

Chief Administrative
Law Judge



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

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August 13, 2002

RECEIVED

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Superintendent of Public Instruction
Legal Services



James J. Dionne
2550 Wells Fargo Center
999 Third Ave.
Seattle, WA 98104

Lynda Sharp, Director
Secondary Special Education
Renton School District
300 SW 7th St.
Renton, WA 98055-2307

In re: Renton School District - Special Education Cause No. 2002-SE-0089

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(e) (Individuals with Disabilities Education Act) or RCW 34.05.510-598 (State Administrative Procedure Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact the Legal Services office at OSPI at (360) 725-6133.

Sincerely,

Mary L. Radcliffe
Administrative Law Judge

c: Legal Services, OSPI
Deputy Chief ALJ, Jan Grant
Jill L. Geary, OAH/OSPI Coordinator



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

IN THE MATTER OF:

RENTON SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2002-SE-0089

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

STATEMENT OF THE CASE

On June 25, 2002, [REDACTED] and [REDACTED] the Student at issue's uncle and aunt, filed a request for hearing with the Office of Superintendent of Public Instruction ("OSPI). On June 26, 2002, the Office of Administrative Hearings ("OAH") mailed a Notice of Prehearing Conference and a Notice of Hearing before Administrative Law Judge ("ALJ") Andrea Conklin to the aunt and uncle and to the District for July 8, 2002 and July 24, 2002 respectively. The prehearing was held as scheduled. The District moved to dismiss the matter based on lack of standing by the uncle and aunt. The prehearing conference was continued to July 11, 2002 at the request of the parties, by order dated July 9, 2002. In order to meet the parties' requested hearing time frame, the matter was reassigned to ALJ Mary L. Radcliffe. A formal notice was mailed to the parties on July 12, 2002.

The July 11, 2002 prehearing conference was held before ALJ Radcliffe with the agreement of the parties. In addition to the aunt and uncle, the Student's mother, [REDACTED], and grandmother, [REDACTED] appeared. The mother endorsed the aunt and uncle's request for hearing as a family decision. The District withdrew its motion to dismiss. A Prehearing Order was issued on July 12, 2002. A hearing was scheduled for July 25 and 29, 2002. At the request of the family("Family")¹ the hearing was open to the public.

A hearing in the above-entitled matter was held before Administrative Law Judge Mary L. Radcliffe in Renton, Washington, on July 25 and 29, 2002. The Family appeared on their own behalf. The Renton School District ("District") was represented by James Dionne, attorney at law. The court reporter service: Alliance Court Reporting Services on July 25, 2002 and the morning of July 29, 2002; Flygare & Associates on the afternoon of July 29, 2002.

¹In the interests of preserving the family's privacy, this decision does not name the interested family members. Instead, they are each identified as "Uncle," "Aunt," "Mother," "Grandmother," "Family," and/or "Student."

On August 3, 2002, the ALJ wrote to the parties identifying the District's exhibits D-103 through D107 as having not been admitted. Appearing to be the result of an oversight, the ALJ advised the parties if an objection was not made prior to August 8, 2002, the exhibits would be admitted. As of the date of this decision, August 13, 2002, no objection was received.

Evidence Relied Upon:

Exhibits Admitted: Legal File Exhibits: C1 through C4; Parent Exhibits: 1 through 11; District Exhibits: D101 through D-108.

Witnesses Heard: Rebecca Donnelly, special education teacher and facilitator at [REDACTED] Michael Williams, special education teacher and facilitator at [REDACTED] Lynda Sharp, director of special education; [REDACTED], mother; [REDACTED], aunt; [REDACTED], uncle; [REDACTED] grandmother; and Dr. Daryl Freeman, counselor at Atlantic Street Center.

ISSUES

Whether the District's proposed IEP for the 2002-2003 school year complies with the procedural and substantive requirements of the IDEA and federal and state implementing regulations. Specifically, the Family asserts the IEP is per se inappropriate because the District did not provide the family with its right to participate in its development; and, that the IEP does not meet the Student's needs.

