

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

MAILED

MAR 06 2003

IN THE MATTER OF:

Cheney School District

SPECIAL EDUCATION Office of Administrative Hearing
Spokane
CAUSE NO. 2002-SE-0139

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

A hearing in the above-entitled matter was held before Administrative Law Judge Wynne O'Brien Persons in Spokane, Washington on February 4 and 5, 2003. Appellant, parent of the Student (Parent), was present at hearing and represented by Rosemarie Thurman and Hillary Behrman, Attorneys at Law from TeamChild. The Cheney School District (District), was present through Marilyn Larson, Director of Special Education, for the District, and represented by Gregory Stevens, Attorney at Law. The Administrative Law Judge, having sworn the witnesses, heard testimony, and considered the admitted exhibits and arguments of the parties, hereby enters the following:

STATEMENT OF THE CASE

The Parent, through TeamChild, filed a request for due process hearing with the Office of Superintendent of Public Instruction on November 12, 2002. The Office of Administrative Hearings ("OAH") mailed to the parties a Notice of Prehearing Conference and Notice of Hearing on November 13, 2002 with an assigned docket number of 2002-SE-0139. A prehearing conference was held on November 21, 2002 with a second prehearing scheduled for December 19, 2002 and a hearing date of January 9 and 10, 2003. The forty-five day deadline was extended from December 27, 2002 until February 14, 2002.

An unscheduled prehearing conference was held on or about December 19, 2002. The parties requested a postponement of the hearing from January 9 until February 4, 2003. The hearing was postponed until February 4, 2003, with the forty-five day deadline again being extended from February 14 until March 12, 2003.

ISSUES

The Parent requests that the Student be declared eligible for special education services and that an IEP be developed to address the Student's educational needs. The Parent also requests compensatory education beginning in the fall, 2001, arguing that the Student should have been identified as in need of special education at the time of enrollment into the District.

EXHIBITS AND WITNESSES

Witnesses for the Parent were the Parent himself; the Student; Tad Jaccard, M.D., Psychiatrist; and K. Mark Derby, Ph.D., Associate Professor and Licensed Psychologist at Gonzaga University.

Witnesses for the District were [redacted] School Psychologist; [redacted] Teacher; [redacted] Teacher; [redacted] Teacher; [redacted] Assistant Principal; [redacted] Instructional Assistant; [redacted] School Counselor; Kim Chupurdia, Ph.D., Private Psychologist; and Marilyn Larson, Director of Special Education.

The following exhibits were admitted:

District exhibits 1, 2, 4 through 9, 12 and 13.

Parent exhibits 100 through and including 140.

FINDINGS OF FACT

1. The Student was born on [redacted] 1989. He resides with his father and two sisters in Cheney, Washington, within the Cheney School District (District) boundaries. At the time of the hearing the Student was 13 years old and attended 8th grade at [redacted] Middle School.

2. The Student came to live with his father in August, 2000. His parents had separated when he was two years old and he lived with his mother until he was eight years old. The Student was removed from his mother by Child Protective Services (CPS) and placed in foster care. The Student was placed in at least five different foster homes and attended five different schools in three districts during this time.

3. The Student was hospitalized in the children's psychiatric ward at Sacred Heart Hospital in Spokane from August 31, 1998 through September 7, 1998. (Exhibit 100). He was diagnosed with Oppositional Defiant Disorder (ODD), Probable Reactive Attachment Disorder, and Mood Disorder NOS (Not Otherwise Specified). The psychologist at Sacred Heart, Dr. Kevin Heid, found that the Student's "behavioral acting out may very well be his primary defense against uncomfortable and painful feelings of sadness and anxiety."

(Exhibit 101).

4. The Student attended the Behavioral Education Skills Training (BEST) program, a day treatment program that integrates mental health treatment with education, following his hospitalization. (Exhibit 103). It was concluded that the Student did not suffer from Attention Deficit Hyperactivity Disorder (ADHD) but that his anxiety scores were elevated. The Student was prescribed Buspar, an anti-anxiety medication.

5. The Student began outpatient therapy at Spokane Mental Health following his discharge from BEST. (Exhibit 104). This therapy ended in September, 1999 when the Student was placed in a new foster home.

