



ART WANG
Chief Administrative
Law Judge

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
1904 Third Avenue, Suite 722
Seattle, Washington 98101-1100
(206) 464-6322 FAX (206) 587-5136

MAILED
SHS-SEATTLE

JUL 17 2002

OFFICE OF
ADMINISTRATIVE HEARINGS

RECEIVED

JUL 19 2002

Superintendent of Public Instruction
Legal Services

July 17, 2002

Parents


Michelle Corker-Curry
Special Education Department
815 Fourth Ave N
Seattle, WA 98109

Steven Shea
Attorney at Law
PO Box 1269
Everett, WA 98206

Brenda Little-Latham
Deputy General Counsel
814 Fourth Avenue N
Seattle, WA 98109

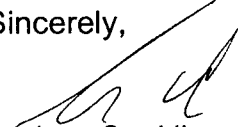
RE: School District, Special Education Cause No. 2002-SE-0044

Dear Parties:

Enclosed please find a copy of the Findings of Fact, Conclusions of Law, and Order in the above referenced matter.

Please feel free to call the undersigned if you have any questions.

Sincerely,


Andrea Conklin
Administrative Law Judge

cc: Legal Services, OSPI
Jill Geary, OAH ALJ Hearing Coordinator



JUL 17 2002

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

OFFICE OF
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

SEATTLE SCHOOL DISTRICT

SPECIAL EDUCATION
DOCKET NO. 2002-SE-0044

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

Andrea Conklin, Administrative Law Judge (ALJ), held a hearing on May 28, 29 and 30 and June 30, 2002. The Parents appeared and were represented by Steven B. Shea, Attorney at Law. The Seattle School District (District) was represented by Brenda J. Little-Latham, General Counsel.

District Exhibits 1 through 28 and Parent Exhibits 100 through 110, 112, 113, 115 through 123 and 124 were admitted. The District called as witnesses Sara Woolverton, Billie Butterfield, Hyla Dobaj, Debra Liman, and Sue Blackadar. The Parents called as witnesses both the Parents, Karla Balko, Rebecca Culver, Maura Berndsen, Sandy Parkins and Kim Hamren.

STATEMENT OF THE CASE

On March 29, 2002, the Parents requested a due-process hearing. P 102. The hearing was initially scheduled for April 25, 2002. At the April 9, 2002 prehearing conference the parties agreed the 45-day due date would be continued and the hearing would be held on May 28, 29 and 30, and June 3, 2002.

The Parties submitted post-hearing briefs and proposed Findings of Facts and Conclusions of Law. The parties agreed the 45-day due date would be continued to July 31, 2002.

ISSUES

The issues as set forth in the April 16, 2002 prehearing order are as follows:

- A. Does the January 2002 Individual Education Plan (IEP) provide a Free and Appropriate Public Education (FAPE) for the Student?
- B. If not, are the Parents entitled to reimbursement for private tuition, transportation expenses and Auditory therapy?
- C. If the January 2002 IEP does not provide a FAPE, is the District required to pay for the Student to be in a private placement?

FINDINGS OF FACT

Ways Students Communicate

1. The issue in this case involves the [REDACTED] needs of a [REDACTED] Student. All the parties in this case agreed that there has been a debate for well over a hundred years about which is the appropriate way to teach [REDACTED] children to [REDACTED]. Before specific facts of the case will be discussed, an explanation of different ways to teach [REDACTED] children how to [REDACTED] must be explained.

2. One of the ways is total [REDACTED] in which [REDACTED] is used along with [REDACTED]. P 110 p. 7. Within the total [REDACTED] area, there can be different emphasis on the use of [REDACTED]. Some use [REDACTED] but do not [REDACTED]. Another way is [REDACTED] and [REDACTED] is rarely used. A third is when all the [REDACTED] and their [REDACTED] are [REDACTED] at the same time the [REDACTED]. P-110 p.7. Often the third way is referred to as [REDACTED] exact English while also verbalizing the instruction.

3. Another way to teach students is to use an [REDACTED] method. Within [REDACTED], there is [REDACTED] in which students are cued to

complement [REDACTED]. A second way is called [REDACTED] in which a student is encouraged to both [REDACTED] and [REDACTED]. Finally, there is [REDACTED] in which the student does not receive specific instruction on a daily basis to watch the [REDACTED]. [REDACTED] is discouraged and the student is taught to rely on [REDACTED] to [REDACTED]. P 110 p. 7.