Whether the appellant/Family is entitled to their requested remedies, or other equitable remedies, as appropriate. Specific remedies requested are: a timely IEP meeting to develop the IEP; more time in the regular education placement at [REDACTED] School; no school time used as travel time for vocational work-skills goals.

The Student's May 2001 reevaluation is not at issue.

See July 12, 2002 Prehearing Order.

The Administrative Law Judge, having sworn the witnesses, heard testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

FINDINGS OF FACT

1. The Student has been eligible for special education under the category of [REDACTED] since the [REDACTED] grade. He has been served by the District in a self contained

Findings of Fact, Conclusions of Law and Order

program since the [redacted] grade, with the exception of two regular education classes in the [redacted] grade. At the time of the hearing, the Student had completed his [redacted] grade year and is [redacted] years old. The Student has been in about [redacted] placements in his life and has suffered many hardships. The Student is an [redacted].

2. The Student attended the [redacted] program for [redacted] school, for the 2000-2001 and 2001-2002 school years, his [redacted] and [redacted] grade years. The 2001-2002 school year was the first year of the [redacted] program.

3. [redacted] is the District's [redacted] school self-contained special education program for eligible behaviorally disabled students. It is located at [redacted] School. Students do not rotate to different teachers. The program is designed to assist the student develop skills necessary to function successfully in the mainstream environment. All academic activities, social skill development, and pre-vocational skills are taught at [redacted]. The facility provides a safe secure setting for students to develop relationships, learn new skills and increase self confidence.

4. The goal of the program is to allow students sufficient success to return to their regular education classroom. Goals for such success are to develop academic and vocational work skills, cultivate problem solving skills, make positive choices, recognize consequences for choices, and be a contributing member of the class and community.

5. The program is highly structured and incorporates a level and a point system. Students are rewarded for positive decisions and behavior. The family plays a vital role in the continuity of services in the development of behavior goals and the follow through with consequences. The maximum number of students in the program at one time is 10. The actual number, less than ten, varies depending on the different transitioning stages of the students. In the 2001-2002 school year, the number was about six.

6. [redacted] has four full time staff plus the facilitator. Rebecca Donnelly, the facilitator of the program, is a certified special education teacher with about 15 years experience. She also holds a master's degree in education and has been a teacher at [redacted] School [redacted]. Stacy Boss is the general education teacher for all academic courses. She also has training in social emotional development issues. Mr. Benta is a full time mental health counselor providing immediate attention, assistance, feedback, and de-escalation within the learning environment. He also teaches a social skills class. Tasha Holm is a behavior specialist with a background in youth counseling. She holds a Masters degree in school counseling and assists in the design of behavior intervention plans.

7. The staff are trained in crisis prevention, de-escalation techniques, verbal skills and interventions, as well as, therapeutic restraint. [REDACTED] is based on Washington State Re-education principles which link the use of rules to values such as sitting in one's seat to listen to a speaker evinces respect. Re-education principles include a 3:1 ratio for positive verbal affirmations to every negative act. [REDACTED] goal is a ratio of 4:1. Positive reinforcements are imbedded in the multi-layered structured environment.

8. The behavior management plan is based on a five tier level system. At each level there are six behavioral objectives a student must maintain to remain at his/her level or move to the next level. Upon reaching level 5, transition opportunities exist for the student to reintegrate at the home school. Three behavioral objectives are standard for all students and three behavioral objectives are standardized from the student's IEP. As a student progresses from level to level, more responsibilities are added which the student is expected to meet. The goal of [REDACTED] is the successful full time transition of students to their neighborhood school.

9. Level 1 is the most restrictive. Students remain on level 1 for one day. In order to advance students must maintain at least 75% on their point sheet and have no more than 5 incidents in a day. Students remain on level 2 for ten days and must maintain at least 80% on their point sheet and have no less than 4 incidents in a day to advance. Students remain on level 3 for 20 days. This level provides privileges and opportunities not provided on level 1 or 2. To advance to level 4 the student must demonstrate 85% on the daily point sheet and have no more than 3 incidents in a day.

