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

VANCOUVER OFFICE OF  
ADMINISTRATIVE HEARINGS

IN THE MATTER OF

SPECIAL EDUCATION CAUSE NO.  
2003-SE-0159

Evergreen School District

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

Gina L. Hale, Administrative Law Judge, conducted a hearing in the above-entitled matter in Vancouver, Washington, on May 10, 11, 12, and 13, 2004. The Appellant Parents, JF (Father) and GF (Mother), were represented by David Girard, Attorney at Law with the Washington Protection and Advocacy System (WPAS). The Evergreen School District (hereinafter "District"), was represented by Lawrence Ransom, Attorney at Law.

**STATEMENT OF THE CASE**

Procedural History

On November 25, 2003, the Parents filed a due process hearing request with the Office of the Superintendent of Public Instruction (OSPI) on behalf of their minor child. The hearing request was forwarded to the Office of Administrative Hearings, and on December 3, 2003, notice was sent to the parties scheduling a prehearing telephone conference for December 11, 2003, and a due process hearing for December 30, 2003.

Prior to the prehearing conference, the parties agreed to and requested a continuance of the proceeding because the representatives were not available at the scheduled time. By notice dated December 5, 2003, the prehearing conference was rescheduled for December 16, 2003.

On December 16, 2003, the prehearing conference was held. The Parents were represented by David Girard, Attorney at Law. The District was represented by Lawrence Ransom, Attorney at Law. At the prehearing conference, the Parents, through their attorney, requested additional time to submit an amended request for due process hearing in order to clarify the issues. The motion for continuance was granted.

On January 5, 2004, the Parents provided their amended request for due process hearing which listed 15 complaints against the District. The District was given until January 16, 2004, to submit any motions in response to the amended request, which it did. The

Appellant was then given until January 23, 2004, to submit any reply motions. On February 10, 2004, the parties were given an opportunity to provide oral argument in support of their requests and motions.

At the February 10, 2004, prehearing conference, the District made a Motion to Dismiss certain issues for lack of jurisdiction. The Administrative Law Judge ruled that she did not have jurisdiction over the following issues and remedies, and the Appellant had not established under what authority the undersigned did have jurisdiction:

Issues

1. Whether, for the student's Ninth, Tenth, Eleventh, and Twelfth grade school years, the District:
  - a. Met the requirements for vocational education under the Carl Perkins Vocational and Technical Education Act of 1998;
  - b. Violated the anti-discrimination provisions of the Carl Perkins Vocational and Technical Education Act of 1998;
  - c. Violated the anti-discrimination provisions of RCW 49.60 and WAC 162-26 and 162-28;
  - d. Violated the due process and equal protection provisions of the state and federal constitution;
  - e. Negligently designed and implemented its Work Experience Program;
  - f. Violated its paramount duty under the Washington State constitution and RCW 28A.150 to amply provide the student with an education;
  - g. Had any contractual obligation to provide vocational education services under the Carl Perkins Vocational and Technical Education Act of 1998; or
  - h. Violated any special relationship to the student to provide a free and appropriate public education (FAPE) under the theory of public duty.

2. Whether, for other students similarly situated, the District's Work Experience Program:

OFFICE OF  
ADMINISTRATIVE HEARINGS

**DEC 15 2004**

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- a. Discriminated against those students in violation of the Americans with Disabilities Act,
- b. Discriminated against those students in violation of Section 504.

Remedies

1. A binding written agreement be entered into among the District, the student at issue, other similarly situated students, and W.P.A.S.;
2. Notification to other similarly situated students regarding the possibility of compensatory vocational education and other possible remedies;
3. Monetary damages;
4. Attorney's fees and costs; and
5. Compensatory vocational education for all similarly situated special education students.

The due process hearing was held May 10, 11, 12, and 13, 2004. The decision due date was extended to thirty days from the close of the record following the parties' submissions of Post-Hearing Briefs, Reply Briefs, and Proposed Findings of Fact and Conclusions of Law on October 8, 2004. The original date for the hearing was changed at the request of the parties from December 30, 2003. The record closed on November 8, 2004, following the submission of the Post-Hearing Briefs, Reply Briefs, and Proposed Findings of Fact and Conclusions of Law. The date on which the record closed was extended to November 30, 2004, at the request of the Administrative Law Judge and by agreement of the parties.

Evidence Relied Upon

Exhibits Admitted:

Parents' Exhibits P-101, P-105, P-109 through P-112, P-116 through P-122, P-134, P-137, P-138, P-140, P-141, P-144, P-148 through P-150, P-172 through P-174, P-178, P-193 and P-194.

District Exhibits SD-201 through SD-250.

ALJ jurisdictional Exhibits 1 through 7.

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ADMINISTRATIVE HEARINGS

DEC 15 2004

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Witnesses Heard:

Parents, J.F. (father of the Student, NF) and G.F. (mother of the Student, NF);  
Robin Andrus, ██████████ High School Special Education Coordinator (Department  
Head);  
Candace Baker, District Director of Special Services;  
Debra Ball, ██████████ High School Supervisor of Custodians (Employed by American  
Building Maintenance);  
Kimberly Brown, ██████████ High School Special Education Teacher;  
Patricia Crawford, ██████████ High School Special Education Staff Assistant  
(Coordinator, Work Experience Program);  
Susan Dixon, District Director of Career and Technical Education;  
Richard Farr, District Coordinator of High School Special Education Programs;  
Michelle Prohoroff (Markle), Teacher CHOICE Program;  
Susan Nichols, ██████████ High School Special Education Teacher;  
Denise Snyder, ██████████ High School Custodian (Employed by American Building  
Maintenance);  
Dr. Jo-Ann Sowers, Ph.D., Co-Director, Center for Self-Determination, Oregon  
Institute of Development and Disability - Oregon Health Sciences University

**ISSUES**

The issues for hearing were set forth as follows in the Prehearing Order dated February 20, 2004. The statement of issues was intended to put the Parents' issues in a context relevant to the jurisdiction of a due process hearing. The ALJ relied on the Parents' amended due process request and the information presented in the prehearing conferences in developing the issues. The issues are as follows:

1. Whether, for the student's Ninth, Tenth, Eleventh, and Twelfth grade school years, the District failed in the drafting of the contents and the implementation of the student's Individual Education Plan (IEP).
2. Whether, for the student's Ninth, Tenth, Eleventh, and Twelfth grade school years, the District's Work Experience Program denied the student a free and appropriate public education (FAPE).
3. Whether, for the student's Ninth, Tenth, Eleventh, and Twelfth grade school years, the student was educated in the least restrictive environment under the District's Work Experience Program.

OFFICE OF  
ADMINISTRATIVE HEARINGS

DEC 15 2004

4. Whether the District provided the student with timely, appropriate and adequate transition planning services.
5. The timeliness of the Appellant's request for due process hearing.
6. Whether, if the District failed to provide FAPE to the student, the remedies should be as follows:
  - a. Compensatory vocational education for the student;
  - b. Required training for the District Special and Vocational Education staff at District expense;
  - c. Annual monitoring of the District's Vocational Education program for a period of three years; and
  - d. Whether the student should be awarded other equitable remedies, as appropriate.

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

#### Background

1. NF is the son of GF (mother) and JF (father). NF has lived with his family, within the boundaries of the Evergreen School District (District), during the time periods relevant to this case.
2. NF was born [REDACTED]. He turned [REDACTED] on [REDACTED].
3. NF has been eligible for special education and related services throughout his time as a student in the District beginning in the sixth grade.
4. Within the District, NF attended [REDACTED] Middle School. In the Fall of 2000, he enrolled as a ninth grader in [REDACTED] High School. His years at [REDACTED] High School, 2000 - 2004, are the subject of this due process hearing.
5. NF has a cognitive disability which includes communication and auditory processing issues. In the early years of his education, his eligibility category was

designated multi-handicapped, under Health Impaired (ADHD) and Communication Disorder. As of his eighth grade year, he was reclassified as having Severe Specific Learning Disability.

Initial Testing - Auditory Processing Issues

6. In the Fall of 1997, the District conducted an audiological assessment of NF. The test results noted problem areas which "could result in poor listening skills which contribute to poor academic performance and misunderstandings in social situations." The audiologist concluded, among other things, that NF would benefit from a) "small, structured classroom settings to improve auditory signals and his attention," b) "classroom amplification or the personal use of a low gain FM system," and c) "preferential seating away from noisy and high traffic areas."

7. A second audiology assessment was conducted in April of 2000. Similar problems were noted and similar solutions suggested, including a personal FM system.

8. A school psychologist assessment was also conducted on NF in Spring 2000. NF was found to have significant language processing difficulties and articulation problems, noting that this language disorder impacted NF's ability to follow classroom instruction and to give information to others. This resulted in his coming across as mildly retarded. While NF's problems are significant surrounding his verbal processing, the same conclusion could not be drawn for visual or performance based activities. The report noted that NF's relative weaknesses were "virtually all the verbal/auditory type of tasks." The Spring 2000 school psychologist report concluded that:

"In a setting, where most of the input is verbal in nature, [NF] will tend to function as a person who is mentally retarded. When the tasks are visual and the output recorded is performance based, with little or no verbal processing requirement, he is able to function like most of his peers."

It was in this report that the school psychologist recommended changing NF's handicapping condition from multi-handicapped under Health Impaired (ADHD) and Communication Disorder to Severe Specific Learning Disability due to "significant auditory processing difficulties."