6. The Student began weekly outpatient therapy with the Children's Home Society (Society) after he came to live with his father in August, 2000. It was recommended that the Student re-enter the BEST program and did so on July 10, 2001. The Student was diagnosed at the BEST program as suffering from Generalized Anxiety Disorder and Depression.

7. The Student began weekly outpatient therapy with Claire Aberasturi, M.S., at the Society after he left the BEST program. (Exhibit 106). The Student has continued with weekly therapy and receives monthly medication therapy from Dr. Tad Jaccard, Spokane Mental Health. Dr. Jaccard first saw the Student in December, 2001, and diagnosed the Student with Post Traumatic Stress Disorder (PTSD); ADHD; ODD; and Depression NOS. (Exhibit 107).

8. The Student was enrolled in _____ Elementary School during the 2000-2001 school year, his sixth grade year. The Student's grades at the end of his sixth grade were two A's, four B's, and two C's, with numerous plus and satisfactory marks. The Student's final sixth grade marks were a vast improvement from his beginning of the year marks. Throughout his sixth grade it was noted that the Student's temper and social behavior, both marks of Emotionally Behavioral Disability (EBD), were the most significant deterrent to the Student's educational success.

9. The Student was enrolled into the _____ Middle School in September, 2001. Upon enrolling in the Cheney Middle School the Student's Parent filled out a student placement questionnaire (Ex. 118). On this questionnaire the Parent indicated that the Student had ODD/anxiety and was taking medication (Buspar). Middle school counselor, _____ spoke with the Parent regarding this information and was told by the Parent that the Student's prior elementary school year was fine and that he did not expect any significant problems. Ms. _____ also checked the Student's prior elementary years and confirmed that he had been successful.

10. The District sends out, every Fall, a notice to all patrons of the District informing them of the special education child find procedures. This notice informs patrons of the special education procedures and processes for referring any student they believe may require or warrant a special education assessment for services. Such a notice was sent out in the Fall of 2001.
11. The Student's seventh grade year was difficult. He had two in-school interventions for disruptive behavior and received short-term suspensions on October 30, 2001 and December 14, 2001.
12. On November 1, 2001 the Student's name was brought up at a middle school staff meeting regarding the concerns that existed about his behavior. The Student was, however, still exhibiting grade level performance in his classes. The team decided not to refer him for special educational assessment because they did not believe a significant educational impact was occurring. (Ex. 134).
13. On January 10, 2002 the Student was expelled from the middle school for making comments of a threatening nature to school staff. The Student's statement leading to the expulsion arose from a dispute with another student where the Student was taken to the office. While at the office the Student stated words to the effect that while he would not hurt other students he might hurt adult staff. (Exhibit 128).
14. Some of the Student's behavioral problems during the 2001-2002 school year were attributable to the lack of medications and contact with his mother. Contact with his mother was a particular trigger for poor behavior. On January 10, 2002, the day the Student was expelled, the Student forgot to take his medications and had been rejected by his mother two days prior.
15. The Student's medications became stabilized in mid-summer 2002.
16. The Student's grades at the time of expulsion were three F's, one D, one C, one B, and one "no grade". (Exhibit 129).
17. The Student attended the _____ after he left the District. The _____ is an alternative school. The Student was expelled from the _____ on approximately March 11, 2002 for pulling a knife on another student. (Exhibit 132). The Student asked for readmission into the District. (Exhibit 130). That request was denied for the remainder of the school year. (Exhibit 131).
18. In early June 2002 District Director of Student Services, Marilyn Larson, received a psychological report from private psychologist Dr. Kim Chupurdia. This report diagnosed the Student as suffering from post-traumatic stress disorder (PTSD). (Ex. 132) In light of

this report and diagnosis, Ms. Larson referred the Student for special education assessment. (Ex. 134) Prior to receiving this report from Dr. Chupurdia, Ms. Larson had not heard of this Student.

19. At approximately the same time the Parent, through his attorney, requested that District assess the Student for special education or Section 504 services. The Parent requested that the assessment be expedited and, if school staff were not available over the summer, that it be conducted by Dr. Kim Chupurdia as an independent assessment.

20. The District, through Marilyn Larson, authorized and approved of Dr. Chupurdia to conduct the initial assessment of Student.