10. Level 4 provides greater opportunities and independence. A student remains on level 4 for 30 days. Expected criteria are 90% on the daily point sheet and no more than 2 incidents per day. The student must also meet 90% of staff expectations for 30 days. Level 5 students are considered for transition and have the most privileges. The student must maintain 93% on the point sheets and have no more than one incident per day. The student must also meet 95% of staff expectations for 30 days before being eligible to begin transition.

11. A student is provided a new point sheet every day. Staff record points and incidents on the point sheet. Generally, a student is given several opportunities to comply with an expectation before staff record it as an incident on the point sheet. The point sheet is in triplicate. A student takes two copies home every night. The parent signs one and keeps the other one. The student returns the signed copy the next day to staff.

12. The District has corollary programs at the [REDACTED] and [REDACTED] school levels. The [REDACTED] school program, [REDACTED] is located on the [REDACTED] School campus, an [REDACTED] school. The Student's neighborhood regular education school is [REDACTED]. The District bus ride between the two is about 7 minutes.

13. The level system is designed to build slowly on success. Generally, a student will begin transition by enrolling and attending one regular education class. As success builds, additional classes are added. Transition/reintegration includes a regular education teacher's participation in team meetings. [REDACTED] and [REDACTED] facilitators visit the regular school during transition periods to observe, offer assistance and support, and problem solve. Students who transition too quickly, or too much at one time, and without sufficient support are likely to fail, which serves to further diminish their self-esteem.

Evaluation

14. The Student's last evaluation was May 7, 2001. It is not in dispute. The Family relies on the reevaluation and the Student's progress since January 2002 to support their opinion the Student should no longer be attending a self-contained program in the Fall, 2002.

15. For the District's May 2001 reevaluation, the school psychologist collected data regarding the Student's behavior from review of his IEP goals and objectives, teacher information, student observations and behavior rating tools. At the time of the evaluation, the Student was level 4. The Achenbach Teacher Report Form revealed the Student's behaviors were no longer in the clinically significant range, and delinquent and aggressive behaviors were in the borderline range. On the Behavior Evaluation Scale-2, interpersonal difficulties and inappropriate behaviors were in the borderline range. Other behaviors were within the normal range and not significant. Teacher reports revealed that the Student is argumentative and has difficulty following adult directives. Classroom and PE observations revealed appropriate behaviors.

16. The school psychologist concluded that the Student required continued specially designed instruction for an [REDACTED] disability because he had not yet demonstrated the ability to maintain appropriate behaviors without considerable support. He continued to demonstrate resistance to general education interventions. In a general education setting, the Student's behaviors would be significantly different than his peers. Goals are designed to develop the behaviors necessary to participate in the general education classroom.

17. The school psychologist recommended, in relevant part, special education and related services in the form of behavior management, problem solving skills and compliance with adult directions. Recommended supplemental aids and services and program modifications included: opportunity for time out, debriefing opportunities for self evaluation, and clearly stated instructions/directions, with prompts for understanding. Transition accommodations were not addressed as the school psychologist did not see the Student as ready for transition from the self-contained environment. The evaluation states that extended school year services are not recommended.

18. The Student is personable, articulate, and can be kind hearted. If things are going well, he does well and is an asset to the classroom. He has difficulty accepting directives from his teacher and becomes verbally and physically intimidating when asked or told to do something. He has also intimidated and ridiculed other students. Rather than modeling the good behavior of his peers, generally, he mocks their success.

Grade

19. For his grade year, the Student lived with his mother. The year was marked by his verbal and physical intimidation and belittlement of other students and his teacher. Nevertheless, he had a number of successes, made behavioral progress, and towards the end of the year achieved level 4. However, an altercation with a staff person led to his tossing a table, eloping from the school, and jumping out of his mother's car. The problem was related to the Student's stress at home, including the death of his stepfather. The staff determined this was a serious incident and decided the Student would begin the 2001-2002 school year at level 1.

Grade

20. The Student began his grade year with the expectation he would be the first in the year to transition out of . However, he had many behavioral incidents and did not make much progress in the level system. The Student made insulting and derogatory remarks to the teacher, mocked her, and frequently used vulgar language. If not called on, he would shout out. On occasion he was physically intimidating. He also had days when he could focus well and accomplish his academic goals. The Student's behaviors varied but he remained on level 2 from September through January 27, 2002. Between September 2001 and January 2002, he had absences.