9. NF was reevaluated for special education in May of 2000 by the District. In this re-evaluation report, the District concluded that he had a severe learning disability. The District determined that this "linguistic impairment" affected NF's education on a global basis and necessitated a multi-modal approach to learning. Additionally, the report noted that although NF's hearing and communication performance were significantly impaired,

his hearing screening results were within normal limits and he was never impaired enough to be officially categorized as a hearing impaired student. The report concluded that NF's auditory processing disorder was likely to be a contributing factor in NF's communication abilities.

10. A few months after his re-evaluation for special education in the Spring of 2000, NF began ninth grade at Heritage High School in the Fall of the 2000-2001 school year.

Ninth Grade IEP and Education (2000-2001)

11. In the Fall of 2000, NF was age of 15 when he entered high school. On October 11, 2000, NF's ninth grade IEP meeting was held. Present at the meeting were: a) GF, NF's mother, b) Susan Nichols, NF's ninth grade special education teacher and IEP manager, c) a district representative, and d) a related service provider. No regular / general education teacher was included on the team.

12. **IEP meeting discussion.** The completed IEP was handed to GF for her to follow along as Ms. Nichols reviewed each section with her. Ms. Nichols and GF had a brief discussion regarding NF's interests. There was no discussion regarding any Division of Vocational Rehabilitation (DVR) or Division of Developmental Disabilities (DDD) services. There was some discussion around NF's behavior of hitting his elbow and banging his head when frustrated.

13. **IEP Sections.** The District used a standardized IEP form. NF's ninth grade IEP contained a statement of "Present Levels of Performance," statements of "Goals and Objectives," a "Modifications Checklist for Specially Designed Instruction" form, an Accommodations Checklist, a page headed "Special Education Program Summary," a section entitled "Placement Decisions - Least Restrictive Environment," and a two-page section entitled "Attachment for Secondary Transition Services." In the section entitled "Rights and Responsibilities," GF confirmed, by signing her initials, that she: a) had received a copy of the Procedural Safeguards, b) had received a copy of the IEP, and c) that she agreed with the IEP.

14. **Ninth Grade IEP Contents.**

a. The Present Levels of Performance and Educational Needs of the Student. NF's current Academic/Pre-academic, Communication, Physical, and Social/Emotional performance was noted. No specific measure of NF's current performance level was provided other than that his reading is at the third grade level.

OFFICE OF  
ADMINISTRATIVE HEARINGS  
DEC 15 2004  
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There were also no details as to where NF was actually performing within that third grade level. No statement of his educational needs was mentioned. There was no parent input noted.

b. Annual Goals and Short-term Objectives. The annual goals for Reading/Writing, Life skills/Community, and Language did not state any basis on which to measure success or progress. The short-term objectives for most subjects were stated with a measurement component and a time period for ongoing measurement. It is unclear from the way in which the goals and objectives were stated just which present level of performance was being targeted for improvement.

c. Special Education, Related Services, and Supplementary Aids and Services Program Summary. The IEP did include a separate sheet noting the special education, related services, and supplementary aids which NF would need. The Summary indicated that NF was to take a life skills course 80 minutes per day, five days per week. The goal in the IEP for the life skills course was for NF to "increase his life skills in the area of cooking and using community resources." There was no statement of any present levels of performance for his life skills course, basic training or community training instruction which were noted on the Program Summary. Regarding supplementary aids, none were suggested. Although the most recent audiology report was only six-months old and suggested an FM device for NF, no such supplementary aid or service was obtained for NF's program.

d. Student's Participation in Regular Education / LRE. NF was to participate with the general education population for the 40-minute lunch period. The remainder of his time was to be within a special education setting. Other opportunities for interaction with the general education students included: field trips, assemblies, and sports. "Special education classes with integration into general education and/or community" were determined to best meet NF's needs. A self-contained classroom was deemed too restrictive and a general education class with pull-outs was found to lack the needed support.

e. Modifications in Assessment of Achievement. NF was to participate in statewide assessments and the modifications/accommodations checklists noted what was necessary in order for NF to participate. However, NF's academic skills were "too low to allow him to participate in the reading and writing sections of the WASL."

f. Projected Beginning Dates. All short-term objectives were noted with beginning dates.

OFFICE OF  
ADMINISTRATIVE HEARINGS  
DEC 15 2004

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g. Statement on How Progress will be measured and How Parents will be routinely informed. NF's was to be measured based on "teacher data," "teacher made assessments," and "tests." The parents were to be informed of NF's progress through district report cards, progress reports/notes, and parent conferences.

h. Section on Transition Services. The District used a standardized form to address the transition services requirement. The sections included the following:

(1) Summary of Functional Vocational Evaluation - NF and his parents were asked about his occupational interest and video store was listed. His aptitudes were also noted as "eye-hand coordination, math, speed."

(2) Anticipated Post School Outcomes - The postsecondary education outcome was not determined. The employment needed to be supported, but Community Living was to be independent.

(3) Transition Planning From School-To-Work - Needed Services - It was noted that NF was in a vocational program that required specially designed instruction and that the goals/objectives were on the IEP. In order to meet those outcomes, it was determined that the following needed to occur or be included in NF's program: specially designed instruction, related services, community experience, acquisition of daily living skills and functional vocational evaluation. These categories were checked as boxes. No details regarding the specifics of NF's needs in these areas were provided.

Ninth Grade Life Skills - Goals, Objectives, and Performance

15. NF's IEP for his ninth grade year contains three objectives for his life skills class:

a. After completing a recipe, NF will answer questions about the recipe, including the materials needed, and the steps followed to complete the recipe with 75 percent accuracy or better as measured by teacher-made tests.

b. Given a destination, time limitations, and access to bus transit schedules, NF will indicate in writing or orally the correct bus and times he must get on and off the bus to make it to the destination on time with 80 percent accuracy or better; and

c. Given a variety of resources such as a telephone book, a newspaper or public transit schedules, in questions, NF will indicate in writing or orally with 85 percent accuracy as measured by data.

The beginning dates and target end dates for all three objectives were the same: October 2000 through October 2001. The measurement period on the IEP for the life skills objectives is stated to be every six weeks.

16. The life skills class does not appear on NF's student progress reports for ninth grade. However, there is a class for home living on his IEP that may be the life skills class. The home living class is a special education class and is taught in the center-based classroom (CBC) classroom. In a student progress report dated October 20, 2000, NF received a grade of "B" in the class, although in the teacher comment section it is reported that he is receiving below average grades on examinations and assessments. On his student grading report, dated December 7, 2000, it is reported that NF is receiving a grade of "B" in his home living class.

17. The life skills class appears for the first time in NF's student progress report dated January 25, 2001. It is reported that he is receiving a grade of "C" and is making progress towards meeting IEP goals and objectives. However, what progress he is making is not stated in measurable terms.

18. In NF's student grading report dated March 22, 2001, he was receiving a grade of "C+" in his life skills class. Again, it is noted that he is making progress towards meeting IEP goals and objectives. Again, there is no statement of progress in measurable terms. The progress report dated May 4, 2001, states that he is failing to seek help or communicate his needs although he is demonstrating good effort. The grade was a "B-."

19. In a student grading report dated June 19, 2001, his last grading report for his ninth grade year, it is reported that he is received a "B-" in his life skills class with a notation under teacher comments that he needs to follow directions carefully and not rush through work.

#### Tenth Grade IEP and Education (2001-2002)

20. On October 16, 2001, an IEP meeting was conducted for NF's tenth grade school year; NF was age [REDACTED]. Present at the meeting were: a) NF and both his parents, b) Kimberly Brown, NF's special education teacher and IEP manager for his tenth grade year, c) Robin Andrus, the head of the special education department at [REDACTED] High School. Ms. Brown drafted the IEP. Ms. Andrus signed as the District Representative. However, she was present only at the beginning and did not participate in the details of the IEP meeting. No regular / general education teacher was included on the team.

21. **IEP meeting discussion.** Ms. Brown informed NF's parents what his courses would be; he was to continue with the CBC courses. It was determined that art

and music were not good fits as electives. However, small engine repair, a general education class, was determined to be a good fit for NF and which he enjoyed. There was a brief discussion regarding vocational training in the community. The name Work Crew was not specifically mentioned to NF's parents or included on the IEP. There was no specific reference to any voluntary recycling program for CBC students.

22. **IEP Sections.** The District used its standard IEP form. NF's tenth grade IEP contained a statement of "Present Levels of Performance," statements of "Goals and Objectives," an "Accommodations Checklist," a page headed "Special Education Program Summary," a section entitled "Placement Decisions - Least Restrictive Environment," and a two-page section entitled "Attachment for Secondary Transition Services." In the section entitled "Rights and Responsibilities," GF signed her initials, but did not check whether she had in fact received a copy of the Procedural Safeguards and the IEP. She did sign across from the line which indicated that she agreed with the IEP. NF also signed the Transition Services section indicating that he had been informed of his rights. NF would turn 17 before his next IEP in October 2002.