21. Dr. Chupurdia conducted a comprehensive assessment of Student in which she reconfirmed the diagnosis of PTSD. Dr. Chupurdia conducted an I.Q. test, finding Student's intelligence to be within the average range. Dr. Chupurdia also administered the Wexler Individual Achievement Test (WIAT) which found the Student performing at or above grade level in all areas except for reading comprehension. Dr. Chupurdia noted in her report that the Student's low scores on reading comprehension may be due to lack of focus and concentration. Dr. Chupurdia's report included recommendations for the Student's education. (Exhibit 133).

22. Dr. Chupurdia's report was provided to the District in August 2002. Upon receiving Dr. Chupurdia's report, District staff convened a meeting to discuss this assessment and any further information that was required. A decision was made that the District would conduct further assessments, gather further background information and then meet to decide the Student's eligibility. District staff, including school counselor and school psychologist, gained additional information from Student's records, conversed with the Parent, reviewed prior school records, and spoke with teachers.

Chair of the District's Special Education Department, also conducted another achievement test of Student using the Woodcock Johnson-3. Mr. administered the Behavior Assessment Scale for Children (BASC), a survey questionnaire of behaviors that was given to Parent and Ms., a teacher of Student during the Fall semester of 2001.

23. The assessment team, or Multidisciplinary Team (MDT), reconvened with this additional information on September 16, 2002. Included on the team were the Parent, Dr. Kim Chupurdia, Assistant Principal special education teacher Marilyn Larson, Director of Student Services, among others. (Ex. 1; 135) Team members shared their information regarding the Student, assessment data and background information. Discussions then centered around the Student's eligibility for special education, the need for an Independent Educational Plan (IEP), and what other services the Student required in order to benefit from and be

successful at school.

24. Assessment results showed that the Student has a intellectual ability level in the average range. Academic achievement test results show that the Student was functioning at or above grade level in all academic areas, including basic reading, reading comprehension, math calculations, math applied problems, and broad written language. Despite the low reading comprehension score obtained by Dr. Chupurdia's assessment, the Student's reading comprehension was found to be at or above grade level due to his above average performance on the Woodcock Johnson, administered on September 6, 2002. Student's vision and hearing screening were within normal limits.

25. The Student's scores on the BASC indicated significant problems in the area of hyperactivity, aggression, conduct problems, depression, and atypicality. The Student scored in the average range in areas rating adaptive skills, attention problems, somatization, leadership, study skills and learning problems.

26. Evidence did not support a finding that the student was learning disabled or that the student suffered from Attention Deficit Hyperactive Disorder or was otherwise health impaired. The MDT did conclude that the Student suffered from an Emotional/Behavioral Disability (EBD).

27. In considering all of the information, and particularly in light of the Student's strong academic skills and relatively successful academic experience, the MDT concluded that the Student did not require specially designed instruction and therefore did not qualify as a special education student. Rather, the team concluded that the Student needed to be referred to a Section 504 team to determine eligibility under Section 504.

28. The Student was referred to a Section 504 team where a 504 accommodation and behavioral plan was developed. (Exs. 4; 136). The 504 plan (Exs. 4; 136 and 5; 137) provided for redirection of the Student, reminders to use relaxation techniques, earned reinforcements, clear and understandable consequences, opportunity for voluntary timeouts, processing data for the Student to reflect and consider inappropriate choices, and the opportunity to earn back privileges. The plan also provided the Student with an aide, a physical search of the Student at the beginning of the day, that the Student would begin with five out of seven class periods, and that he would be provided individual transportation. In accordance with the recommendations of service providers, the plan provided for strict accountability of Student's behavior and compliance with school rules.

29. The Student engaged in argumentative and disruptive behavior which resulted in several short-term suspensions during the first part of the 2002-2003 school year. The Student was suspended for a total of 14 days during the first several months of the 2002 school year. None of the Student's conduct, however, was of a violent or threatening

nature.

30. The Student's behavior and success under the 504 accommodation plan resulted in a discontinuation of the before school searches, gained the Student an additional class period and allowed him to ride a school bus in the morning to school. The one-to-one aide for the Student became increasingly removed so that the interactions between the aide and Student were mild and infrequent. Overall, the Student's performance indicated that the 504 plan was working. (Ex. 6).

31. Middle School's first semester of school concluded in late January 2002. Student's success at school was shown by his grade point average of over a 3.00, earning him a place on the honor roll. The Student also exhibited appropriate interactions with teachers and peers.