21. The Student is more successful in his relationships with adults than peers, with the exception of the role of the classroom teacher, which seems to be an especially difficult relationship for the Student. This difficulty does not appear to be limited to the teacher, as the Student had similar problems during the sixth grade in two regular education classes.

January to June, 2002

22. In January, 2002, the Student went to live with his Uncle and his family. The Uncle tried to enroll the Student at School but was referred to . He met with staff who explained the program and why the Student needed to be there. The Uncle was new to special education and wanted to enroll the Student at . Staff provided a copy of the special education Procedural Safeguards, the IEP, the informational booklet, and set up a meeting to include the school psychologist, to discuss

the Student's evaluation. The conversation was positive and established good communication between the Family and the Staff.

23. In January 2002, the school psychologist, [REDACTED] staff, and the Uncle met. The school psychologist explained the special education eligibility process, went through the Student's evaluation, and the IEP process. It was a good discussion of the Student's needs and program. The District provided the Uncle with a copy of the IDEA Procedural Safeguards.

24. The Uncle talked with the Student to identify the Student's goals: return to a general education classroom and school, and to participate in after-school activities. The Uncle committed to the Student that if he did well, the Uncle would get him out of [REDACTED] and into a general education classroom and school.

25. From then on, the Uncle committed to the Student's program and actively participated in his education. He checked almost daily on the Student's progress. The Uncle tied permission to participate in activities to the Student's performance at school so that the Student had to do well at school in order to participate in sports and other after-school activities. It is the Uncle's commitment to school success that has caused the Student to buy into the program and seek success. The Student began making consistent behavioral progress. Ms. Donnelly believes that the Uncle has been the salvation of the Student.

26. In March, the Uncle requested that the Student have some experiences outside of the [REDACTED] environment. The Student was at level 4, still having some significant behavioral challenges, and not eligible for any outside transition activities. However, staff acknowledged that the Student was making changes. Staff agreed to try a part-time placement at the District's print shop, located at the administrative offices, [REDACTED].

27. In April, 2002, the Student began working at the print shop Mondays and Wednesdays between 9:30 a.m. and 11:00 a.m. This required the Student to spend some time at home alone before leaving on his own. The print shop staff are adults. The Student was given various projects to help out. By all accounts, the placement was very successful. The Student managed his time at home and transportation well and never missed a day. He was polite and respectful. The print shop would like to have the Student return in the Fall, 2002.

28. Staff restructured the Student's daily transitions back to [REDACTED] from the print shop because he had difficulty finding a focus for his academics. He used his elevated status, as the only level 4 student in an out-of-program transition activity, to put others down. Although he remained on level 4 from April to June, the Student's daily behavior did

not always meet expectations for level 4. The daily point sheets reveal that on April 29, 2002, he flipped a desk out of anger. On May 2, 2002, he refused to leave room when directed, refused to stop tapping and being disruptive, threw a pencil up in the air and refused to stop, refused to follow staff directions during free time and pushed another student out of a chair. On May 3, 2002, he argued with staff, threw rocks at preschool kids in the playground area, and incited others. On May 6, 2002 he refused to follow directions and on May 7, 2002 he yelled at his teacher. Six incidents occurred on May 9, including arguing with his teacher. On May 16, 2002, the Student had ten incidents including: yelling at the teacher, inciting others, throwing a pencil, refusing to follow directions, banging a shoe on his desk, and physically intimidating and arguing with staff. From May 17 through about June 12, 2002, the number of incidents varied between 1 and 2, with several exceptions: on May 29, 2002 he had five incidents; on May 20, 27, June 3 and 10, 2002 he had no incidents.

29. The Student's history, as recorded in the daily point sheets, demonstrate that the Student has a particular problem with conforming his behavior to a teacher's requests. The Student's history between January and June 2002 does not demonstrate that he has that problem under control.