23. **Tenth Grade IEP Contents.**

a. The Present Levels of Performance and Educational Needs of the Student. NF's current Academic/Pre-academic, Communication, Physical, and Social/Emotional performance was noted as based on the results of his most recent Woodcock-Johnson test. NF's reading skills remained at the 3rd grade level. In particular, he read "110-120 wpm with fewer than 3 mistakes." His comprehension was at the 2.7 grade level, his written language skills were at the 3.2 grade level, and his math at the 6th grade level. He was enrolled in Consumer Math and scheduled to take Pre-Algebra 2 later that year. Continuing problems with NF's communication skills were noted, but no physical problems were noted in his Adaptive PE course. NF's continuing Social/Emotional problems reflected that he rushed through his work, did not listening well, had difficulty following directions, was easily frustrated with others thumping his head on his desk. There was no parent input noted in that section.

b. Annual Goals and Short-term Objectives. Goals and objectives were identified for eight subjects. The latter three were not identified in the present levels of performance. They included: reading, written language, functional math, consumer math, communication, life skills, community-based instruction, and vocational. Some measurement was stated for all course categories with the exception of communication. The measure was stated as "to improve verbal and social language skills."

c. Special Education, Related Services, and Supplementary Aids and Services Program Summary. The Special Education Program Summary listed

OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 2004  
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reading/math, consumer math, life skills, community based instruction, work skills, and pre-algebra as NF's special education courses. His related service was speech therapy. No supplementary aids were suggested for NF. Ms. Brown was aware that an FM device had been suggested in the audiology report. However, she did not feel it was necessary for NF because they could address his needs by seating him in the front and center of the classroom, and by making sure he received instructions, assignments, etc. orally and in writing. Additionally, Ms. Brown had some experience with her own daughter's use of an FM device and did not believe it would be helpful.

d. Student's Participation in Regular Education / LRE. NF was to participate with the general education population during meals, assemblies, sports, clubs, and student government. The remainder of his time was to be within a special education setting. Again, special education classes with integration into general education and/or community were determined to best meet NF's needs with placement in a CBC-2 class. A self-contained classroom was deemed too restrictive. A general education class with in-class special education instruction was also noted on the condition that there was "additional individualized instruction."

e. Modifications in Assessment of Achievement. NF was to take the ITBS during his tenth grade year.

f. Projected Beginning Dates. All short-term objectives were noted with beginning dates and target dates, except for consumer math, which had neither.

g. Statement on How Progress will be measured and How Parents will be routinely informed. NF's was to be measured based on the "Caught Reading" program, "teacher data," and "staff data collection." The parents were to be informed of NF's progress through district report cards, progress reports/notes, and parent conferences.

h. Section on Transition Services. The District used a standardized form to address the transition services requirement. The sections included the following:

(1) Summary of Functional Vocational Evaluation - Based on an interview, NF's occupational interest was veterinarian assistant/ animal caretaker. His aptitudes indicated that he liked animals; he was responsible for pet care at home.

(2) Anticipated Post School Outcomes - The postsecondary education outcome again was undetermined. Both the employment and community living components needed to be supported. There was some indication that DVR, DDD, and CHOICE programs were being considered; no details were given.

(3) Transition Planning From School-To-Work - Needed Services - It was noted that NF was in a vocational program that required specially designed instruction and that the goals/objectives were on the IEP. In order to meet those outcomes, it was determined that the following needed to occur or be included in NF's program: specially designed instruction, related services, community experience, acquisition of daily living skills and functional vocational evaluation, and development of employment and other post-school adult living objectives. These categories were checked as boxes. No details regarding the specifics of NF's needs in these areas were provided.

24. The tenth grade IEP was amended on January 28, 2002, to include a social skills goal and objective. NF was to "improve his social skills with peers and staff by 10 percent as measured by teacher observation and data." Beginning and target dates were included. NF, both his parents, Ms. Brown, Susan Nichols, another special education teacher, a District representative, and another individual were present at the meeting.

Tenth Grade Life Skills / Community-Based Instruction / Vocational - Goals and Objectives

25. For his tenth grade year, NF was placed in the CBC. The year's set curriculum included: reading, mathematics, life skills, community based instruction, and work skills. NF was to spend 1600 minutes per week in special education and none in general education. All of his classes were in the CBC or a special education classroom, except for his community based instruction. He also received 30 minutes per week for speech therapy.

26. As to life skills, NF's tenth grade IEP goal was to increase his life skills by 10 percent as measured by staff data collection. The objectives related to life skills were:

a. Given coupons, labels, letters, and forms to fill out, NF will answer questions by showing understanding of materials with 75 percent accuracy as measured by teacher data;

b. Given a unit, practical money skills, NF will demonstrate an understanding of budget, credit, interest, banking, etc. by accurately filling in worksheets provided with 70 percent accuracy and show mastery of unit by receiving at least 75 percent on tests as measured by teacher data from worksheets and tests;

c. Using a calculator, "real life scenarios" and imitation checkbook, NF will be able to write checks and calculate deposits and withdrawals on a bank transaction log with a 75 percent accuracy as measured by weekly worksheet data; and

d. By recipe, NF will get all necessary materials and complete all steps with 80 percent accuracy as measured by teacher checklists and worksheets.

The start dates and target dates are the same for all four objectives: October 16, 2001 to a target end date of October 15, 2002. Achievement towards the objective was to be measured weekly.

27. NF also had a class in community based instruction in tenth grade. The goals statement for the community based instruction class was that NF would increase his life-community skills by 10 percent as measured by staff data collection. The objectives of community based instruction were described as:

a. When using the public bus for community outings, NF will be able to restate route and transfers needed to accomplish trips with 75 percent accuracy as measured by teacher made worksheets and data collection;

b. When on community outings, NF will be able to demonstrate appropriate personal safety skills such as avoiding strangers, dangerous places and handling personal property appropriately 90 percent of the time as measured by teacher observation and data;

c. When on community outings, NF will utilize decision making skills (recognizing problems, anticipating consequences, utilizing or locating places to get assistance if needed, and evaluating alternatives) when indicated on assignment or when personally necessary 90 percent of the time as measured by teacher data and observation.

Again, the start date for the objectives was October 2001 with a target end date of October, 2002, although the measurements for achieving the objectives were set as monthly.

28. NF's tenth grade IEP had vocational goals and objectives. The goal statement for vocational section for his IEP is that he will improve his work skills from completing jobs or assignments with 75 percent accuracy to 90 percent accuracy. The vocational section of the IEP contains the following objectives:

j. In a job (community or student center), NF will follow directions, use appropriate work behaviors (start and stay on task), and work with others appropriately (not butting into others business, etc.) with a 90 percent accuracy as measured by data and observation of staff;

OFFICE OF  
ADMINISTRATIVE HEARINGS

DEC 15 2004

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k. Given a classroom (sic) or job, NF will tell the supervisor when he is finished 100 percent of the time;

l. Given an assignment or job, NF will complete the job or assignment with two or fewer mistakes as observed by staff observation and data.

The start date for achieving the goals was October 2001 with a target completion date of October 2002. The measurements were to be made at the end of each trimester.

29. Nothing in NF's tenth grade IEP mentions the Work Crew class or its activities or any recycling program for CBC students.

Eleventh Grade IEP and Education (2002-2003)

30. On October 7, 2002, NF, his mother, Kimberly Brown, and a district representative attended NF's eleventh grade IEP meeting. No regular / general education teacher was included on the team.

31. **IEP meeting discussion.** GF was informed that NF's classes were selected based on the program he was in. On September 5, 2002, GF signed the Work Experience form which had been brought home by NF regarding his community based experience. There was a discussion of NF not following instructions and being in jeopardy of losing his job. The issue of transition services was discussed. Ms. Brown informed GF that it was her responsibility to get NF on the DVR waiting list as a first step to the CHOICE program. GF did make the contact with that agency on her own. She was informed by CHOICE staff that the contact should have been made by the District on her behalf. CHOICE is an extension of the District's Work Experience Program. It covers disabled adults age 18 through 21.

32. **IEP Sections.** The District used a standardized IEP form. NF's eleventh grade IEP contained a statement of "Present Levels of Performance," statements of "Goals and Objectives," an Accommodations Checklist, a page headed "Special Education Program Summary," a section entitled "Placement Decisions - Least Restrictive Environment," a "State- or District-wide Assessment of Student Learning" form, and a two-page section entitled "Attachment for Secondary Transition Services." In the section entitled "Rights and Responsibilities," GF confirmed, by signing her initials, that she: a) had received a copy of the Procedural Safeguards, b) had received a copy of the IEP, and c) that she agreed with the IEP. NF also signed the Transition Services section indicating that he had been informed of his rights.

