. At home, the Student is able to put on her coat and shoes in a normal fashion. However, at school, the Student is not able to put on a coat consistently. Ms. Dauphiny, under adaptive behavior in the

reevaluation, reports the Student has made progress toward independent toileting skills. The report also notes the Student can use a fork and spoon to eat lunch. However, she experiences difficulty with use of these utensils when she is very hungry.

29. In the social-emotional category of the report, Ms. Dauphiny noted the Student was a happy child. She developed a bond with the teachers and she liked to carry a plastic water bottle with her at all times. Ms. Dauphiny reported that lessons with the Student are most successful when short and frequently given. As to oppositional behavior, Ms. Dauphiny writes:

Oppositional behaviors are observed when [Student] is not clear on the directions. She needs clear directions consisting of as few words as possible. She also becomes defiant when asked to do something difficult and frustrating to do. [The Student] is more cooperative when tasks are short. Oppositional behavior consists of hitting the wall, crying out loudly and running around the room. Sometimes it appears that running around the room is a game for [the Student] and not an oppositional behavior. She seems to rather enjoy controlling behavior of the adults.

D-145 Stamp 175.

30. Ms. Dauphiny concludes:

[The Student's] special education program is going well for [the Student]. Her pre-academic skills of matching and identifying are improving. She has demonstrated more on-task behavior to allow teaching to take place, and she is gaining skills toward independent self-care.

Ms. _____

31. Ms. _____ is the school nurse at _____. She initially received her nursing license in 1976. She has been a certified school nurse since 1996. Ms. _____ has observed the Student in the classroom when Ms. _____ went to the Life Skills III class to perform nursing duties.

32. On February 12, 2002 Ms. Mahowald attempted to perform vision and hearing screening of the Student. However, the Student was uncooperative.

33. Ms. [redacted] s report notes the Student is nonverbal but knows a few signs in ASL. Therefore, a vision screening was not performed. But Ms. [redacted] states, ". . .it appears her vision and hearing are adequate for her to function in the classroom she is in." D-145, Stamp 181. Ms. [redacted] bases that statement on her observation of the Student in the classroom and discussion with teachers in the class.

34. At the time of preparing her report, Ms. [redacted] was not aware Mr. [redacted] the teacher in the Student's classroom from December 2001 to June 2002, was not a certified special education teacher. Had Ms. [redacted] known at the time of the evaluation that Mr. [redacted] was not a certified special education teacher, she would have asked questions about the Student's hearing and vision. Since no one expressed concern to her about the Student's hearing and vision, she assumed the Student was not having problems in these areas in the classroom. She was not aware Mr. [redacted] observed the Student had difficulty with her vision. Ms. [redacted] was aware the Student had some mild hearing loss.

35. Ms. [redacted] agrees there are vision exams and hearing tests that could be performed on the Student by other experts. Ms. [redacted] did not perform these tests because, as a school nurse, she does not have the equipment and/or training to do so.

36. Ms. [redacted] did not prepare her report until May 2, 2002. Therefore, the evaluation team did not have the report at the time of the reevaluation meeting. The reason she did not prepare the report until May of 2002 was because she had no medical information confirming the Student's diagnosis. Children's Hospital would not release the information until a medical release was received from the guardian of the

Student. Ms. [redacted] used a release from Ms. [redacted] the surrogate parent. However, Children's Hospital would not accept that release. Therefore, Ms. [redacted] received a release from the Parent on March 18, 2002. That release was sufficient and Children's Hospital forwarded the information on May 2, 2002.

37. Children's Hospital forwarded a report from Dr. Heinz, a developmental pediatrician, and Dr. McLaughlin, the Director of the Neurodevelopmental Program at Children's Hospital. District Exhibit 105 Stamp 16 through 19. The report confirms the Student has Fragile X Syndrome. Also, the report notes an I.Q. examination was conducted on the Student when she was three years old and she received an equivalency of 52, which is within the mental retardation range.

Ms. Nichols

38. For the reevaluation, a communication assessment was performed on the Student by Ms. Stephanie Nichols, an SLP. Ms. Nichols has a bachelor's of science degree from the University of Washington, Liberal Arts. She received a Master's in Speech Science in 1987 from Portland State University. She has her ESA certificate.

39. Ms. Nichols has been employed by the District since 1993 as a SLP. She enjoys working with a racially diverse population who are very low-functioning individuals. She worked at [redacted] with the level-three or low-functioning population for many years. She also has worked at [redacted] with a similar population for many years. She has worked with many students with autistic behaviors and students with pervasive developmental disorder.

40. Ms. Nichols has never worked with a student with Fragile X before, but she had a colleague who did an extensive paper on Fragile X. She was very interested in the information and attended the colleague's presentation back in the early 1980s. For the Student's reevaluation Ms. Nichols obtained a few articles about Fragile X

Syndrome. She read the articles and made an outline of the symptoms of students with Fragile X. Exhibit 132.