30. In the [REDACTED] and [REDACTED] programs, the level of scrutiny of students is high. However, it is not the level of scrutiny that increases the documentation of incidents. The behavior is not typical adolescent acting out, either because of the nature of the behavior or the willful persistence of a typical behavior when instructed to stop. Staff provide a lot of support and positive reinforcement which is not available in a general education classroom. An undesirable behavior is not identified formally as an "incident" and logged on the Daily Point Sheet until the student has been given opportunities to redirect or change the behavior.

31. Based on past performance, the Student could not immediately succeed in a regular full day [REDACTED] program because of his behavior, and would need a lot of support to succeed in general education classes. The Student's behavior classified as borderline in the May 2001 reevaluation was in the context of the [REDACTED] program and would not necessarily be characterized as borderline or stay within the borderline range in a general education classroom.

32. The Uncle arranged for the Student to volunteer at the [REDACTED] after school, which he did between January and June 2002. The Student was consistent and responsible, followed directions, and worked well with others.

33. The Student's grades for the year ending June , 2002 were: Math C, Language Arts A-, PE A-, Social Studies A, and Science B. His final grade point average was 3.28. The Student achieved these grades not only because he is intellectually capable but also

because staff provided constant focus and re-direction, multiple opportunities to complete work, and allowed the Student to work at his own pace.

June IEP Meeting

34. The District informed the Family of the need for an IEP meeting and accommodated the Uncle's work schedule when scheduling it. The day before the meeting, Michael Williams, the [REDACTED] facilitator and special education teacher, talked with the Uncle about the [REDACTED] program at [REDACTED] School [REDACTED] and the gradual transition to general education classes at [REDACTED]. Ms. Donnelly also had several conversations with the Uncle prior to the IEP meeting, wherein she described the transition to [REDACTED] at [REDACTED] and the partial transition to [REDACTED]. They had agreed that the Student would start the school year as a level 5 and be allowed to transition to a [REDACTED] class. This was a change in the [REDACTED] protocol which requires a student to achieve 30 days at level 5 before beginning a transition general education class. The Uncle requested that Mr. White attend the meeting but due to graduation commitments he was unable to attend. Mr. White is a counselor at [REDACTED] with whom the Uncle has had positive interactions in the past, unrelated to the Student.

35. On June 13, 2002, the District held an IEP meeting. Ms. Donnelly, Mr. Williams, Mr. Binta, Ms. Boss, the Uncle, Mother, Grandmother, and Student attended. The meeting lasted about 1 and ½ hours. Ms. Donnelly, Mr. Binta, and Ms. Boss said that the Student was within several days of earning level 5 and that he was doing increasingly well.

36. The District provided the Family with a draft IEP. The conversation immediately focused on the Summary of Service Matrix, page 2 of the draft IEP. The matrix for the 2002-2003 school year provided for 1200 minutes in the [REDACTED] program, 300 minutes at [REDACTED] and 300 minutes at the [REDACTED].

37. The Family expressed their view that the Student should not attend the [REDACTED] program at [REDACTED] because he was much improved and could be served full time at [REDACTED] School. This came as a surprise to the District, although staff had understood that mainstreaming was the Uncle's ultimate goal. The Family rejected the counseling aspect of the [REDACTED] and [REDACTED] program, wishing to provide it privately through Dr. Freeman. The Family also had concerns about the [REDACTED] work site because they did not want the Student to lose academic class time he would need to prepare for college. The Family was of the view that they could provide the work opportunity in a volunteer placement like the [REDACTED].

38. Ms. Donnelly said that the team could increase the [REDACTED] number of classes to 2 or 3 but beyond that it would require a change in the recommendations of the May 2001

Reevaluation, which she did not have authority to change. The District explained that an IEP is driven by the evaluation and that the Student's evaluation recommends a self-contained classroom. Mr. Williams explained the services provided in the [REDACTED] program and the Family rejected it. It was the District's view that the Family's request to drop so many services, including [REDACTED] failed to sufficiently address and/or implement the educational recommendations of the May 2001 reevaluation team. Ms. Donnelly explained that a reevaluation would need to be initiated.