Background

4. The Student in this case was born on [REDACTED] as the only boy in a [REDACTED]. He was diagnosed as profoundly [REDACTED] at [REDACTED] of age. The Parents began using [REDACTED] with the Student.

5. At [REDACTED], the Student was [REDACTED]. At about the same time the Parents selected an [REDACTED] training approach so the Student would use [REDACTED]. The Parents stopped using [REDACTED] with the Student.

6. When the Student was approximately [REDACTED] old, the Parents determined he should receive a [REDACTED]. The surgery was performed on the Student's [REDACTED] in June 2000 at the [REDACTED]. Twenty-two active [REDACTED] were inserted in the Student's [REDACTED]. The surgery was successful. The Student now has a [REDACTED] in the [REDACTED] and the [REDACTED] in the [REDACTED].

7. In July 2000, the Student was initially fitted with the [REDACTED] external equipment by [REDACTED] Karla Balko. The [REDACTED] is a [REDACTED] that includes a [REDACTED] placed in the [REDACTED]. An externally worn [REDACTED], [REDACTED] them to an [REDACTED] which converts the [REDACTED] information to [REDACTED] sends them up to a [REDACTED] secured in the Student's [REDACTED] with a magnet, across the skin, to an internal receiver which stimulates the [REDACTED] based on the

speech processing [REDACTED] designed specifically for the Student. The [REDACTED] stimulate the fibers and the brain [REDACTED]. With the use of the [REDACTED] the Student does not [REDACTED] the same sounds as a [REDACTED]. However, the [REDACTED] allows the Student to process the [REDACTED] and allows his brain to identify those [REDACTED].

8. After the surgery, the Parents continued with the [REDACTED] approach and have consistently used the method to present. At [REDACTED], the Student has been under the care of Ms. Balko and Ms. Culver, a Speech and Language Pathologist (SLP.)

9. In June of 2000, Ms. Culver and Ms. Balko performed a one-year post procedure evaluation on the Student for the [REDACTED] D 9; P 104. Prior to the [REDACTED], the Student, who was approximately [REDACTED] old, had the language comprehension level of about a [REDACTED] P 104, at page 2. At the [REDACTED] evaluation, based on the grammatical analysis of elicited language, the Student's receptive language was above average for his age, and his expressive language was within normal limits. This analysis is based on children who are [REDACTED] and [REDACTED] enrolled in the [REDACTED] programs. P 104.

10. Based on the preschool language scale, the Student was within normal limits of auditory comprehension and within normal limits of expressive comprehension, based on a sample of normally [REDACTED] peers. P 104. However, the Student had an extreme deficit in intelligibility, the ability of another person outside of his home to understand him. P 104

Seattle School District.

11. When the Student was [REDACTED] old, he was referred to the District for a [REDACTED] assessment by his case manager, Sandy Duncan. The Student underwent a number of examinations by the District. The District concluded the

Student had a disability which severely affected his educational performance and was in need of specifically designed instruction. P 100; D 5. The District therefore determined the Student was eligible for special education.

12. On October 25, 2001, a transition conference was held in the Parents' home. In attendance at the meeting were the Parents, Sara Woolverton, Early Childhood Special Education Program Supervisor, Mel Olson, District Transition Coordinator, Billie Butterfield, District Consulting Teacher, Paula Shifley, Registered Nurse (RN), Karla Balko, [REDACTED], Kim Harmen, teacher at [REDACTED] Maura Bernsden, Education Direction, [REDACTED] and Rebecca Culver, SLP.

13. At the meeting, the Parents showed a video of the Student. In addition, the Parents handed the District a written statement of the goals they wished to achieve for the Student. Exhibit D 4. The goals set forth by the Parents are as follows:

- [Student] will attend his local grade school with his [REDACTED]
- [Student] will not require interpretive assistance upon entering [REDACTED]
- [Student] will understand and speak at a median age-appropriate level by the time he is [REDACTED]

In order to achieve the goals and realize the vision, [Student] requires:

- A natural language educational environment.
- Classroom participation with children who have no [REDACTED] challenges.
- Limited distraction from [REDACTED] and communications systems.
- Family involvement to provide seamless connections between educational and home environments.

Exhibit D 4, page 1.

14. At the transition meeting at the Parents' home, Ms. Butterfield, District Consulting Teacher, stated she did not believe a placement at [REDACTED] School [REDACTED] was appropriate for the Student. Ms. Butterfield made the statement because

she believed the Parents did not want their child exposed to [REDACTED] Since the [REDACTED] program used [REDACTED] Ms. Butterfield did not think the placement was appropriate solely based upon the Parents' preference. The Parents believed she made the statement because she did not believe the placement was appropriate and there were no conditions on the statement.