OFFICE OF  
ADMINISTRATIVE HEARINGS

DEC 15 2004

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33. **Eleventh Grade IEP Contents.**

a. The Present Levels of Performance and Educational Needs of the Student. NF's reading level was high third grade. He read 110 wpm with fewer than two mistakes. Comprehension remained a grade below. NF was at the fourth grade level for written language and was working on the six traits of writing (prewrite, rough draft, revise, final draft, and publication). Math continued to be NF's best subject and highest academic area. He continued to work on his functional math as part of his Life Skills course. In Life Skills, NF struggled with filling out forms which he would need on a daily or routine basis, and his knowledge of the public transportation system was low. He also continues to need improvement with his social skills regarding peers and staff. Although NF was receiving speech and language support, continued to need "visual supports to help him understand instruction, direction and intentions of others." NF's hearing deficit was specifically mentioned as a problem and the basis for his placement in Adaptive PE. For the Social/Emotional component, NF was seen as a loner, eating alone and easily frustrated with peers because of his communication difficulties.

b. Annual Goals and Short-term Objectives. Goals and objectives were identified for seven subjects. They included: language, reading, writing, life skills/functional math, community-based instruction, social skills/life skills, and vocational skills. Some measurement was stated for all course categories with the exception of language, where the goal/measure was "[NF] will communicate clearly and effectively by increasing use of conversational skills and clear speech from a prompt dependent skill level to an independent skill level as measured by informal assessment and observation." There was also no clear measure for the vocational skills goal. It was stated as "increase knowledge of worker characteristics necessary for maintaining employment."

c. Special Education, Related Services, and Supplementary Aids and Services Program Summary. The Special Education Program Summary listed CBC block reading, community based instruction, writing, social skills, life skills, work experience, special education business for a total of 1,600 hours of special education. It is unclear what the purpose of the general education component was to be. As noted in this section, NF was to spend 200 hours in general education "passing time." Speech therapy was listed as NF's related service. No supplementary aids were suggested for NF.

d. Student's Participation in Regular Education / LRE. NF was to participate with the general education population during field trips, meals, assemblies, sports, clubs, and student government. The remainder of his time was to be within a special education setting. General education classes were considered inappropriate for NF's individualized needs. Placement in the special education CBC-2 class was

determined to be the best placement for NF. A self-contained classroom was again deemed too restrictive.

e. Modifications in Assessment of Achievement. NF was to be re-evaluated with the Woodcock-Johnson III in May 2003.

f. Projected Beginning Dates. All short-term objectives were noted with beginning dates and target dates.

g. Statement on How Progress will be measured and How Parents will be routinely informed. NF's was to be measured based on the "Caught Reading" program, "teacher data," and "staff data collection." The parents were to be informed of NF's progress through district report cards and progress reports/notes.

h. Section on Transition Services. The District used a standardized form to address the transition services requirement. The sections included the following:

(1) Summary of Functional Vocational Evaluation - Based on an interview, NF's occupational interest was again listed as animal caretaker, noting that his aptitude was that he was nice to animals and pets.

(2) Anticipated Post School Outcomes - The postsecondary education outcome again adult services. Both the employment and community living components needed to be supported.

(3) Transition Planning From School-To-Work - Needed Services - It was noted that NF was in a vocational program that required specially designed instruction and that the goals/objectives were on the IEP. In order to meet those outcomes, it was determined that the following needed to occur or be included in NF's program: specially designed instruction, related services, community experience, acquisition of daily living skills and functional vocational evaluation, and development of employment and other post-school adult living objectives. These categories were checked as boxes. Two items were suggested for the transition process which would not require specially designed instruction: a) visiting the humane society, and b) job shadowing an animal caretaker.

34. The eleventh grade IEP was amended on March 24, 2003, to include a vocational goal and objective. NF was to "increase his work-related skills by 10 percent as measured by staff date & observation." Beginning and target dates were included. Both of NF's parents and Ms. Brown were present at the meeting.

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Eleventh Grade Life Skills / Community-Based Instruction / Vocational - Goals and Objectives.

35. According to NF's eleventh grade IEP, he was again placed in the CBC classroom where he received all of his instruction except for those periods of time when he was in community based instruction or in the Work Experience Program. The IEP reflects that he received 1600 minutes of special education per week and 200 minutes in general education for "passing time" and lunch. He also spent 30 minutes per day on the special education bus, and again received 30 minutes per week in speech therapy.

36. In the eleventh grade, NF again was enrolled in the set CBC curriculum including language, reading, writing, life skills, functional math, and "vocational skills."

37. According to his eleventh grade IEP, NF's present level of performance in life skills stated:

"[NF] does well with assignments dealing with money (balancing bank accounts, giving change). However, continued practice in giving change is indicated and should be addressed in the area of life skills. His knowledge about the public transportation system is low and instruction on accessing and using the bus is critical to his success in this area. [NF] continues to struggle with filling out forms essential in every day life. He also needs to work on his social skills with peers and adults."

38. NF's eleventh grade IEP does not contain any present levels of performance in the areas of community based instruction or vocational skills.

39. The goals statement related to life skills in NF's eleventh grade IEP states that he will increase his life skills by 10 percent as measured by classroom assignments and staff observations. His objectives are stated to be:

- Given functional reading and written answers (i.e. coupons, labels, letters and forms), NF will answer questions on worksheets to show an understanding of materials with an 85 percent accuracy as measured by grades on assignments;
- Given a life scenario in "your on your own", consumer education curriculum, NF will learn and understand a variety of skills needed to live on your own (i.e. getting a job, finding an apartment, grocery shop, paying bills, etc.) with 80 percent accuracy as measured by a teacher, data from worksheets provided with curriculum;

- Using a calculator in a real life scenario and an imitation checkbook, NF will be able to write checks and calculate deposits and withdrawals on a bank transaction log with a 90 percent accuracy as measured by worksheets pertaining to banking and staff observations;

- Given assignments dealing with time, NF will be able to tell time to the nearest hour and minute, calculate past and present time frames, and interpret time schedules with 85 percent accuracy as measured by assignments, community outings and tests;

- Given assignments regarding money, NF will be able to accurately calculate costs, give correct change, and other functional skills pertaining to money with 90 percent accuracy as measured by assignments, community outings and tests;

- Given a recipe, NF will understand materials and steps needed to complete a recipe with an 85 percent accuracy as measured by teacher checklists and weekly worksheets.

40. In the area of community based instruction in NF's eleventh grade IEP states as a goal that he will increase his life-community skills by 10 percent as measured by staff and data collection. The objectives set forth, as to community based instructions, include:

- When using the public bus for community outings, NF will be able to restate route and transfers needed to accomplish trips and interpret bus schedules with 80 percent accuracy as measured by teacher-made worksheets and data collection;

- When on community outings, NF will demonstrate age appropriate behavior and personal safety skills (avoiding strangers, dangerous places, handling personal property appropriately) 90 percent of the time as measured by teacher observation and data;

- When on community outings, NF will utilize decision making skills (recognizing problems and anticipating consequences, utilizing or locating places to get assistance if needed, and evaluating alternatives) when indicated on assignment or when personally necessary 90 percent of the time as measured by teacher data and observation.

The progress towards obtaining these objectives was to be measured every six weeks on the first two objectives, and every twelve weeks on the last objective.

41. NF's eleventh grade IEP, as to vocational skills, states that his present level of performance as:

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ADMINISTRATIVE HEARINGS  
DEC 15 2004  
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"[NF] learns job duties quickly and able to work independently once trained for a job. He stays on task, he is able to fill out time sheets. He needs to improve his social skills when talking to a supervisor, staff or co-workers."

The goal, as to vocational skills, is stated as increasing NF's knowledge of worker characteristics necessary for maintaining employment. The objectives are stated as:

- Demonstrating dependability on bi-weekly time sheets by tracking hours at job sites and turning into school work coordinating, missing no more than one time sheet.
- Demonstrating dependability by communicating to work supervisor prior to work shift any absence that may occur; no more than two failures to notify supervisor reported on evaluation.
- Demonstrating independence and initiative on the job site by completing tasks assigned with no more than three prompts.
- Demonstrating acceptable work appearance by being dressed and groomed for the job as reported by work supervisor on evaluation.
- Demonstrating productivity on job site by completing 8-10 assigned duties during work shift as reported by work supervisor on evaluation.

The measurement in progress towards achieving objectives was to be made every six weeks. The start date was stated as October 2002 with a target end date of achieving objectives by October 2003.

Twelfth Grade IEP and Education (2003-2004)

42. On September 23, 2003, NF's twelfth grade IEP meeting was held. Present at the meeting were: a) NF, b) both his parents, c) Kimberly Brown, d) Robin Andrus as the a district representative, and e) a related service provider for speech. Ms. Andrus signed the IEP, but was not present during the meeting. No regular / general education teacher was included on the team.

43. **IEP meeting discussion.** NF's courses for his twelfth grade year were based on the programs he had been in previously. GF indicated that her interest was in the CHOICE program versus graduation for NF. GF wanted to know what was involved in the program. GF was informed that CHOICE was a program for disabled adults age 18 to 21. Community resources included DVR and DDD.

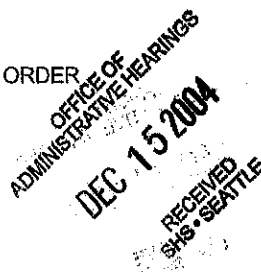
44. **IEP Sections.** The District used a standardized IEP form. NF's twelfth grade IEP contained a statement of "Present Levels of Performance," statements of "Goals and Objectives," a "Modifications Checklist for Specially Designed Instruction" form, an Accommodations Checklist, a page headed "Special Education Program Summary," a section entitled "Placement Decisions - Least Restrictive Environment," a "State- or District-wide Assessment of Student Learning" form, and a two-page section entitled "Attachment for Secondary Transition Services." In the section entitled "Rights and Responsibilities," GF confirmed, by signing her initials, that she: a) had received a copy of the Procedural Safeguards, b) had received a copy of the IEP, and c) that she agreed with the IEP. NF signed the transition services page noting he had been informed of his rights.