41. Ms. Nichols was the SLP for the Student for the 2000-2001 and 2001-2002 school years. She worked with the Student at _____ once a week for a 45-minute period in a group session. Ms. Nichols did not work with the Student individually at _____ because the Student has difficulty concentrating for any extended period of time. Ms. Nichols does not believe the Student could sit for more than 15 minutes at a time to work on speech and language issues. It is Ms. Nichols' opinion the Student is a nonverbal student. Although the Parent has heard the Student say words, Ms. Nichols has not heard the Student speak.

42. Ms. Nichols prepared her report of the Student based on her observation of the Student, data taken on the Student and Parent reports. Ms. _____ also reviewed educational records and research articles about Fragile X Syndrome and language development norms. In addition, she spoke to the teacher, Mr. _____, and the Student's aide, Ms. _____.

43. Ms. Nichols believes the Student has the language development of a 12-month old. The Student responds to verbal greetings with eye contact and an occasional smile. The Student will respond to simple tasks and simple statements.

44. Ms. Nichols tested the Student with picture cards in an effort to allow the Student to communicate by handing picture cards to her care givers. The Student has not been consistent, in Ms. Nichols' opinion, with the cards. For a period of time, Ms. Nichols had some success in placing the cards vertically rather than horizontally. However, she found this method to not be consistently successful. Ms. Nichols has also tried to use color cards (as opposed to black and white cards) with the Student. However, Ms. Nichols has not received consistent success with the color cards.

45. The Parent has been working on alternative communication with the Student, including sign language. Ms. Nichols believes sign language is too difficult for the Student, given her disabilities. Ms. Nichols writes “[the Student] appears to attempt to make signs, but they are difficult to interpret, due to fine motor difficulties.” D-145.

Ms. Arp

46. Ms. Arp performed an Occupational Therapy/Physical Therapy (OT/PT) assessment of motor skills for the Student. Ms. Arp received her Bachelor’s Degree in Physical Therapy from Waynes State University in 1996. She received her Master’s in Education from Whesley University on August 28, 2002. She received a ESA certificate from the State of Washington in Physical Therapy. Ms. Arp has been licensed in Physical Therapy since 1978.

47. As a physical therapist, Ms. Arp worked in rehabilitation, home health care, geriatrics and pediatrics. She also managed an adult day care center. Ms. Arp worked under contract two days a week for the 1998-1999 school year for the District. Ms. Arp has been a District employee since 1999. Ms. Arp provides consulting services, as well as direct services to children.

48. During her testimony, Ms. Arp was very angry, frustrated, and defensive when cross-examined by the Parent. She was cooperative when she was questioned by the District’s attorney and by the ALJ. Her defensiveness toward the Parent’s relevant questions substantially decreased her credibility and the credibility of her opinions.

49. Ms. Arp had contact with the Student in the 2000-2001 school year while the Student attended . In addition, she saw the Student in the 2001-2002 classroom at . However, Ms. Arp did not provide direct services to the

Student. Although Ms. Arp worked with students with autism, Ms. Arp did not provide services to students with Fragile X Syndrome with autistic behaviors.

50. To prepare her report, Ms. Arp observed the Student in the gym during adaptive PE class. The Student had no difficulty moving around the classroom or performing the activities. Also, Ms. Arp interviewed the Student's teacher and reviewed the Student's records.

51. During Ms. Arp's assessment, the Student pushed herself away from the table, moving approximately five feet. Testimony of [redacted] Ms. Arp did not note the outburst in her report.

52. Ms. Arp considered giving the Student the Brunicks-Osterikesky standardized test. However, based on her professional judgement, the Student could not take the test because of her disabilities.

53. The Parent expressed a concern about the Student's toe-walking and requested physical therapy services. Ms. Arp reviewed the medical notes taken of the Student on January 30, 1996 by Stephanie Heinz and John McLaughlin, M.D., Director of the Neurodevelopment program. D-105. In 1996, it was noted, "there was passive full range of motion on all joints except at the ankle. At the right ankle, 10-20 degrees of dorsiflexion. Left ankle unable to dorsiflex past neutral." D-105.

54. Surgery was considered in 1996 to resolve the Student's toe walking problem. It was determined surgery was not appropriate at the time, but the Student's progress should be monitored. D-105, stamp 18.

55. Ms. Arp states the 10-20 degrees of dorsiflex is normal and the inability to "dorsiflex past neutral" is not normal. To resolve this problem, the Student would need to perform stretching. Ms. Arp believes such stretching could be performed by a teacher or paraeducator, instead of a physical therapist. Ms. Arp could instruct a teacher or

paraeducator on how to perform the stretching. However, Ms. Arp's report does not suggest the stretching.