15. Placement was not determined at the transition meeting. The District suggested the Parents view the program at [REDACTED] as a possible placement for the Student.

16. Sometime in late October or early November 2001 the Parents, along with Ms. Culver, SLP, viewed the [REDACTED] program. The main teacher in the [REDACTED] program is Ms. Liman, who has an undergraduate degree in special education. Also in the classroom is an aide. Three days a week, Ms. Blackadar, who is a SLP, is in the classroom. Ms. Dobaj, who is an [REDACTED] is in the classroom two days a week and specifically leads the class for at least a half an hour twice a week. The program operates from 9:00 a.m. to 11:30 a.m, four days a week.

17. The Parents and Ms. Culver witnessed the circle time and table program. The Parents and Ms. Culver viewed the [REDACTED] program for approximately 40 minutes. The program at [REDACTED] is considered a total [REDACTED] program. The teachers [REDACTED] instruction using [REDACTED] while also [REDACTED]. There was a dispute between the parties whether the teachers [REDACTED] everything said, or [REDACTED] a majority of the things said, or [REDACTED] just some of the things that were said. Based upon the testimony of the instructors in the classroom every day, Ms. Liman, Ms. Dobaj and Ms. Blackadar, the teachers [REDACTED] and [REDACTED] [REDACTED]. However, if a student did not need [REDACTED] to communicate, when the teachers were working one-on-one with that student, the instructors did not use [REDACTED]

18. There are eight students in the [REDACTED] program, three girls and five boys. Three students have [REDACTED]. Seven of the eight students speak and can be understood. One student cannot be understood. Three students use [REDACTED] to express themselves. The [REDACTED] program does not require the students to learn [REDACTED]. There are no students at [REDACTED] who did not know [REDACTED] prior to entering the program who now uses [REDACTED] exclusively.

19. The [REDACTED] program is a self-contained classroom whose participants all have some type of [REDACTED]. Students from [REDACTED] grade come in every week to read to and interact with the [REDACTED].

20. The goal of the [REDACTED] program is to have students who are [REDACTED] or have [REDACTED] speak. Some of the students in the classroom need the assistance of [REDACTED] in order to communicate. Other students do not need [REDACTED] because they can speak or use other forms of communication.

21. The Parents of the Student do not subscribe to the [REDACTED] program but subscribe to the [REDACTED] method in which all items are [REDACTED]. Therefore, after reviewing the [REDACTED] program, the Parents determined they did not want the Student to attend [REDACTED] because they do not want their child to be exposed to [REDACTED].

22. The Parents attended another meeting called an ART Meeting. At that time, the Parents told the District that they did not want the Student to [REDACTED] and they were not interested in the [REDACTED] program as discussed by the District. The District noted placement was not an appropriate discussion for the ART meeting, but was a discussion for the team who prepares the Individualized Education Program (IEP) :

23. Prior to January of 2002, the Parents enrolled the Student, without notice to the District, in a private placement at the [REDACTED] program, which is an

[REDACTED] The Student began the [REDACTED] program on January 3, 2002.

24. Pursuant to notice, an IEP meeting was held on January 11, 2002. In attendance at the meeting were Mary Ellen Talle, SLP, both Parents, Billie Butterfield, Debra Liman, Sara Woolverton, Sue Blackadar, Hyla Dobaj, Kim Hamran, Maura Bernsden, and Rebecca Culver. The parties went over the present levels of performance and the goals and objective outlined in the IEP. All of the participants in the team provided input about the present levels of performance and the goals and objectives. Neither the Parents nor their experts objected at the IEP meeting to the present levels of performance or the goals and objectives as outlined in the January 2002 IEP. In fact, the Parents' SLP, Ms. Culver, utilized the goals and objectives of the January 2002 IEP in providing private therapy for the Student after the January 2002 meeting. None of the goals or objectives proposed by the Parents were rejected by the District.

25. The IEP included annual goals of (1) improvement of [REDACTED] discrimination and comprehension; (2) improve speech and language skills; and (3) improve speech language skills to age level expectations within one calendar year. The related services portion of the IEP determined to be appropriate for the Student by the IEP team was 60 minutes of speech and language either in the class or pull-out, 60 minutes of audiology in the class or pull-out, and 480 minutes of special education instruction in the classroom.

