

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

IN THE MATTER OF:

WEST VALLEY SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2002-SE-0056

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

A hearing was held before Administrative Law Judge Ralph Thompson, Jr. on June 6, 2002, at Yakima, Washington. The student's father appeared, as did the student. West Valley School District (the District) appeared and was represented by Dr. Hans Michielsen, Director of Special Services. School psychologist, Katie Vandemark, and teacher, Judy Frisbee, also appeared.

STATEMENT OF THE CASE

The District filed an appeal with the Office of the Superintendent of Public Instruction (OSPI) on May 7, 2002, indicating that the student and his father have refused special education services. The District believed that the student is eligible and in need of such services.

FINDINGS OF FACT

1. The student (date of birth [REDACTED]) is nearing his [REDACTED] birthday and has earned [REDACTED] of the [REDACTED] credits required for [REDACTED] from [REDACTED] School.
2. The student first received special education services in the West Valley School District in 1992, while he was in the [REDACTED] grade. He received half-hour reading instruction in the Resource room. He continued to receive special education services, focusing on reading, writing, and study skills, through the [REDACTED] grade. In the [REDACTED] grade, the student transferred to the Yakima School District, where he continued to receive services.
3. The student returned to the West Valley School District for the 2001-2002 school year as a [REDACTED] grader. He has not been receiving special education services. He, as indicated, presently has only [REDACTED] credits and needs [REDACTED] credits to [REDACTED]. Credits are normally earned at the rate of six per year. He is therefore over [REDACTED] years behind and will be [REDACTED] in July 2002. It is anticipated that the student will earn at least two credits this year at the school.

4. Toward the end of the second trimester the District requested an IEP meeting with the student's father. This was rejected by the father as he believes firmly that the student does not need special education services and that the special education services that have been offered have not helped.

5. The father's firm belief, shared by the student, is that the student simply is not trying and that, with hard work, he will find success. According to both of them, there is a lack of determination and desire to apply himself.

6. The "disability" which qualified the student for special education services was determined while the student was in the [REDACTED] grade. It was essentially a statistical analysis which compared the student's IQ results with his academic achievement. There has not been an individual diagnosis of a disability by a health care professional. The last re-evaluation was completed by the Yakima School District in fall 2000, and relied on the comparative statistical analysis to determine the student continued to be a special education student.

7. In [REDACTED] school, the student was given [REDACTED] for a period of time and it made no difference. The student has not been [REDACTED] and was never tested for [REDACTED] or [REDACTED]. The father is firm in his belief that it would not be detrimental to the student to remove services.

8. There is no evidence that the student did better while in the special education program than he did when he was in school without the program.

9. The student is presently taking an Internet class through [REDACTED] (with the consent of the District) to try to bring his credit total up. He has been working on this for approximately two months. The student's grades are better this year without special education services.

10. The District has no evidence that the student has benefitted from special education services. It appears his principle problem is lack of motivation.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. Section 1401 *et. seq.* (Individuals with Disabilities Education Act (IDEA)), Chapter 28A.155 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR 300 *et. seq.*, and Chapter 392-171 WAC (or Chapter 392-172 WAC for cases arising after November 11, 1995).

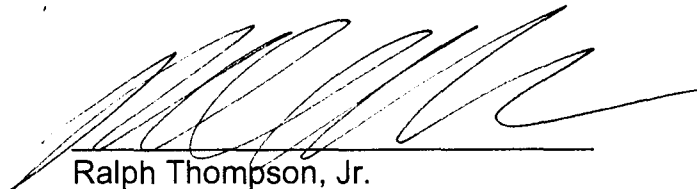
2. WAC 392-172-186(2)(a) provides the process by which a re-evaluation group may determine whether the student continues to be eligible for special education, or not. WAC 392-172-186(3) permits a determination by the group even without a meeting. That is essentially what these parties have done. The parent and student agree the student is not a special education student, and the District does not object to this result.

3. Because there is no evidence that the student has benefitted from special education services, and because the initial disability evaluation came about because of the discrepancy between the student's ability and academic performance under WAC chapter 392-172, and because the student and his father firmly believe that the student does not need special education services, and finally because the evidence does not establish that it would be detrimental to the student to remove services, it is concluded that the student is not eligible for special education services and the parent and the student need not participate with the District in an IEP meeting to develop a special education program for the student.

DECISION AND ORDER

The student is not eligible for special education services and need not participate in an IEP meeting.

Dated at Yakima, Washington this 20th day of June, 2002.



Ralph Thompson, Jr.
Administrative Law Judge
Office of Administrative Hearings

RT:mb

APPEAL RIGHTS

Pursuant to 20 U.S.C. 1415 (e) (individuals with disabilities education act) and chapter 34.05 RCW, this matter may be further appealed to a court of law. The 30-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.

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 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.

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 June 20, 2002, by depositing a copy of the same in the United States mail, postage prepaid, addressed to the following:

Copies were sent to:

Parents



Dr. Hans Michielsen, Director
Special Services
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