45. **Twelfth Grade IEP Contents.**

a. The Present Levels of Performance and Educational Needs of the Student. The last evaluation for NF was conducted on March 11, 2003, and from that data the current levels of performance were noted. NF began his final year reading at a high third / low fourth grade level. His written language was at the high fourth grade level. He was using Microsoft Word and needed to work on his ability to recognize misspelled words which were highlighted in the program. NF's broad math skills were at the seventh / eighth grade level. He was able to "add, subtract, multiply and divide without the aid of a calculator, but will often make mistakes. He does much better with the aid of a calculator especially when working with large money values." In the life skills area, NF had limited adaptive behaviors. His continuing challenges involved "accessing the public transportation system, cooking, consumerism, etc." In the vocational area, NF was to continue working on "ethics, work-related behaviors and attitudes necessary for success in this area." NF continued to receive speech therapy once per week to improve his efforts at communication. Physically, NF's hearing problems continued to "interfere with his academic learning." NF's social/emotional skills remained poor. He was remained aloof with peers and staff. There was no parent input noted.

b. Annual Goals and Short-term Objectives. Goals and objectives were identified for six subjects. They included: reading, functional math, written language, life skills, community-based instruction, and vocational skills. Some measurement was stated for all course.

c. Special Education, Related Services, and Supplementary Aids and Services Program Summary. The Special Education Program Summary listed CBC classroom, reading, writing, math, life skills, special education electives, work experience, community based instruction. Related services included special education business and speech. A total of 1,600 hours of special education and 0 hours of general education were suggested. No supplementary aids were suggested for NF.



d. Student's Participation in Regular Education / LRE. NF was to participate with the general education population during field trips, meals, assemblies, sports, clubs, and student government. The remainder of his time was to be within a special education setting. Again, general education classes were considered inappropriate for NF's individualized needs and a self-contained classroom was again deemed too restrictive. The CBC-2 classroom was again determined to be the best placement for NF.

e. Modifications in Assessment of Achievement. NF was noted as exiting the project. No State- or District-wide assessments were considered applicable.

f. Projected Beginning Dates. All short-term objectives were noted with beginning dates and target dates.

g. Statement on How Progress will be measured and How Parents will be routinely informed. NF's was to be measured based on the "Caught Reading" program, "teacher data," and "staff data collection." The parents were to be informed of NF's progress through district report cards, progress reports/notes, and parent conferences.

h. Section on Transition Services. The District used a standardized form to address the transition services requirement. The sections included the following:

(1) Summary of Functional Vocational Evaluation - Based on an interview, NF again stated his occupational interest as animal caretaker. His aptitude was based on his enjoyment of animals and his experience.

(2) Anticipated Post School Outcomes - The postsecondary education outcome was the CHOICE program. Employment was to be supported, but Community Living was to be independent.

(3) Transition Planning From School-To-Work - Needed Services - It was noted that NF was in a vocational program that required specially designed instruction and that the goals/objectives were on the IEP. In order to meet those outcomes, it was determined that the following needed to occur or be included in NF's program: specially designed instruction, related services, community experience, acquisition of daily living skills and functional vocational evaluation, and development of employment and other post-school adult living objectives. These categories were checked as boxes. Two items were suggested for the transition process which would not require specially designed instruction: a) visiting pet stores and zoos, and b) job shadowing at a vet clinic, a dog grooming business, or kennel. In the section identifying "Interagency Responsibilities/Linkages," DVR and the CHOICE program were listed for vocational

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training and both GF and Ms. Brown were identified as IEP team members responsible for making the contact.

46. Ms. Brown contacted GF regarding amending the IEP to include an art class to meet the vocational goals. GF wrote back that she disagreed with the amendment.

47. There were two options presented to GF regarding the ending of NF's high school career: graduation or the CHOICE program. NF's parents selected CHOICE.

Twelfth Grade Life Skills / Community-based Instruction / Vocational - Goals and Objectives

48. NF returned to the CBC classroom placement for his twelfth grade year except for those periods when he was in community based instruction and in the Work Experience Program. NF received 1600 minutes in special education and no minutes per week in general education.

49. The goal statement for life skills on NF's twelfth grade IEP was that he would increase various life skills by showing an understanding of these skills with 90 percent accuracy as measured by classroom assignments and staff observations. Objectives, as to life skills, on his twelfth grade IEP, included:

- Given various forms, applications and other materials, NF will be able to fill them out correctly and neatly with zero mistakes as measured by assignments and teacher data.

- Given assignments dealing with consumerism and the use of a calculator, NF will compare, analyze and make decisions about various products, and choose the best buy of the products with 90 percent accuracy as measured by worksheets and assignments.

- Given assignments dealing with home living skills (cooking, cleaning, caring for home, health, etc.), NF will increase these skills by completing all assignments related to topic with 80 percent accuracy as measured by worksheets and other assignments.

- Given a recipe, NF will get all necessary materials and complete all steps of the recipe with 90 percent accuracy as measured by teacher checklists and weekly worksheets.

OFFICE OF  
ADMINISTRATIVE HEARINGS

DEC 15 2004

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Measurement schedules for completion of objectives for the first two objectives were stated as every six weeks as well as six weeks for the fourth objective. The third objective was to be measured for progress every twelve weeks. The start date for all progress towards completion of objectives was September 2003 with a target end date of September 2004.

50. NF's twelfth grade IEP does not contain any present levels of performance for his community based instruction. The goals statement for the IEP in the area of community based instruction states that when on community based instruction outings, NF will act age appropriately, increase his ability to access the public transportation system, increase his decision making skills and complete all assignments connected to outings 85 percent of the time as measured by data collection, observation and assignments. Objectives as to community based instruction in his twelfth grade IEP, are:

- When using the public bus for community outings, NF will be able to restate routes and transfers needed to accomplish trips and interpret bus schedules with 85 percent accuracy as measured by teacher made worksheets and data collection.
- When on community outings, NF will complete assignments related to outings and life skills classroom with 85 percent accuracy measured by assignments and teacher observation.
- When on community outings, NF will utilize the "rules for life" with fewer than two reminders 90 percent of the time as measured by data collection and observation.
- When on community outings, NF will utilize decision making skills (recognizing problem, anticipating consequences, utilizing and locating places to get assistance, if needed, and evaluating alternatives) when indicated on assignment or when personally necessary 90% of the time as measured by teacher data and observation.

Measurement on progress towards these objectives for the first three objectives was every six weeks. For the fourth objective, the schedule for measuring progress was every twelve weeks. For all objectives, the start date was September 2003 with a target end date of September 2004.

51. NF's twelfth grade IEP contains goals and objectives related to "vocational skills." In the goals statement, NF was to increase his vocational skills by 10 percent as measured by staff data collection. The objectives related to vocational skills in NF's twelfth grade IEP stated:

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ADMINISTRATIVE HEARINGS

DEC 15 2004

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- When given job assignments in the community, NF will complete daily time sheets, notify supervisor of any absences, turn in time sheets to work experience coordinator 100 percent of the time as measured by weekly time cards.
- When given a job in the community, NF will ask his supervisor for a letter of recommendation at the end of the trimester as measured by letter being turned in to teacher for senior portfolio.
- When on a job in the community, NF will ask for help when needed from supervisor or co-workers three out of five times as measured by staff or supervisor data.
- Given a job assignment in the community, NF will follow directions of supervisor, use appropriate work behavior (staying on task) and demonstrate ability to work as team member 90 percent of the time as measured by staff data and observation.
- Given a job in the community, NF will increase his social skills with co-workers and supervisors (greetings, good-bye's, simple conversations with others, etc.) by 10 percent as measured by staff and supervisor data and observations.

The measurement of progress towards all objectives was every twelve weeks. All objectives also had the same start date of September 2003 with the same target end date of September 2004.

Least Restrictive Environment

52. During his four years in high school, NF spent his entire time in special education either in the CBC or CBC-2 classrooms, both of which are strictly special education classrooms. When NF was not physically in the special education classroom, he participated in a special education work program, namely Work Crew or Work Experience. The one exception was NF's enrollment in the general education class for small engines in the tenth grade. During the ninth grade, there were no pull-outs to any general education classes. The CBC set curriculum included functional reading, functional writing, life skills, adaptive PE, and special education pre-Algebra for a total of 1600 minutes in special education, 40 minutes per week in general education for lunch.

53. NF's parents agreed to the placements each year. The record does not reflect whether NF's parents, or NF later on, asked for more general education courses. NF's father did request a change in his Work Experience assignment once it was clear that NF was performing janitorial work on school premises in front of his peers.

OFFICE OF ADMINISTRATIVE HEARINGS  
 DECEMBER 15 2004

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## Work Programs

54. **Work Crew / Work Experience Program.** During his high school career, NF participated in both the Work Crew (tenth grade) and Work Experience Program (eleventh and twelfth grade). The tasks with Work Crew were done as part of a team and with Work Experience as an individual. However, they were the same, custodial work done on campus. NF's parents were aware that he was involved in such programs. However, they were not informed of the details of NF's tasks or assignments. The Work Experience Program was for special education students and those who were under discipline. Both Work Crew and Work Experience were included as part of NF's transition plan. The issue of NF picking up trash came up in November 2002, when NF's father spent the day observing NF's classes and saw that he was picking up trash on school premises in front of his peers. JF asked that his son not be assigned such tasks. JF found out in May 2003, that NF was still doing custodial work even though the school staff had instructed NF that he could no longer do that work. JF had to complain a second time.