26. After the goals and objectives and the related services were agreed upon, the District proposed [REDACTED] as a placement. The Parents did not accept the proposal for [REDACTED] as a placement because the Parents did not want the Student to be in a total [REDACTED] environment, they wanted the Student to be in an [REDACTED]

[REDACTED] environment. The Parents did not disclose to the District that the Student was already enrolled in the [REDACTED] at the time of the IEP meeting.

27. On January 29, 2002, the District forwarded a letter to the Parents which provides in part:

Please remember that you are welcome to access any of the placement options we discussed at the IEP meeting (the [REDACTED] support [REDACTED] program at [REDACTED], itinerant services delivered in a community [REDACTED] setting or play group, or itinerant services delivered at a public school site) at any time. If you wish to take advantage of one of these placement options, please call me at the number listed below.

D-20. The District believes this letter was confirming it was offering to provide SLP and [REDACTED] therapy separate from the placement at [REDACTED]. The Parents interpreted the letter to mean they had to accept a placement option before they could have SLP and [REDACTED] therapy. As the Parents did not agree with the placement options, they declined all services.

28. The [REDACTED] program in which the Student has been enrolled since January of 2002 operates from Wednesday through Friday from 9:00 to 11:30 a.m. There are seven children in the Student's class. Of the seven children, four are [REDACTED] and three are [REDACTED]. Of the three that are [REDACTED] two are the Student's siblings. In the classroom at all times with the Student are an educational assistant and a teacher. In the classroom two days a week is a person who provides speech/language pathology (SLP) services. Finally, an [REDACTED] is on call, but is not in the classroom. All of the students in the classroom are [REDACTED] years old.

29. Since approximately February of 2002, the Student has not been receiving speech and language service every week but has been receiving it every other week, due to financial constraints of the Parents.

30. The Parents requested a due process hearing on March 29, 2002.

Parents' Experts

Rebecca Culver

31. Rebecca Culver is a pediatric SLP currently employed by [REDACTED]. She has been employed by [REDACTED] since March of 2001. Prior to that time, she was employed by the Boyer Children's Clinic as a pediatric SLP. In 1999 she received a Masters of Science in Speech and Hearing from the University of Washington. She received a Bachelor's of Science in Speech and Hearing Pathology, *Summa cum Laude*, in 1997 from the University of Washington. Ms. Culver has participated in the preparation of approximately 15 IEPs. She provides services to children who are [REDACTED], and children who have [REDACTED].

32. Ms. Culver agrees there is a large debate in the [REDACTED] community as to what method is appropriate to educate [REDACTED] children. There is a debate about whether [REDACTED], as offered by the District, or [REDACTED] therapy as suggested by the Parents, is the most appropriate, or best way to educate a [REDACTED] child with or without a [REDACTED]. Ms. Culver stated the research shows children who are in [REDACTED] communication programs and have [REDACTED] do 30% better than children with [REDACTED] who are in [REDACTED] programs. However, Ms. Culver indicates the studies showed children who have [REDACTED] and participate in the total [REDACTED] mode methodology do progress and do receive educational benefit.

33. Ms. Culver indicated she could not determine how the Student would do based on the IEP because there were too many unknowns. However, it was her opinion the Student would achieve success using the [REDACTED] method taught by [REDACTED]. She thought the Student was "at risk" of regression if he participated in the [REDACTED] mode proposed by the District.

Karla Balko

34. Ms. Balko received her Master's of Science in [REDACTED] in 1995. She received a Bachelor's of Science in Speech Pathology and [REDACTED], *Magna cum Laude*, from North Arizona in 1983. Since September of 1999, Ms. Balko has been employed at the [REDACTED] Center at Virginia Mason where she is currently a supervisor. Ms. Balko has published several articles and has been involved with clinical [REDACTED] since 1985.

35. Ms. Balko did not participate in the January 2002 IEP meeting. Her concerns for the Student were mainly that the Student receives [REDACTED] which was provided in the January 2002 IEP. Ms. Balko agreed there are many different ways to educate a [REDACTED] child and there are debates in the [REDACTED] community as to the best approach to educate such children.

36. It is Ms. Balko's opinion that the Student's [REDACTED] and the Student's progress is heavily related to the amount and type of rehabilitation the Student receives. Ms. Balko believes the Student needs a minimum of one hour session a week with an SLP or an [REDACTED]

37. Ms. Balko believes use of [REDACTED] with the Student would be distracting. However, she could not say the Student would regress if he were in a [REDACTED] classroom.