32. Student's academic instruction followed the same curriculum, same books, same grading and work as all other regular education students.

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 284.155 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 funds 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 v. Rowley*, 458 U.S. 176, 103 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 Acts 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.

3. A "free appropriate public education" consists of both the procedural and substantive

requirements of the IDEA (formerly the EHA). The Rowley court articulated the following standard for determining the appropriateness of special education services:

According to the definitions contained in the (Education for All Handicapped Children Act) a 'free appropriate public education' consists of education instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the state's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items of the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as defined by the Act. 103 S. Ct. at 3041, 3042.

4. The evaluation of any student being considered for special education must be performed under the procedures set out in Chapter 392-172 Washington Administrative Code (WAC), specifically WAC 392-172-108.

5. The District used a variety of assessment tools and strategies to gather relevant functional and developmental information about the Student, including information provided by the Parent, that assisted in determining whether the Student is a special education student, as required by WAC 392-172-108(4). The District's evaluation did not solely rely upon any single procedure. *Id.* At (5). The tests given and the procedures used by the District were appropriately selected and administered to address the intended suspected disability.

6. The District is required to complete an evaluation report and document the determination of eligibility consistent with WAC 392-172-10905 through 392-172-111. See WAC 392-172-108(14). WAC 392-172-10905 provides the requirements for an evaluation report and documentation of determination of eligibility. The District has established compliance with these regulations.

7. The District has complied with the evaluation requirements as set forth in the law.

ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

8. " 'Special education student' means: (a) Any student, enrolled in school or not, (i) who has been identified as having a disability, (ii) whose disability adversely affects the student's educational performance, (iii) and whose unique needs cannot be addressed exclusively

through education in general education classes with or without individual accommodations and is determined to be eligible for special education services..." WAC 392-172-035(2). "If it is determined through an appropriate evaluation that a student has one of the disabilities identified in WAC 392-172-114 through 392-172-148, but only needs a related service and not specially designed instruction, the student is not a special education student under this chapter." Id at (3).

9. The Student has been identified by the District as having an Emotional/Behavioral Disability (EBD). See WAC 392-172-118. The District's conclusion is supported by the evidence. It is concluded that the Student has been identified as having a disability and meets the first prong of the special education student definition.

10. It is concluded that the Student's disability was adversely affecting his educational performance. See Seattle School District, No. 1 v. B.S., 82 F.3d 1493 (1996). Beginning in seventh grade, and prior to the implementation of the 504 Plan, the Student's EBD behaviors were interfering with the student's ability to learn. The Student's behaviors were forcing him out of the classroom. The Student's behaviors were preventing him from finishing assignments. The District recognized that the Student's behavior was interfering with his ability to learn. The District implemented a behavioral plan on October 19, 2001, with a revision on November 15, 2001. These behavior plans were unsuccessful and the Student was expelled due to his behavior. The Student's grades at the time of expulsion were three F's, one C, one B and one "no grade". This was a significant deterioration from his end of sixth grade marks of two A's, four B's, and two C's, with numerous plus and satisfactory marks. The Student's final sixth grade marks were a vast improvement from his beginning of the year marks. Throughout his sixth grade it was noted that the Student's temper and social behavior, both marks of EBD, were the most significant deterrent to the Student's educational success.

The Student began the eighth grade with a strict and structured behavioral plan, 504 Plan, that has seemed to work. It is concluded that the Student would not be educationally successful in the eighth grade but for his 504 Behavioral Plan. The Student's EBD adversely affects the Student's educational performance and must be addressed so that the Student may succeed educationally. The Student has met the second prong of the special education student definition.

11. The services the Student is receiving through the 504 Plan are positively affecting the Student's educational performance. The question then becomes whether the services provided for in the 504 Plan are specially designed instruction or a related service as contemplated in WAC 392-172-035(3). If the services in the 504 Plan are specially designed instruction, the Student is a 'special education student' and protected under the special education regulations.

12. "Related services include classified staff services, counseling services, early

identification and evaluation of disabilities in students, medical services, parent counseling and training, psychological services, recreation, rehabilitation counseling services, school health services, social work services in schools, and transportation. The list of related services is not exhaustive and may include other developmental, corrective, preventative or supportive services..." WAC 392-172-055(1). Classified staff services included services provided by classified staff which provide for the student's safety, personal care, and instructional assistance. Id at (2)(a)(i). Psychological services include assisting in developing positive behavioral intervention strategies. Id at (2)(f)(vi).