## Transition Services

55. **IEP transition meetings.** The District did not invite a representative from DVR, or any other outside agency, to any of NF's IEP meetings during his ninth, tenth, eleventh, or twelfth grade years. The responsible IEP team members did not believe that DVR staff would attend since that agency would not be financially responsible for NF until he left high school. GF was informed that it was her responsibility to make such connections on NF's behalf. GF understood that the special education staff with whom she had been working would make those connections for her. During the meetings, NF was asked what his interests were, but there was never any follow up based on those interests. For some interest areas, it was suggested that NF needed more exposure in order to pursue. However, no additional opportunities for exposure of the type identified were made available to NF.

## 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)), Revised Code of Washington (RCW) Chapter 28A.155, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR 300 *et. seq.*, and Chapter 392-172 Washington Administrative Code (WAC).

2. The Individuals with Disabilities Education Act (IDEA) (formerly the Education for All Handicapped Children Act (EHA)) and its implementing regulations provide federal

DEC 15 2004

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.

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.

3. A preliminary issue to be addressed, is whether the Student's claims are limited under a statute of limitations or other equitable principals.

OFFICE OF  
ADMINISTRATIVE HEARINGS

DEC 15 2004

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Limitations on the Action

Statute of Limitations

4. The IDEA and Chapter 392-172 WAC do not include an express time limit (statute of limitations) for the parent of a special education student to file a request for due process hearing. However, given the annual development of IEPs, the District's notice obligations, and the requirement that a written decision at the conclusion of a due process hearing be issued within forty-five days, it is clear that Congress anticipated the speedy identification and resolution of disputes. Chapter 392-172-158, -302, -356 WAC.

5. In *Dreher ex rel. Dreher v. Amphitheater Unified Sch. Dist.*, 22 F.3d 228, 20 IDELR 1449, 1450 (9th Cir. 1994), the Ninth Circuit Court of Appeals considered and rejected an argument that a thirty-five day statute of limitations pertaining to appeals from administrative actions should be applied to an IDEA claim. Instead the court, citing *Alexopoulos v. San Francisco Unified Sch. Dist.*, 817 F.2d 551, 554-55 (9th Cir. 1987), looked at the state statute that was most analogous to the issues being presented. *Dreher* at 232.

6. When presented with the issue of whether a "catch-all" statute of limitations, or a statute of limitations for a personal injury cause of action was the more analogous to claims under the IDEA, the Ninth Circuit Court of Appeals determined that a tort provision was the more analogous provision. *S.V. v. Sherwood School District*, 254 F.3d 877 (9th Cir. 2001). The courts reasoning in that case was that the Oregon two-year limitation for personal injury actions served the policies of the IDEA by being 'short enough to allow expeditious resolution of claims, but long enough to allow parents "the opportunity to protect their disabled children's rights.'" *Sherwood*, 254 F3d. at 882, citing *Strawn v. Missouri State Bd. of Educ.*, 210 F.3dc 954,958 (8th Cir. 2000).

7. In Washington, there are two potentially analogous statutes of limitation. There is a three year limitation under RCW 4.16.080(2) for "an action for. . . any other injury to the person or rights of another not hereinafter enumerated." And, there is a two year statute of limitation under RCW 4.16.130 for "an action for relief not herein provided for." Under the reasoning of the *Sherwood* decision, it is determined that the more analogous limitation in Washington, is the three year limitation for personal injury actions. It is recognized that the result of this decision is to add a year of potential claims to a parent's complaint over that allowed by the *Sherwood* decision; however, whether that is equitable can ultimately be considered in the determination of remedies.

8. Therefore, in the present case, the undersigned has jurisdiction over the entire four-year high school period. The request for due process hearing was filed on

DEC 15 2004

November 25, 2003. Three years prior to the filing of the due process hearing request takes the case back to 2000, which would cover the ninth, tenth, eleventh, and twelfth grade years.

9. The seminal case setting forth the criteria for determining whether FAPE has been provided is the *Rowley* decision. The first step in the analysis, is to determine whether the District complied with the procedures of the IDEA. *Rowley*, 103 S. Ct. at 3051. To initiate this hearing, the Appellant-Parents have alleged several procedural inadequacies against the District. However, the Ninth Circuit Court of Appeals has held that "procedural flaws do not automatically require a finding of a denial of a FAPE." *W.G. v. Target Range*, 960 F2d 1479, 1484 (1992). A denial of FAPE occurs when the procedural inadequacies "result in the loss of educational opportunity. . .or seriously infringe the parents' opportunity to participate in the IEP formulation process." *Id.*, citing in part *Hall by Hall v. Vance County Bd. of Educ.*, 774 F2d 629, 635 (4<sup>th</sup> Cir. 1985). It is necessary to look at each of the allegations in turn.

#### Failure in the Drafting and Implementation of the IEP

10. The IEP, properly designed and implemented, is the cornerstone to a free and appropriate education. The components of the IEP a) reflect the current needs of the student, b) set out the goals which the student, parents, and teachers aim to accomplish by year's end, and c) identify the services necessary to meet the needs and accomplish the goals.

**Needs.** In the present levels of performance, both the academic and non-academic starting points are to be identified. Students who qualify for special education services will undoubtedly face academic challenges which will need to be accounted for. However, they may also face social / emotional / life skill issues which can impact their ability to receive FAPE. Knowing where the student is starting from helps all who are working with the student, determine if the agreed upon strategy is truly working. If is not, changes can be made along the way.

**Goals.** Once it is clear where the child is at the beginning, appropriate goals can be established for the year, with interim objectives identified to mark the progress along the way. Both the goals and objectives must be measurable and the type of measure that addresses the current performance level.

**Services.** There must be a clear identification of the special education, related services, and supplementary aids the student will need to be successful.

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ADMINISTRATIVE HEARINGS

DEC 15 2004

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**Team.** The makeup of the IEP team is also crucial because this brings together those who have helped to identify the needs, those who have helped set the goals for meeting those needs, and those who can provide the necessary assistance, be it equipment or financial.

Ninth Grade IEP

11. While it is acceptable for the District to provide a draft copy of the IEP for discussion, there must still be a way provided to include parental input. The ninth grade IEP was presented not as a draft, but in a completed format and provided to GF for her review as part of the meeting process. While it might appear that GF would still have valid opportunity to give parental input, rulings have been made to the contrary. A pre-written IEP denies parents their input and right to participate. *Amanda S. v. Webster City Comm. S.D. 27 IDELR 698 (N.D. Iowa 1998)*. While it is true that G.F. signed off on the IEP indicating that she agreed to it, it is also true that she is intelligent in her own right, but not a special education teacher. She relied on the special education professionals for information and guidance. Therefore, she did not waive her right to claim a procedural violation regarding the creation of the IEP.

12. The present levels of performance were included as a section on the standardized form. However, as detailed or stated on the form, they were vague and unmeasurable; they gave no truly clear picture of NF's starting point regarding his abilities or educational needs. Therefore, it would be difficult to link them, in any meaningful way, to any goals and objectives which would be associated with them. Although there was a section regarding Parental input on NF's present performance levels, there was none noted.

13. Prior evaluations of NF suggested that he needed assistive technology. Although the most recent data suggested that an FM device be used, it also suggested smaller classrooms and strategic seating arrangements for NF. The latter two suggestions were implemented, but the former was not. The undersigned concludes that had the assistive technology been utilized, the need for tighter control in the classroom may have been obviated, or at least lessened. NF may not have had to sit in certain designated areas, be limited to smaller-sized classes, or discounted for general education classes because of his hearing deficits. It may have enhanced his ability to interact with the general education population, comprehend verbal instructions, make himself better understood, and function more independently with more self-esteem if he had been given the FM device for his hearing. The failure to provide the FM device, created a lost educational opportunity for NF. There were things he was unable to do and other things for which he was never considered because he had a recognized hearing deficit, but had no assistive technology to help him overcome it.

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14. When a student turns age 14, the IEP team is to begin discussing what transition service needs the student has and will have. Once the student has turned at 16, the discussion turns to what actual services will be provided to the student and by whom.

15. At the time of his first high school IEP in the Fall of 2000, NF was 15. While the team was required to begin the discussing his specific needs in some degree of detail, the actual discussion was cursory. NF and his parents were asked about his interests and he indicated video stores. There was no follow up by any member of the team to add that component to NF's courses or transition plan. There was also no discussion with NF regarding his interests or desires for his life after high school.

#### Tenth Grade IEP

16. GF and JF were informed that NF would continue in the CBC program. However, NF was enrolled in one general education course, Small Engines. NF's continuing problems regarding his hearing deficit were noted in his present levels of performance, and again no FM device was provided for him as a means of addressing that issue. This failure by the District to provide for this identified need was an ongoing denial of FAPE. The team members felt that the issue could be handled satisfactorily with preferential seating and visual cues. Additionally, NF's special education teacher did not think the FM device would be helpful because her daughter had one and it had not worked out for her. Such a conclusion takes away the "individualized" nature of NF's program and ignored the student's unique needs. What may not work for another child may indeed be a perfect fit for NF. The undersigned concludes that the District's repeated failure to secure an FM device was a denial of FAPE for NF. The District had qualified data from an audiologist indicating what was necessary. In light of NF's continuing hearing-related problems, it is unreasonable that the District would continue to deny NF the device. Again, there was no parental input noted in that section of the IEP.

17. NF's life skills, community-based instruction and vocational skills were crucial to his transition from school to a postsecondary life. However, the present levels of performance were not identified at all even though goals and objectives were. Without the connection or linkage between the present performance and any goals for improvement, it becomes impossible to determine the exact nature and extent of any particular successes or failures. It is never made clear what that starting point is. It is therefore also unclear how to adequately prepare NF for the transition to his postsecondary life.