Maura Bernsden

38. Ms. Bernsden is the executive director at [REDACTED]. She has a Bachelor of Arts in [REDACTED] from Fontnet Bond in St. Louis. She has a Master's Degree in Early Childhood Education from the University of Texas in 1994. She is certified as an [REDACTED]. Ms. Bernsden has taken specific courses and has degrees in education of the [REDACTED]. She is a certified [REDACTED] ([REDACTED]). The

requirements to become an [REDACTED] are quite rigorous. Ms. Bernsden has had extensive experience with [REDACTED] and is an expert in her field.

39. It is Ms. Bernsden's opinion that as the Student's [REDACTED] and he does not [REDACTED] he would be at risk for losing his [REDACTED] if he attended a [REDACTED] school. Ms. Bernsden acknowledges there is huge debate in the field, and has been for several hundred years, over the best way to educate [REDACTED] children.

40. Ms. Bernsden could not state the Student would fail to progress educationally in a [REDACTED] environment. However, she believes the Student would be at extreme risk to not progress.

Kim Hamren

41. Ms. Hamren has a Bachelor of Science from the University of Nebraska in elementary and special education with a special emphasis in [REDACTED]. She has a Master's Degree from the University of Nebraska in early childhood special education. Ms. Hamren is certified in the State of Washington for special education - early childhood, elementary education, early childhood education and special education. Ms. Hamren has a teaching certificate from the State of Washington as well as from the State of Nebraska. Ms. Hamren is currently in training to be an [REDACTED]. She has not yet met all of the requirements. However, she has been working toward being an [REDACTED] for at least five years.

42. Ms. Hamren began working with the Student in January of 2000 as a therapist. She saw him once a week for [REDACTED] therapy. She became the Student's [REDACTED] teacher in January 2002. Once she became his [REDACTED] teacher, she no longer provided [REDACTED] therapy to the Student.

43. Ms. Hamren believes the Student has made progress since receiving his [REDACTED]. The Student is also making education progress at the [REDACTED].

[REDACTED] Ms. Hamren has reviewed the goals and objectives in the January 2002 IEP and believes those goals and objectives are appropriate.

44. Ms. Hamren believes the Student will regress if he is introduced to a [REDACTED] mode. She cannot state the Student will fail to learn using the [REDACTED] methodology. However, based on her experience, he will not have as rapid a rate of growth with his communication as if he continued with [REDACTED] teachings.

Sandy Parkins

45. Sandy Parkins has a Bachelor of Science degree in SLP and received her Master's degree from Kansas State University in December of 1997. She worked for several years providing SLP services to schools and to nursing homes. She is currently in training to be an [REDACTED]. She has an Educational Services Associates certificate (ESA) which allows her to teach in Washington public schools.

46. Ms. Parkins began as the Student's primary [REDACTED] in late January of 2002. She works with the Student at [REDACTED] in his classroom.

47. Ms. Parkins evaluated the Student on April 16, 2002. P-115. Ms. Parkins performed the Clinical Evaluation of Language Fundamentals [REDACTED] (CELF-P) assessment. She found the Student's [REDACTED] to be a little below average. Ms. Parkins found the Student's [REDACTED] to be well below average. [REDACTED] concepts look at the Student's "[REDACTED] [REDACTED] and [REDACTED] (e.g. [REDACTED]), and increase in length from [REDACTED] level commands." P-115 p. 1.

48. Ms. Parkins also found the Student's expressive language to be below average. The Student's word structure is very low. However, the Student did score

high in the formulating of labels. P-115. Based on her evaluation using the CELF-P, the Student was at an age equivalent of two years and nine months when he was chronologically [REDACTED] years [REDACTED] months. Using the Goldman-Fristoe Test of Articulation, the Student was in the 1st percentile. P-115 p. 2.

District's Experts

Hyla Dobaj

49. Ms. Dobaj has been employed by the District for two years as an [REDACTED]. She is an [REDACTED] specialist. Ms. Dobaj checks children for [REDACTED] [REDACTED] for children, and works in the classroom.

50. Prior to working for the District, Ms. Dobaj worked in the Virginia Mason [REDACTED] program for one year. She also worked for three and one-half years at Johns Hopkins in Baltimore in the [REDACTED] program.

51. Ms. Dobaj received a Bachelor of Arts Degree from Portland State University in [REDACTED]. She has a Master's Degree from Galaudette University which is the only liberal arts college for the [REDACTED] in the world. She graduated in the [REDACTED] department with emphasis in [REDACTED]. Ms. Dobaj is certified by the [REDACTED] Ms. Dobaj also has an [REDACTED] certificate so she may teach in schools.