39. The District took the Family's opinions to mean that they were requesting the Student be exited from special education. Although the Family disputes this inference, it was not an unreasonable one to make. At a minimum, District staff decided they did not have the authority to change the IEP program and placement as the Family requested because it was significantly different from the educational recommendations of the Student's May 2001 reevaluation. They informed the Family of the need to reevaluate in order to exit the Student from special education or to make a fundamental change in the Student's program and placement. The District provided a copy of the IDEA Procedural Safeguards and highlighted the reevaluation provisions.

40. The IEP meeting ended on the reevaluation topic. The team did not discuss any of the other aspects of the draft IEP. The meeting ended on a frustrating note for everyone.

41. Immediately thereafter, Ms. Donnelly consulted with Lynda Sharp and provided the Uncle with a Notice of Intent to reevaluate the Student.

42. On June 19, 2002, the Uncle met with Ms. Sharp, the director of special education. He provided Ms. Sharp the Family's request for due process hearing. The Family requested the District not forward the request to OSPI but contact Sound Options Mediation Services to schedule a mediation instead.

43. The Family's request for hearing states that the Student no longer has a [REDACTED] [REDACTED] that adversely affects his ability to learn in a regular education classroom. It requests the Student be exited from the [REDACTED] program and be served in the least restrictive environment on a full time basis at [REDACTED]. It also provides that the Family wants the Student to receive private counseling services rather than those provided by the District in the [REDACTED] program.

44. On June 20, 2002, the District wrote the Family. In keeping with the June 13, 2002 discussion and the Family's request, the District provided written notice of the intention to reevaluate the Student. It provided a consent for reevaluation form for the Mother to sign. It further provided that Dean Grimm, school psychologist, would oversee the reevaluation and, thus far, had Ms. Binta and Ms. Boss complete the Behavioral Assessment System for Children (BASC). The Family has not returned the signed consent form.

45. Daryl Freeman, Ph.D. testified on behalf of the Family. He has 30 years of pastoral and religious education counseling experience and currently works with the Atlantic Street Center as a family and child counselor. He is also a certified teacher and has worked for the Federal Way and Seattle School Districts. Among other experiences, Dr. Freeman has worked with the [REDACTED] Academy and can provide insight and guidance in developing educational plans for young [REDACTED] males. The Family has requested he provide counseling services and assistance to the Student. They also asked that he participate in the upcoming development of the 2002-2003 IEP. At the time of the hearing, Dr. Freeman had spoken with the Student and his Aunt for intake and found the Student to be appropriately respectful. Soon after the hearing, he was to begin individual visits with the Student. Although he had spoken with the Aunt about the June 13, 2002 IEP meeting, neither she nor he had attended it. He has observed the Student volunteering at the [REDACTED] Academy elementary age summer program and found the Student to be apparently normal and doing well.

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.

Family Participation in the 2002-2003 IEP Development

3. In this matter, the Family asserts the District failed to provide them with their right to participate in the development of the IEP at the June 13, 2002 IEP meeting.

4. WAC 392-172-153 through -166 identify the requirements a school district must comply with in conducting IEP meetings and developing IEPs. WAC 392-172-153 provides that the parent is a member of the IEP team. WAC 392-172-15700 provides that a school district must provide the parent with an opportunity to participate in the IEP meetings. WAC 392-172-15705 provides that the school district must provide an opportunity for parent participation in placement decisions.

5. The District scheduled the June 2002 IEP meeting to accommodate the Uncle's participation. The Family was able to, and did, attend the meeting. The ALJ finds no procedural error in the scheduling of the IEP meeting on June 13, 2002.

6. The Family asserts that they were denied participation because the District did not go through the draft IEP beyond page two. Generally, the IEP team should fully discuss a draft IEP, including the present levels of performance, goals and objectives, and the participation in general education environment. See WAC 392-172-15700. However, it would be an absurd outcome if district IEP team members ignored a parent's input and continued with a discussion which was non-responsive to the parent's concerns. If a discussion comes to an impasse, a district must decide the appropriate course to follow. For example, the team may continue to work their way through the IEP to identify all areas of agreement and disagreement and look for options for resolution. In another situation, the team may conclude that further discussion is not going to be fruitful given the nature of the disagreement.