13. "Specially designed instruction" means organized and planned **instructional** activities which adapt, as appropriate, to the needs of eligible students under this chapter, the content, methodology or delivery of **instruction**:

- (i) To address the unique needs that result from the student's disability;
- (ii) To ensure access of the student to the general curriculum so that the student can meet the educational standards of the school district or other public agency that apply to all students; and
- (iii) That is provided by appropriately qualified special education certificated staff, or designed and supervised by this staff and carried out by general education certificated personnel or trained classified staff pursuant to a properly formulated IEP consistent with WAC 392-172-160 (1)(c), so that the needs of the student and services provided to the student will be clear to the parents and other IEP service providers. Student progress must be monitored and evaluated by special education certificated staff.

WAC 392-172-045(4). (Emphasis added).

14. Not every disabled child who is advancing from grade to grade in a regular public school system is automatically receiving a FAPE in accordance with the requirements of Rowley. Rowley, 458 U.S. at 203, n. 25. "The fact that a child, despite a disability, receives some educational benefits from regular classroom instruction should not disqualify the child from eligibility....Denying special education benefits because [a student] is able to pass from grade to grade despite documented impairments that adversely affect his educational performance is wrong." Corchado ex rel. Corchado v. Board of Educ., 86 F.Supp. 2d 168, 176 (W.D.N.Y. 2000).

15. Specially designed instruction is not necessary for this Student to receive educational benefit from the general education curriculum and the Student is, therefore, not a special education student. The specially designed instruction definition found in WAC 392-172-045(4) is unclear. It does not define the term "instruction." It is the adaptation of the content, methodology, or delivery of the "instruction" that determines whether classroom adaptations are "specially designed instruction." The parties have failed to provide a definition of the term "instruction." Prior case law and legislative intent are reviewed to

determine the meaning of the word.

The purpose of special education is to provide "free appropriate public education" to all students, including those with special needs. Free appropriate public education consists of **educational** instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Rowley, 103 S. Ct. at 3041 (Emphasis added).

The Student in this case is not receiving specially designed "educational" instruction as contemplated by the IDEA. The Student is receiving services necessary for the Student to benefit from the general curriculum instruction, but not specially designed educational instruction. The services the Student is receiving under the facts of this case are related services and not specially designed instruction.

It was unclear from the hearing record why the Student wishes to be considered a special education student. The behavioral plan under which the Student is currently operating is working. The Student has been modifying his behavior and receiving benefit from the plan by so doing. The Student is learning appropriate social interactions that need to occur in the general education population, not in a specially designed instruction setting. The Student is excelling with both the general curriculum and the general education population and should not be removed from such for special education instruction. The Student is learning to deal with the issues in his world. It is unclear why it would be beneficial to label the Student as a special education student when he is excelling socially and academically in a general education world.

CHILD FIND REQUIREMENTS

16. Generally, the District is required to conduct "child find activities that apply to students ages birth through twenty-one for the purpose of locating, evaluating, and identifying students with suspected disability, regardless of the severity of their disability, who are residing within the boundaries of the district. . . ." WAC 392-172-100(1). Child find activities must be calculated to reach...[s]tudents who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade. *Id.* at 3. The local school district, or other public agency shall have policies and procedures in effect that describe the methods it uses to conduct child find activities. *Id.* at (4). A special four part test is used to determine whether a school district knew or should have known that a student was in need of special education services when there has been a disciplinary exclusion. See WAC 392-172-38410.

17. Generally, referrals of students suspected of having a disability "may be initiated by any source in writing . . . including but not limited to parents, medical personnel, school district, or other public agency personnel, community agencies, civil authorities, through district screening procedures and by other interested persons." WAC 392-172-102.