18. NF was [redacted] at the time of this second IEP. The team was now responsible to identify exactly what services he would need as part of his transition planning. His specific and unique needs were to have been identified at age [redacted] at [redacted] the focus shifted to services. For the next three years, NF was asked at each IEP meeting what his

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DEC 15 2004

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interests were. He indicated animal care, but no steps were ever taken by the District to help him pursue that interest. Rather, it was stated that he needed more exposure. However, again, no action was taken to help get him the needed exposure. The District's failure to take any action in this area of the IEP denied FAPE to NF.

### Eleventh Grade IEP

19. NF's mother was again informed that NF would be in the special education CBC-2 program. NF was to spend 1,600 hours in special education and 200 in general education "passing time." It is unclear what "passing time" was referring to.

20. Contact with DVR as the first step to the CHOICE program was discussed. However, NF's mother was informed that it was her responsibility to make that initial contact and to get NF on the DVR waiting list. NF was [REDACTED] at the time of the meeting. It is the District's responsibility to invite other agencies to the IEP meeting. 20 USC § 1414(d)(1)(B). The other agency staff may or may not attend. If they fail to appear, it is the IEP team's responsibility to convene another meeting to determine how the needed services will otherwise be provided. 34 CFR Sec. 300.348(a).

### Twelfth Grade IEP

21. All those who signed the IEP were present throughout the meeting with the exception of Ms. Andrus, the district representative. Her failure to attend and actually participate in the meeting was a denial of FAPE. *Bd. of Starpoint Cent. Sch. Dist.*, (SEA NY 2002) 37 IDELR ¶ 120.

22. Report cards indicated that NF did make some academic progress. His reading increased from a basic third grade level to a high third / low fourth grade level. His math skills continued to improve and he was using a computer for his writing projects. However, his social / emotional / life skills remained poor and his hearing deficit continued to be identified as a factor for those areas in which his academics were poor.

### Work Crew and Work Experience Programs

23. The tasks required for both Work Crew and Work Experience as they pertained to the custodial program were the same. Those working in Work Crew worked as part of a team and those in the Work Experience Program worked as individuals. NF enjoyed the Work Experience Program and was successful at it. Once NF's father became aware of the nature of the job tasks, he was assigned other Work Experience jobs.

24. NF had repeatedly indicated that he preferred working with animals. However, alternative work assignments were found which were much more people-intensive, a clothing store, grocery store, and auto parts store. NF had difficulty understanding the instructions given and in making himself understood. This was another example of the District failing to take into consideration NF's unique / individual needs.

25. The District failure to consider NF's needs or desires to work with animals affected NF's ability to transition into a postsecondary life. First, it is highly possible that if he had an FM device he could have communicated more effectively. Secondly, if he had been assigned work in keeping with his repeatedly stated interest of working with animals more so than with people, he could have been more successful. The success could have increased in his self-esteem and perhaps, had a positive impact on his social interactions with peers and staff. Lastly, NF's positive experiences in high school may have provided a helpful road map for his future options as he transitioned to his postsecondary life.

Least Restrictive Environment and FAPE

26. The IDEA requires a school district to implement an eligible student's IEP in his or her least restrictive environment. Inclusion in the general education classroom is presumed to be the least restrictive environment available. State regulation defines LRE as placing a student in the general education environment to the maximum extent appropriate, and only providing instruction in a special education environment "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." WAC 392-172-172.

27. Likewise, the law requires that a district have a continuum of placements available in which to place a student, ranging from the general education environment, to instruction in hospitals and institutions, if appropriate. WAC 392-172-174. Therefore, although general education is presumed to be the least restrictive environment, the appropriate LRE for a student must be considered in light of the continuum of placement alternatives.

28. State regulations discuss procedures for placement, and the following factors must be considered in a placement decision:

- 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

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DEC 15 2004

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d. consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

WAC 392-172-180(2). A student is not to be removed from the regular education classroom, if all that is needed is a modification of the general education curriculum. WAC 392-172-180(5). And, unless a parent agrees otherwise, placement is to be as close to the student's home as possible. WAC 392-172-180(3).

29. The Ninth Circuit Court of Appeals has addressed the issue of LRE in several cases. In *Sacramento Unified Sch. Dist. v. Rachel Holland.*, 14 F. 3d 1398 (9th Cir. 1994), *cert denied*, 114 S. Ct. 2679 (1994), the court of appeals reviewed the district court's order placing [REDACTED], an [REDACTED] year old, moderately mentally retarded child, in the general education classroom. In making its decision to affirm the lower court, the court of appeals applied the district court's four-factor test to determine the appropriateness of a general education placement: (1) the educational benefit to the student; (2) the non-academic benefits to the student; (3) the effect on other students; (4) the cost to the school district. *Id.* at 1401. 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 (which would have required six classroom changes each day).

30. The factor of educational benefit was weighed in [REDACTED] favor due in great part to her teacher's testimony that [REDACTED] was a full participant in the class and was making progress on her IEP goals and objectives. *Id.* at 1401. The district court concluded that [REDACTED] IEP could successfully be implemented with an aide and modification of the curriculum. *Id.*

31. Non-academic benefits also weighed in [REDACTED] favor because of her improved social and communication skills, as well as an increase in her self-confidence. *Id.* [REDACTED] teacher also testified about the student's excitement about school, learning and friendships with her classmates. *Id.*

32. In applying the factor of the student's effect on the classroom, the court looked at two factors: (1) potential disruption, and (2) need of the general education teacher's time. *Id.* Again, the court found this factor to weigh in [REDACTED] favor, because [REDACTED] could follow directions, was well-behaved, and was not a distraction of class. *Id.* The general education teacher also testified that teaching [REDACTED] did not interfere with her ability to teach the other children, so long as [REDACTED] had a part-time aide.

33. Finally, the court reviewed the issue of cost, and rejected the school district's argument that the cost of keeping [REDACTED] in the general education classroom was prohibitive. *Id.* In doing so, the court concluded that many of the alleged costs would need

to be pro rated between other students who might benefit as a result of the expenditures for a classroom aide and sensitivity training. *Id.* at 1401-1402.

34. 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 (which would have required six classroom changes each day).

35. Later the same year, in *Clyde K. ex rel. [REDACTED] v. Puyallup School District*, 35 F.3d 1396 (9<sup>th</sup> Cir. 1994), the Court of Appeals applied the same four part test and found that the least restrictive environment for [REDACTED] was a self-contained special education classroom. Unlike the student in *Holland*, [REDACTED] a student with Tourette 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. *Id.* at 1398. [REDACTED] had also been involved in two violent confrontations and removed from the regular education classroom. *Id.* In applying the educational benefit factor of the *Holland* test, the court concluded that [REDACTED] behavior largely prevented him from learning, and that an aide would not have made a meaningful difference. *Id.* at 1401. Looking at the non-academic benefit to [REDACTED] the court determined that 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. *Id.* [REDACTED] presence in the regular education classroom had an a overwhelmingly negative effect on teachers and other students, interfering with their ability to learn. *Id.* at 1401-1402. The court further states that, "disruptive behavior that significantly impairs the education of other students strongly suggests a mainstream placement is no longer appropriate." *Id.* at 1402, citing 34 CFR § 300.552, Comment.

36. Recently the Ninth Circuit Court of Appeals again reviewed the issue of LRE, in the case of *Ms. S. v. Vashon Island Sch. Dist.*, 2003 U.S. App. Lexis 15281 (9<sup>th</sup> Cir. 2003). The case involved G, a child with Down's syndrome who tested in the mildly mentally retarded range. *Id.* at 2. The court ultimately concluded that a temporary plan to place G in special education for academics and in general education for classes such as music, PE and tutoring, was the least restrictive environment appropriate for G.

37. In applying the first of the four factors of the *Holland* test, the court determined that the evidence did not demonstrate that G would make satisfactory academic progress in the general education classroom. *Id.* at 59. In coming to this conclusion, the court considered how G's program was a "fully individualized special education academic curriculum," and that there was evidence that G "would not perform well academically in a regular education classroom because her math and written language skills were about three years behind comparable general education students." *Id.* at 58.

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38. With regard to the second factor, the court concluded that G would gain non-academic benefit from general education exposure in the areas of social relationships and self-esteem. *Id.* at 59. The court also noted the benefit G would receive from being able to model her language and behavior on non-disabled students. *Id.*

39. In looking at the third factor, the court determined that although G did not have the behavior problems demonstrated by ██████ in *Clyde K.*, her placement in the general education classroom would have taken a substantial amount of the teachers time and effort. G was new to the school district, and had come from an alternative school in a much larger district than Vashon Island School District. Because Vashon Island could not duplicate the alternative setting G had been in, staff testified that it needed more information about G before it could tailor its general education curriculum to suit G's needs. *Id.* at 10 and 11. Because developing the appropriate special education curriculum for the general education environment would have been cumbersome to the district, the court concluded this factor weighed in favor of the temporary special education placement. *Id.* at 60. Cost was not argued as a factor for the District and was therefore not weighed in favor of mainstreaming.