52. Ms. Dobaj works in the [REDACTED] program two days a week for a half hour each day. She also provides [REDACTED] services.

53. Ms. Dobaj believes the Student is not ready for mainstreaming, or being in a classroom with all [REDACTED] because of his communication difficulties. However, Ms. Dobaj believes the [REDACTED] program would be appropriate for the Student and would teach him language. At the [REDACTED] program, if the Parents chose not to use

[REDACTED], the District would not [REDACTED] when having one-on-one therapy with the Student. However, the Student would be exposed to [REDACTED] It is Ms. Dobaj's belief, as an [REDACTED] and as an educator, the Student would progress at [REDACTED]

Debra Liman

54. Ms. Liman is the special education [REDACTED] teacher at [REDACTED] She has a degree in Special Education from Arizona State University. She has a Washington State teaching certificate.

55. Ms. Liman participated in the Student's IEP meeting in January of 2002. The goals and objectives were reviewed and revised, based on the group's discussion. Ms. Liman believes, based on the parties' discussion of the Student at the IEP meeting, that if the Student attended [REDACTED] he would progress educationally. Ms. Liman does not believe the Student would use [REDACTED] rather than [REDACTED] Ms. Liman would not [REDACTED] to the Student when working with him on a one-on-one basis. Ms. Liman does not teach [REDACTED] at [REDACTED] She uses [REDACTED] to allow some of the students in the program, who do not have the [REDACTED] to [REDACTED]

Sue Blackadar

56. Ms. Blackadar has been a SLP for 22 years. She is currently employed by the District. Ms. Blackadar has a Master's Degree in Speech/Language Pathology and Audiology from Idaho State University. She has a Bachelor of Arts Degree in Speech/Language Pathology and Audiology from Colorado State University. She has an ESA which allows her to teach in the District.

57. Ms. Blackadar works in the [REDACTED] program two days a week. She takes data regarding all of the children to ensure they are meeting their goals and objectives. When she is in the classroom, the students are not required to [REDACTED] in order to [REDACTED] The students are not taught [REDACTED] The mission of the [REDACTED]

58. Ms. Blackadar reviewed the Student's goals and objectives and believes they can be met at [REDACTED] Ms. Blackadar does not have training in [REDACTED] or [REDACTED].

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and the subject matter of this action for the Office of the Superintendent of Public Instruction (OSPI) as authorized by 20 United States Code (USC) § 1401 *et seq.*, (Individuals with Disability Education Act (IDEA)), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) 300 *et seq.* and Chapter 392-172 of the Washington Administrative Code (WAC).

2. A District has the duty of proving compliance with the IDEA at the administrative hearing, including the appropriateness of its evaluation and its proposed placement for the student. 34 CFR § 300.503(B); *Clyde K v. Puyallup District*, 35 F.3d 1396, 1398 (9th Circuit, 1994).

3. The IDEA assures all disabled children receive a free, appropriate public education (FAPE). 20 USC § 1400(c) and § 1412(1). The IDEA provides federal money to assist states in educating disabled children and conditions such funding upon the states' compliance with extensive goals and procedures. *Seattle School District v. B.S.*, 82 F.3d, 1493, 1500 (9th Circuit, 1996) 1500. *See also Board of Education v. Rowley*, 458 U.S. 176, 179, 102 S.Ct. , 3034 (1982).

4. FAPE is defined by 20 U.S.C. § 1401(a)(18) of the IDEA as:

special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with

the individualize education program required under section 1414(a)(5) of this title.

For purposes of the IDEA “special education” means “specifically designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability.”

20 U.S.C. § 1401(a)(16).

5. The Ninth Circuit has held:

An ‘appropriate’ public education does not mean the absolute best or ‘potentially maximizing’ education for the individual child. . . . The states are obliged to provide a basic floor of opportunity through a program individually designed to provide educational benefit to the handicapped child.

B.S. 82 F.3d at 1500, quoting from Union School District v. Smith, 15 F.3d 1519, 1524 (9th Circuit, 1994). “[T]he basic floor of opportunity provided by the Act consists of access to specialized instruction and related services. . . .” B.S. 82, F.3d at 1500; Rowley, 458 U.S. at 201, 102 S.Ct. at 3048.