18. The Student was referred for special education assessment on June 13, 2002 by Marilyn Larson. No prior referral was made. It is the parents contention, however, that the District knew or should have known at an earlier date that the student was in need of referral for a determination as to whether or not the student was a candidate for evaluation and, if so, whether he was in need of special educational services. Except in situations involving disciplinary exclusions, the statutes and the regulations are silent on the issue of when a District knew or should have known that a student should be referred due to a suspected disabling condition for a determination of whether the student should be assessed for special education services. A standard that can be applied in making this determination is well stated at *Clay T. v. Walton County Sch. Dist.*, 26 IDELR 409 (U.S. District Court, Middle District of Georgia, 1997). In that case, the parents of a student argued that a District had failed to meet its obligation to refer Clay T. for evaluation. The Court stated in part, as follows: “. . . in order to establish that the school violated the identification requirements of IDEA, Plaintiff must show that the school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate. . .” *Clay T.*, 25 IDELR at 412.

19. It is concluded that the District neither knew nor should have known prior to the referral on June 16, 2002, that the Student was a candidate for special education evaluation. There existed in this case no “clear signs of disability” and the District presented logical and rational reasons for not referring the Student. The fact that the Parent indicated on the Student’s enrollment questionnaire that the student had ODD/anxiety and was taking a medication does not, in and of itself, require referral. Likewise, poor academic performance alone is not sufficient to constitute a basis of knowledge in the District that the student is in need of referral for special education services. *Sonoma Valley Unified School District*, 31 IDELR 153 (1999). The Student’s academic and school performance was not so severe or suggestive of a disability so as to require that District staff refer him for special education assessment.

20. When there has been a disciplinary exclusion, WAC 392-172-38410(1) provides a four-part test in determining whether a school district knew or should have known that a student was in need of special education services at the time of the exclusion. The Student had been involved in disciplinary exclusions during his seventh grade year so WAC 392-172-38410 applies. The four part test is as follows:

- (a) The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational or other public agency that the student is in need of special education and related services;
- (b) The behavior or performance of the student demonstrates the need for these services in accordance with this chapter;

(c) The parent of the student has requested an evaluation of the student pursuant to this chapter; or

(d) The teacher of the student, or other personnel of the district or other public agency, has expressed concern about the behavior or performance of the student to the director of special education of the district or other public agency or to the other personnel of the district or other public agency in accordance with the established child find or special education referral system.

21. The District did not know or should have known that the Student was in need of special education services at the time of the Student's disciplinary exclusions during the 2001-2002 school year. The Parent expressed no concerns in writing that the Student was in need of special education. Neither did the Parent request an evaluation of the Student. *The academic and behavioral difficulties the Student was demonstrating did not indicate to the District's professional staff that the Student was in need of referral. Poor academic performance and behavioral difficulties does not in and of itself equate to a need for a district to evaluate a student for possible special education services. This is particularly true when the District is attempting other interventions first. Lastly, no personnel of the District expressed concerns about the behavior or performance of the student to the District's Director of Special Education or in accordance with District child find procedures. In fact, the District personnel had reviewed the Student's behavior and academic record and concluded the Student did not need to be referred for special education. The District acted in a timely manner when it referred and conducted its assessment of the student. The District complied with all applicable child find requirements.*

SUMMARY

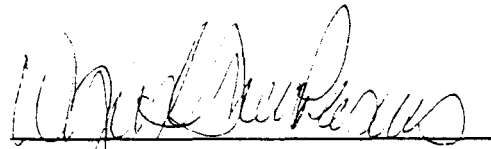
22. Based on the foregoing facts and analysis of the law , it is concluded that the District's initial evaluation of the Student on September 16, 2002 was appropriate. Accordingly, the District's determination that the Student is not currently eligible for special education is also appropriate.

23. Finally, it is important to note that the District does not dispute that the Student has challenges. They recommend Section 504 accommodations as needed, and the careful monitoring of the Student's progress. The evidence demonstrated that the District is receptive and responsive to issues raised by the Parent. *The Student is also fortunate to have his Parent as a staunch advocate for his continued success at school.*

ORDER

1. The District has complied with the procedural and substantive requirements related to the September 16, 2002 initial evaluation of the Student, and appropriately determined that the Student is not currently eligible for special education.
2. The Parent's request to find the Student eligible for special education is **DENIED**.
3. The request for compensatory education for the 2001-2002 school year is **DENIED**.

Filed on the date of mailing.



Wynne O'Brien Persons
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. § 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 thirty-day time limit for filing a petition for judicial review commences with the date of the mailing of this decision.