40. In the present case, NF had a continuing problem with his hearing deficit. The lack of an FM device kept NF tied to the special education staff and courses. Over the course of his four years, his time in general education lessened rather than increased to the point where he was approved for just "passing time." Ultimately, he was discounted or not considered for general education classes, because of the accommodations which would have to be made for him. This was the case in spite of the fact that NF was not a disruptive student and had been successful in the general education class he had taken. There was no general education teacher included on the IEP teams for the ninth, tenth, eleventh, or twelfth grades. Under *M.L. v. Federal Way School Distr.*, No 02-35547 (9<sup>th</sup> Cir. Nov. 5, 2004), the failure to include a regular / general education teacher is a fatal "structural defect" and a denial of FAPE irrespective of the "merits of the IEP." *Id.* at p. 15673. The Court concluded by stating that:

"The [school district's] failure to ensure participation of a regular education teacher on the IEP team when there was a possibility that M.L. would be placed in an integrated classroom was a significant violation of the structural requirements of the IDEA's procedures requiring vacation of the order granting summary judgment in favor of the [school district]."

*Id.* at p. 15674.

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DEC 15 2004

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Transition Services

41. The Appellant-Parents argue that the District's transition plan for NF failed to appropriately include coordination with outside services and what coordination was done was left to the responsibility of the parents.

42. Transition services are a coordinated set of activities that are intended to move a special education student from school to post-school activities. WAC 392-172-045(4)(j). No later than age 14, a student's IEP should include an annual statement of transition service needs that focuses on a student's course of study. WAC 392-172-160(h). No later than age 16, a student's IEP should include a statement of needed transition services, including a statement of interagency responsibilities. WAC 392-172-160(l). The District is responsible for making sure that parents, students, and any other appropriate agency representative participate in the development of the student's transition services. WAC 392-172-164 and WAC 392-172-166. This responsibility is satisfied by inviting the appropriate people to the student's IEP meeting. *Id.* If an agency fails to send a representative to the IEP meeting, then it is the district's responsibility to obtain the agencies participation. *Id.* If an agency fails to meet its responsibilities under the student's IEP, then the IEP team must meet to determine alternative ways to meet the transition objectives. WAC 392-172-160(j).

43. In the current case, it is unclear exactly what the transition plan was for NF. At least one witness for the District argued that NF's entire curriculum was his transition plan. However, there was no clear statement of what the "coordinated set of activities" included or how they exactly were coordinated. These efforts do not satisfy the requirements of the IDEA.

44. It is clear that the District put the responsibility on NF's mother for making any connections with outside agencies. However, it is not clear what the goal of such efforts was to be. Even when agencies were listed by their title, it was unclear what their role was to be. The IEPs were silent as to any interagency responsibilities. No outside agency was ever invited and therefore, none ever attended any of NF's IEP meetings. Additionally, no IEP meeting was ever convened to address any deficit created by no having representatives from other agencies present.

45. The District was responsible for helping NF, as a disabled student, identify his interests, aptitudes, and ultimately his opportunities. The District has failed to identify exactly what constituted the "coordinated set of activities" which comprised NF's transition plan.

46. The District did take steps to expose NF to a narrow variety of employment options. Its failure to more actively coordinate with other agencies and assign responsibilities for the NF's transition, did not meet the requirements of the IDEA and is a denial of FAPE.

47. Had NF's mother not contacted the CHOICE program herself, it is unclear if NF would be in the CHOICE program.

Provision of a Free Appropriate Public Education

48. Having concluded that the Student was denied FAPE due to procedural errors, multiple and repeated, it is not necessary to consider whether the District's individualized educational program was reasonably calculated to enable the student to receive educational benefits. *WG v. Target Range*, 960 F2d at 1485; *M.L. v. Federal Way School Distr.*, No 02-35547 (9<sup>th</sup> Cir. Nov. 5, 2004).

49. Nevertheless, the undersigned will address that issue. The failure in the development of the IEP created a ripple effect regarding the components of NF's education. There was no clear picture of where he was academically or non-academically and where a problem was clearly identified, the District did not address it. Without a clear picture of where NF was, it was difficult to develop an effective plan of where to move him. The post-secondary work skill set was comprised mainly of janitorial work. NF's social / emotional / life skills were deficient throughout his tenure. NF's reading increased part of a grade level, where his math skills moved from a sixth grade level to an eighth level. NF's interests were identified, but never acted upon. As NF left high school, he moved into a program that was basically a continuation of those high school years. The undersigned concludes that NF did receive some educational benefit, but it was minimal.

50. Under the provisions of WAC 392-172-172, the delivery of services must occur within the least restrictive environment (LRE). The undersigned concludes that NF was not placed in the least restrictive environment as required.

51. Having found both procedural and substantive denials of FAPE, this brings us to the issue of remedies. The Appellant-Parents have requested compensatory vocational education. In *Letter to Riffel*, 34 IDELR 292 (OSEP, 2000), the purpose of the remedy is explained:

"Compensatory services are often appropriate as a remedy even after the period when a student is otherwise entitled to FAPE because like FAPE,

compensatory services can assist a student in the broader educational purposes of the IDEA, namely to participate in further education, obtain employment and/or live independently. For example, if a student was denied services on [ ]'s IEP (such as speech services or additional reading or math instruction, [ ]) may not have ever achieved the proficiency necessary to utilize the skills consistent with the broader purposes of the IDEA. The fact that the student has graduated or reached the age at which the right to FAPE would ordinarily end does not necessarily negate the relevancy of, and the need for, compensatory services."

*Id.* Compensatory education is appropriate if comparable to what a student would have received while at the secondary level. This is supported by case law as well.

52. In a review of cases addressing the issue, different types of post-graduate remedies have been addressed. Appropriate remedies have included remedial education, *Straub v. Florida Union Free School*, 801 F. Supp. 1164, 1181 (NY 1992), and tutorial services, *Puffer v. Reynolds*, 761 F. Supp. 838, 854-5 (MA 1988). Remedies determined to be inappropriate have included college tuition, *Straub* 801 F. Supp. at 1181, and monetary damages, *Puffer*, 761 F. Supp. at 853.

### Remedies

53. The Appellant-Parents ask for the following remedies:
- a. Compensatory vocational education for the student;
  - b. Required training for the District Special and Vocational Education staff at District expense;
  - c. Annual monitoring of the District's Vocational Education program for a period of three years; and
  - d. Other equitable remedies, as appropriate.

54. Having determined that the Student was denied a FAPE, consideration of equitable remedies for that denial is appropriate. However, in the Ninth Circuit, compensatory education does not need to be a day for day equivalent of the time when the education was not appropriate. *Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F3d at 1497. Each of the requested remedies will be discussed further.

55. The Parents request compensatory vocational education. This request is granted. The IEP team will reconvene and meet with the Parents by January 31, 2005, to fashion a vocational program which may utilize services of a third party provider. In the alternative, the District will pay for a vocational program selected by the Parents.

56. Required training for the District Special and Vocational Education staff at District expense. This request is denied.

57. The Parents request annual monitoring of the District's Vocational Education program for a period of three years. This request is denied for lack of jurisdiction. The parents are not precluded from seeking such relief through the court system.

58. The Parents also request "other equitable remedies, as appropriate." This request shall be granted in the form of equipment, namely an FM device. The Student shall be evaluated by an outside evaluator to best determine how to address the problems created by his hearing deficit and learning disability. The Parents and District shall jointly select the evaluator. The evaluation should include analysis of the Student's needs for assistive technology. The District will then be responsible for insuring that the recommendations of evaluator are implemented. The District's responsibility for this shall exist so long as the Student is attending the vocational program, but not to extend past the Student's twenty-second birthday. This would give the parties approximately six months to select the evaluator, select the vocational program, and secure the necessary assistive technology. It would then give four full years (equivalent to NF's four years of high school) for him to participate in the program.

59. The District is responsible for providing the Student with the recommended assistive technologies.

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DEC 15 2004

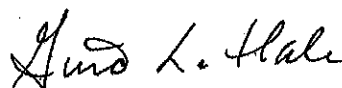
**ORDER**

1. The District denied the Student a free appropriate public education from October 2000 until the May 2004;

2. By way of compensatory education, the District shall pay for a vocational education program for the Student as outlined above. This obligation shall last until the Student completes the program, or until he turns 22, whichever shall occur first.

3. The District shall pay for an assistive technology evaluation and FM hearing device.

Dated at Vancouver, Washington this 13th day of December, 2004.



GINA L. HALE  
Administrative Law Judge  
Office of Administrative Hearings

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DEC 15 2004

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## APPEAL RIGHTS

### RECONSIDERATION

This is a final decision. Pursuant to RCW 34.05.470, either party may file a petition for reconsideration within 10 days after the ALJ has served the parties with the decision. Service of the decision upon the parties is defined as the date of mailing of this decision to the parties. An order denying reconsideration is not subject to judicial review. The filing of a petition for reconsideration is not required before bringing a civil action under the appeal provisions of the Individuals with Disabilities Education Act (IDEA) that allow for the filing of a civil action.

### RIGHT TO BRING A CIVIL ACTION

Pursuant to 20 U.S.C. 1415(i)(c) of the IDEA, any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. See also WAC 392-172-360. The civil action must be filed in court within thirty days after the ALJ has mailed the final decision to the parties. If a petition for reconsideration is filed, this thirty-day period will begin to run after the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). The civil action must be filed and served upon all parties of record in accordance the applicable local and state or federal rules of civil procedure. The Superintendent of Public Instruction must also be served with a copy of the civil action.

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DEC 15 2004

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