6. The Ninth Circuit has also held “Congress did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial.” *Amanda J. v. Clark County School District, 267 F.3d 877 (9th Cir. 2001)*. Contrary to the Parents’ argument, the Ninth Circuit has never held the IEP must provide “substantial” educational benefit. The standard is the IEP must be reasonably calculated to provide meaningful educational benefit. *B.S. 82 F.3d at 1500*. Meaningful educational benefit is somewhere in between substantial and minimal or trivial.

7. There are both procedural and substantive tests to evaluate compliance with the IDEA. The Court must inquire:

First, has the district complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?

B.S., 82 F.3d at 1498-1499; *Rowley*, 458 U.S. at 206-07.

8. The Parents in this case have stipulated there are no procedural violations. Therefore, the only question is whether the January 2002 IEP proposed by the District is reasonably calculated to enable the Student to receive meaningful educational benefit.

9. There is no real dispute between the parties regarding the present levels of performance and the goals and objectives set forth in the January 2002 IEP. The parties agree the goals and objectives for the Student, which are designed for the Student to use [REDACTED] as his means of [REDACTED], are appropriate. If the Student could achieve the goals and objectives in the January 2002 IEP, the parties agree the Student would be making sufficient educational progress.

10. The disagreement of the parties is whether the [REDACTED] program, which uses a [REDACTED] method, would provide the Student with meaningful educational benefit. The Parents argue placement at [REDACTED] does not consider the Student's [REDACTED], which is [REDACTED]. The District argues the Student's [REDACTED] is the English language.

11. 34 CFR § 300.346A(2)(iv) provides:

(2) Consideration of special factors. The IEP team also shall--

...
(iv) Consider the communication needs of the child, and in the case of a child who is [REDACTED] consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and [REDACTED], academic level, and full range of needs, including opportunities for direct instruction in the child's language and [REDACTED].]

(Emphasis added.) The regulation does not define [REDACTED]. In 34 CFR § 300.19(b) the legislature stated:

For an individual with [REDACTED] or for an individual with no written language the [REDACTED] s that normally used by the individual (such as [REDACTED] or [REDACTED])

Based on the use of the term [REDACTED] in 34 CFR § 300.19(b), the term [REDACTED] in 34 CFR § 300.346A(2)(iv) means whether the Student [REDACTED] or uses [REDACTED] to express himself.

12. Therefore, 34 CFR § 300.346A(2)(iv) directs the IEP team must consider the fact the Student's [REDACTED] is oral. In this case, the IEP team did consider the Student's [REDACTED]. The entire IEP is directed at improving the Student's [REDACTED]. The debate between the Parents and the District is what method, [REDACTED] or [REDACTED] to use to teach the Student to achieve the IEP goals.

13. The Court, in *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340 (Tex. 1993), addressed a similar issue. *Bonnie Ann* involved a [REDACTED] with [REDACTED] who was attending a [REDACTED] which used the [REDACTED] method to teach the students. The parents decided that an [REDACTED] method was appropriate and removed the child from the school. The Court, in *Bonnie Ann*, held:

... Specifically, the complaint alleges that CISD [school district] failed to provide a free appropriate public education for Bonnie 'because of the language or communication method used in the teaching methodology.' Complaint, P 4.01. However, the question presented in this action filed under § 1415 (e)(2) and (e)(4)(A) is not whether an [REDACTED] methodology is generally superior to the [REDACTED] methodology in the education of [REDACTED] children. 'Philosophical debates concerning the best method of educating the [REDACTED] are best left to educators who consider this problem their metier.' *Visco v. School Dist. of Pittsburgh*, 684 F. Supp. 1310, 1313 (W.D. Pa. 1988). As the Court stated in *Rowley*,

In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States. The

primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child.

102 S. Ct. at 3051. 'A major part of the task of local and state officials in fashioning what they believe to be an effective program for the education of a handicapped child is the selection of the methodology or methodologies that will be employed.' *Lachman v. Illinois State Board of Educ.*, 852 F.2d 290, 296, 1988 U.S. LEXIS 9966 (7th Cir.), cert. denied, 488 U.S. 925, 102 L. Ed. 2d 327, 109 S. Ct. 308 (1988). 'Parents, no matter how well-motivated, do not have a right under the [Act] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child.' 852 F.2d at 297. . . . "Rowley makes clear that 'once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the State.'" *Lachman*, 852 F. 2d at 294 (citation omitted).

Bonnie Ann, 835 F. Supp. 347. Similarly, in this case, the Parents are arguing with the methodology, [REDACTED], which the District intends to use to educate their child. Which education methodology to be used is left to the discretion of the District.