7. In this case, the District established that the development of the IEP was flexible within the identified parameters of the Student's May, 2001 reevaluation, which called for primary placement in a self-contained environment. The District agreed to reshaping the placement outlined in the Draft IEP, to include up to three general education classes at [REDACTED] and eliminating the [REDACTED] job. Relevant current data, as well as staff training and experience, supports the District's opinion that the Student's complete immersion in general education classes at [REDACTED] without transition and support of the [REDACTED] team would likely be unsuccessful. The Family clearly rejected the [REDACTED] program and its counseling support and would only agree to full time placement at [REDACTED]. Regardless of whether the District was correct in its understanding that the Family was seeking to remove the Student from special education eligibility, the District's response, that a reevaluation was needed, was appropriate. The Family's proposal was a significant change not consistent with the Student's evaluation and current experience with the Student. See WAC 392-172-182(2). Reevaluation is also required before exiting a student from special education. See WAC 392-172-186(4).

8. The District's disagreement with the Family's proposal for full time participation at [REDACTED] was not an inflexible position that denied the Family participation in the IEP process. A legitimate and significant difference of opinion arose in the IEP meeting in spite of efforts

to resolve it. In response, the District advised the Family of their procedural protections under the IDEA and initiated a reevaluation to address the Family's request. The District spent time discussing the procedural protections, highlighting relevant portions. The Family promptly availed themselves of their right to request a due process hearing. Based on this evidence, the ALJ concludes that the District provided the Family with a meaningful opportunity to participate in the IEP process.

Least Restrictive Environment

9. Another way to characterize this dispute is within the context of least restrictive environment. The IDEA requires a school district to implement an eligible student's IEP in his or her least restrictive environment ("LRE"). Inclusion in the general education classroom, also called mainstreaming, is presumed to be the ultimate least restrictive environment. However, LRE is an individual determination for every special education student.

10. **WAC 392-172-172 Least restrictive environment** provides that a school district is required to provide services to each special education student in his least restrictive environment:

Each public agency shall establish and implement procedures which meet the least restrictive environment requirements of this chapter. The provision of services to each special education student, including preschool students and students in public or private institutions or other care facilities, shall be provided:

- (1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and
- (2) Special classes, separate schooling or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

11. **WAC 392-172-180 Procedures for establishing educational placement** provides:

- (1) The educational placement of each special education student, including a preschool student, shall be determined at least annually at a meeting conducted pursuant to WAC 392-172-156.
- (2) The selection of the appropriate placement for each special education student shall be based upon:
 - (a) The student's individualized education program;
 - (b) The least restrictive environment requirements of WAC 392-172-172;

- (c) The placement options(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and
 - (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.
- (3) Unless the IEP of a special education student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. The placement shall be as close as possible to the student's home, unless the parents otherwise agree.
- (4) The decision on the educational placement shall be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.
- (5) A special education student is not removed from education in age-appropriate general classrooms solely because of needed modifications in the general curriculum.

12. The court in *Sacramento Unified Sch. Dist. v. Rachel Holland*, 14 F. 3d 1398 (9th Cir.), *cert denied*, 114 S. Ct. 2679 (1994) found that the least restrictive environment for Rachel was full time placement in her regular education classroom with support services including the assistance of a consultant and part-time aide. The court in *Holland* applied a four part least restrictive environment test to determine whether Rachel should be placed in a full time regular education classroom:

- (1) the educational benefits available to the student in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom;
- (2) the non-academic benefits of interaction with children who were not disabled;
- (3) the effect of the student's presence on the teacher and other children in the classroom; and,
- (4) the cost of mainstreaming the student in a regular classroom.

13. At the time of the court's decision, Rachel was 11 years old and moderately mentally retarded. Rachel was motivated to learn, learned by imitation, and was not disruptive. The court rejected the district's proposal for a special education classroom for academic subjects and regular class for non-academic subjects such as art, music, lunch and recess. It found Rachel modeled her behavior after her peers, was able to learn, and did not disrupt the class, and therefore was appropriately placed in a regular education classroom.