56. As to the fine motor skills, it is Ms. Arp's opinion the Student is able to manipulate small objects with her hands and to pick up a variety of items without difficulty. Ms. Arp noted the Student prefers to hold the pen in a pull-away overhand but is capable of holding it in a tripod grasp.

57. Ms. Arp noted the Student appears to have some tactile defensiveness in her palm. However, in Ms. Arp's opinion, the Student's inability to attend to her tasks was the major factor in the Student's motor skills discrepancies, not problems with her fine motor skills. Ms. Arp did not state a basis for this opinion in her report.

Dr. Feldman

58. Dr. Feldman has been the Student's pediatrician since January of 1990. He was not a member of the reevaluation team. Dr. Feldman examined the Student in July of 2002. Previously he examined the Student approximately one and one-half years ago.

59. Dr. Feldman noted the Student has been diagnosed with autism, pervasive developmental disorder and the underlying Fragile X syndrome. In the past year, the Student's behavior has improved substantially. At the July 2002 examination, the Student was very cooperative and allowed the examination and was quite social with Dr. Feldman. However, the Student was still nonverbal.

60. The Student's primary difficulty is pervasive developmental disorder, an autism spectrum disorder. Dr. Feldman noted the Student does need an educational program to maximize her communication, interactive and self-help abilities. Because the Student had not had her hearing tested in a considerable amount of time, he referred the Student to the audiology department at Children's Hospital. In addition, Dr. Feldman

requested the Parent arrange an appointment with the neurodevelopmental clinic at Children's Hospital for further educational and developmental recommendations and to see an orthopedist about the Student's toe-walking.

61. At the end of the hearing, in addition to the IEE, the Parent requested reimbursement for her time, copying costs, and potential costs of evaluations.

CONCLUSIONS OF LAW

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

2. WAC 392-172-182(2) requires:

Each school district or other public agency shall ensure:

That a reevaluation of each student is conducted in accordance with the evaluation and reevaluation procedures contained in this chapter if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years;

The last evaluation of the Student was in March of 1999. Therefore, the District was required to conduct another evaluation of the Student by March of 2002. WAC 392-172-182(2). The District completed the evaluation in a timely fashion. The Parent does not agree with the conclusions of the reevaluation.

3. The Parent objected to the District's use of a surrogate parent in January of 2002 to consent to the reevaluation. However, there was no evidence the reevaluation began prior to February 1, 2002 when the Parent signed the consent to reevaluate. Therefore, whether the District should have appointed a surrogate parent is not relevant to the case.

4. WAC 392-172-150 provides that a parent of a special education student has the right to obtain an IEE if the parent disagrees with the District's evaluation. However, if the Parent seeks an IEE at public expense, the District has the right to request a hearing, within fifteen days of the Parent's request, to show the District's evaluation is appropriate. WAC 392-172-150(5). The District requested the hearing in a timely fashion.

5. The reevaluation team must include a qualified professional who is knowledgeable about the Student and her area of disability. WAC 392-172-153 and WAC 392-172-108. In this case the District did not have on its reevaluation team any professional who was knowledgeable about the Student's disability. The Student has Fragile X Syndrome. It is a very unusual syndrome. Although the Student had autistic-like behaviors, the Student was not simply autistic.

6. The SLP, Ms. Nichols, recognized she was not knowledgeable in the area and read articles about the disability. Although reading articles is admirable, it is not sufficient to establish she has knowledge in the area. The school psychologist did not demonstrate sufficient knowledge in the area to assess the Student's disabilities. The physical therapist was so angry it affected her testimony and her credibility. She appeared to be quite averse to the Parent and it was difficult to determine the reason for her anger. However, based on her testimony, she did not have sufficient experience in the Student's suspected disability.

7. As there was no professional knowledgeable about the Student's disability on the reevaluation team, the March 2002 evaluation of the Student is not appropriate. The Parent is entitled to have an IEE of the Student at public expense. The evaluation shall include hearing, vision, SLP, OT/PT, academic, Adaptive Behavior and Social/emotional assessment.

8. Even if the reevaluation team had sufficient knowledgeable about the Student's area of disability, the evaluation is still not appropriate. First, the District did not perform a vision test on the Student. Ms. [REDACTED], the School Nurse, acknowledges the Student's vision could be tested by an outside expert even though the Student is not verbal. Ms. [REDACTED] does not have the equipment or expertise to provide the vision testing for the Student.

9. Mr. [REDACTED] suspected the Student had difficulty with her sight, based on his observations of the Student in class. Mr. [REDACTED] did not share that information with Ms. [REDACTED] because he did not realize he was required to do so. Ms. [REDACTED] did not ask Mr. [REDACTED] about the Student's vision, because she believed if there was a problem Mr. [REDACTED] would have expressed a concern to her. Problems with the Student's vision could reasonably affect her education. Therefore, the District's evaluation regarding the Student's vision is not appropriate.