14. The Parents argue that *Bonnie Ann F. v. Calallen Independent School District* is not applicable because it was issued in 1993 and there were substantial changes to the Federal Regulations in 1997. However, Congress in 1997 did not change the courts' decisions that methodology, or how to teach a student, is left to the discretion of the school districts.

15. The Parents' reliance on *Board of Education of Paxton-Buckley-Loda v. Jeff and Debbie S.* 184 Fed. Supp.2d 790 (CD Il. 2002) is also misplaced. First, the court in *Jeff and Debbie S* noted that [REDACTED] was a method of teaching students. *Id.* at 800. Second, the Parents in *Jeff and Debbie S* were not arguing that the School District did not take into consideration the [REDACTED] of the student. The Parent argued that [REDACTED] required the Student attend a class with all typically developing peers and not a self-contained special education classroom. Therefore, the

Parents argued the School District's placement was not the Least Restrictive Environment (LRE) for the student. Also, the School District in *Jeff and Debbie S* committed several severe procedural errors which resulted in a denial of FAPE. In this case, the Parents agree there were no procedural errors.

16. The District has established the January 2002 IEP is reasonably calculated to provide meaningful educational benefit to the Student that is more than minimal or trivial. Based on the opinions of the experts presented by both parties, the goals and objectives are appropriate for the Student. The District's experts established that the Student should progress sufficiently using the [REDACTED] method of teaching. Even the Parents' experts agree the Student will receive educational benefit from the proposed placement at [REDACTED] Testimony of Culver.

17. The Parents' argument the Student would regress if he was exposed to [REDACTED] is too speculative. Prior to January 2002, the Student has never attended any other [REDACTED]. He is [REDACTED] years old and this was to be his first exposure to any type of schooling. It is difficult to predict how the Student will do in an environment without the Student being exposed to any type of school environment. However, even the studies relied upon by the Parents show students who participate in [REDACTED] [REDACTED] receive meaningful educational benefit. The studies may show that the [REDACTED] program will provide more benefit and is the better education for the Student. But, the District is not required to provide the best education. As indicated earlier, "Parents, no matter how well-motivated, do not have a right under the [Act] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." 852 F.2d at 297.

Least Restrictive Environment

18. Although not clear, the Parents may be arguing that the program at [REDACTED] is not the LRE for the Student. LRE requirements are outlined in WAC 392-172-172(1) and (2) as follows:

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.

19. The Ninth Circuit Court in *Sacramento City Unified School District v. Rachel H.*, 14.F.3d 1398 (9th Circuit, 1994), outlined the factors to consider in a LRE. They are:

- (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.

20. The Parents have never requested the Student be placed in a classroom with all typically developing peers. Based on the testimony of the parties, placing the Student in a classroom with all typically developing peers is not appropriate

for the Student based on his communication difficulties. It is a concern, however, that the [REDACTED] program does not have any typically developing peers in the classroom at all times. [REDACTED] graders who visit periodically are helpful, but may not be enough.

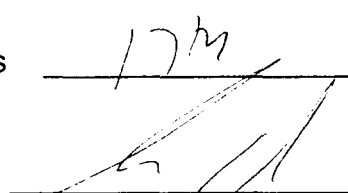
21. Taking into consideration the Student's unique needs and situation, the [REDACTED] program is still the LRE for the Student at this time, even though it does not contain typically developing peers. The Parents and their experts are satisfied that the typically developing peer modeling in the [REDACTED] program is sufficient. The modeling consists of the Student's two [REDACTED] and one other child. As the Student has the fortune of having [REDACTED] his [REDACTED] at all times with him when he is not in school, it appears he has sufficient peer modeling at home.

22. As the District has provided a FAPE, there is no need to address the remaining issues raised by the Parents who are not entitled to reimbursement for private school tuition if the District provided a FAPE.

DECISION

The January 2002 IEP proposed by the District provides a free and appropriate public education which is reasonably calculated to provide meaningful educational benefit to the Student. Therefore, the Parents' hearing request for private placement and reimbursement is hereby denied.

Dated at Seattle, Washington this 17th day of July, 2002.



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.

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 the date set forth on the first page of the decision by depositing a copy of the same in the United States mail, postage prepaid, addressed to the following:

Parents



Steven Shea
Attorney at Law
PO Box 1269
Everett, WA 98206

Michelle Corker-Curry
Special Education Department
815 Fourth Ave N
Seattle, WA 98109

Brenda Little-Latham
Deputy General Counsel
814 Fourth Avenue N
Seattle, WA 98109