14. In *Clyde K. ex rel. Ryan K. v. Puyallup School District*, 35 F.3d 1396 (9th Cir. 1994), the court applied the same four part test and found that the least restrictive environment for Ryan was a self-contained special education classroom. Unlike the student in *Holland*, Ryan, a student with Tourette's Syndrome and attention deficit hyperactivity disorder (ADHD), was frequently disruptive to the class, engaged in name-calling, sexually explicit profanity, as well as kicking and hitting classroom furniture. At the time of the hearing he

had been involved in two violent confrontations and removed from the regular education classroom.

15. The court noted that Clyde's behavior largely prevented him from learning, and that an aide would not have made a meaningful difference. In addition, he did not model his behavior on that of his non-disabled peers, he was socially isolated and suffered a great deal of stress from teasing by the other students. The student's presence in the regular education classroom had an overwhelmingly negative effect on teachers and other students, interfering with their ability to learn. The court further states "Disruptive behavior that significantly impairs the education of other students strongly suggests a mainstream placement is no longer appropriate. See. 34 CFR Sec. 300.552, Comment."

16. In this case, it is important to identify the LRE goal as one which allows the Student to participate in the general education *classroom*. This means that the Student must be able to follow a teacher's direction and instruction and must not distract others so as to impede his or others' learning. We know that following a teacher's direction is one of the Student's specific challenges and that he needs re-direction and multiple opportunities to complete work. The Student's academic success is directly linked to the support provided in the self-contained environment. And, rather than model the positive behavior of peers, the Student tends to ridicule, incite and distract others in the learning environment. There is no reason to believe the Student's behavior would be better in the general education classroom. This is not to make light of the Student's unquestionable successes since January 2002 which include four days between mid-May and mid-June, with no incidences at school. However, in applying the *Holland* four criteria as described above, the ALJ concludes the Student's behavior does not yet support a full time general education placement at RHS.

17. That being said, a school district may not limit its service to a student's needs based on its available programs. A student must be able to move through, or out of, a self-contained program in a manner that addresses the student's individual needs and his appropriate LRE. In this instance, the District modified the [REDACTED] requirements in order to provide individualization to the Student's program in two significant ways. First, it allowed the Student a transition opportunity at the print shop even though he was ineligible as a level 4 and was having continuing behavior problems. The District continued to allow the off-site placement in spite of the fact that the Student's daily transition back to school was disruptive to himself and others. Instead, the District modified the Student's daily reentry to assist his transition. Second, the District agreed with the Uncle that the Student could begin general education classes at [REDACTED] in the Fall 2002 in spite of not having successfully concluded the required 30 days on level 5. At the June IEP meeting, the District further agreed to eliminate the [REDACTED] and allow the Student up to three general education classes at [REDACTED]. These facts establish that the manner in which the District implements the Student's program at [REDACTED] is individualized to the

Student's needs and that it is willing to flex its programmatic structures and supports to promote the Student's transition to the general education environment.

18. The ALJ concludes, based on the evidence presented, that the District's continued placement in the [REDACTED] program should be the supportive base from which the Student transitions to the general education classrooms at [REDACTED] School and is his LRE. This decision defers to the reevaluation to be conducted by the reevaluation team.

19. The District needs to hold an IEP meeting to address the remainder of the IEP and to determine the number of classes the Student will take at [REDACTED]. The Family's request that Dr. Freeman participate as a member of the IEP team is appropriate. See WAC 392-172-153(6).

20. 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

1. The District provided the Family with its right to participate in the IEP process in June 2002.

2. The District's June 2002 draft IEP appropriately identifies the Student as a continuing student in the District's self-contained [REDACTED] program with transition to [REDACTED]. This is the Student's least restrictive environment.

3. The District shall hold an IEP meeting prior to the 2002-2003 school year to decide how many classes the Student will take at [REDACTED] and to complete the 2002-2003 IEP development process. The District shall include Dr. Daryl Freeman at the Family's request. Unless agreed otherwise, the IEP shall be consistent with this decision. In the event a reevaluation is concluded prior to the IEP meeting, the reevaluation, rather than this decision, shall direct the IEP team. In the event of a dispute about the reevaluation, either party may pursue the dispute resolution options in WAC 392-172, including a due process hearing.

Dated at Seattle, Washington this 13th day of August, 2002.



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 8/13/02, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Mother



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Aunt and Uncle



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