10. Second, the District's evaluation of the Student regarding her hearing is not appropriate. The Student has some hearing loss in one ear. It is not known how much hearing loss the Student experiences. The District acknowledges testing can be performed on the Student to establish the amount of the hearing loss. The District did not perform the testing because the School Nurse does not have the ability to perform such testing.

11. The District argues a hearing test is not required because the District has provided an appropriate program for the Student, who is nonverbal. This argument is not persuasive. How can the District be certain the program provided is appropriate for a Student who is nonverbal and cannot say she is having difficulty hearing instruction if the District is not certain of the extent of the Student's hearing loss?

12. Third, the District's PT/OT evaluation of the Student is not appropriate. Ms. Arp was so defensive and angry during her testimony that her credibility was extremely diminished. In addition, Mr. [redacted] and the Parent expressed that the Student had tactile defensiveness and she only wanted to hold certain objects. Ms. Arp, as a PT, did not establish how she had the expertise to examine this OT issue. Ms. Arp acknowledged the Student's tactile defensiveness in her report, but she made no recommendations to deal with the problem.

13. Finally, the academic and social/emotional portion of the evaluation is not appropriate. No standardized testing was performed on this Student. Ms. Dauphiny acknowledged tests are available, but she decided not to perform those tests and instead to rely on observations of the Student. However, there was no special education teacher in the classroom every day to observe the Student's behavior and to provide the needed data to Ms. Dauphiny. Mr. [redacted] was not qualified to analyze the Student's behavior and progress.

14. Although Ms. Dauphiny was in the classroom once or twice a week, her observations, without input from a special education teacher in the classroom on a daily basis, were not enough to be able to fully assess this Student for purposes of a reevaluation. The Student is nonverbal and very low functioning. The reevaluation needed to have the input from a qualified person who had knowledge of the Student's daily performance.

15. Also, based on the testimony of Mr. [redacted], the teacher in the classroom, an extensive impediment to the Student's learning was her tantrums during class. However, the evaluation makes a small reference to this problem. The evaluation states the tantrums occur when there is not clear direction given to the Student.

According to Mr. [redacted] he and the paraeducator spent extensive time trying to analyze why the tantrums occurred and could not find a determining factor.

16. The evaluation notes the Student's academic performance has increased since the previous evaluation. However, there is no way to compare the two evaluations. The 1999 evaluation does not adequately describe the Student's academic performance, and neither does the 2002 evaluation. Ms. Dauphiny's evaluation does not provide any basis for the statement the Student's academic performance has increased. There is also no way for an educator, three years from now, to look at Ms. Dauphiny's evaluation and determine the level of the Student's academic performance.

17. The District is required to pay for an IEE for the Student's OT/PT services, health vision and hearing, SLP and for the Student to attend the neurodevelopmental clinic at Children's Hospital for further educational developmental recommendations. Although the SLP evaluation seems to appropriately evaluate the Student, failing to have an individual on the reevaluation team who has knowledge regarding the Student's disability is such a fundamental flaw in the reevaluation, the entire evaluation becomes inappropriate.

18. The Parent should be aware the regulations do place some restrictions regarding the IEE. Specifically WAC 392-172-150(2), (3), (8), (10) and (11) provide:

(2) Each school district or other public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsections (10) and (11) of this section.

(3) For the purposes of this section:

(a) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not

employed by the school district or other public agency responsible for the education of the student in question; and

(b) Public expense means that the school district or other public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

...

(8) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district or other public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

...

(10) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district or other public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(11) Except for the criteria described in subsection (10) of this section, a school district or other public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Costs

19. The Parent, at the end of the hearing, requested reimbursement for her expenses and compensation for her time expended to prepare for and attend the hearing. The ALJ does not have authority to award such expenses.

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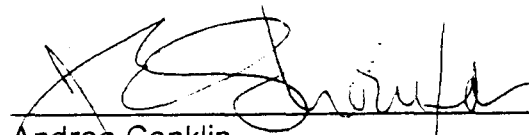
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ORDER

1. The Parent's request for an IEE of the Student at public expense is hereby granted. The evaluation shall include hearing, vision, SLP, OT/PT, academic, adaptive behavior and social/emotional assessment.
2. The Parent's request for reimbursement of expenses is denied.

Dated at Seattle, Washington on the date stamped above.



Andrea Conklin
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 RCW 28A.225.230(3) and RCW 34.05.510 through 34.05.598 this matter may be further appealed to a court of law by filing a petition for review in superior court of either Thurston County or county of the petitioner's residence within thirty (30) calendar days of the date of mailing this decision.