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Superintendent of Public Instruction
Administrative Resource Services

IN THE MATTER OF
CLOVER PARK SCHOOL DISTRICT

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

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OFFICE OF
ADMINISTRATIVE HEARINGS

SPECIAL EDUCATION
CAUSE NO. 2003-SE-0170

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

ANDREA CONKLIN, Administrative Law Judge (ALJ), held a hearing on March 18, 2004. The Clover Park School District ("School District") was represented by William Coats, attorney at law. The Appellant/ Parent appeared in person and was assisted by her advocate, Vanessa Lewis. Also present during the hearing were Ann Jones Almlie, Director of Special Education, and Leslie Weaver, Supervisor for Middle School Special Education.

The School District called as witnesses the Parent, Dr. Penny Holmes, School Psychologist, Special Education Teacher, and Carol Pelander, Department Chair of Special Education at Middle School (). School District's Exhibits 1 through 65, Parent's Exhibits 1 through 5, and Court's Exhibit 1 were admitted.¹

Following review of the pleadings, admitted exhibits, testimony and arguments of the parties, the following order is entered:

STATEMENT OF THE CASE

The Parent filed a request with the School District on December 12, 2003 asking it pay for an Independent Education Evaluation (IEE) of her son, C-1; P-3. On December 23, 2003, the School District filed a request for a due process hearing. On December 24, 2003, a Notice of Prehearing Conference was mailed to the parties setting a prehearing conference for January 7, 2004 at 1:00 p.m. At the same time a notice of the hearing was mailed setting a hearing for January 21, 2004 at 9:00 a.m.

¹ School District exhibits shall be referred to as D-1, etc. Parent exhibits shall referred to as P-1, etc., and the Court exhibit shall as C-1.

A prehearing conference was held on January 7, 2004. The parties agreed to strike the hearing date and hold a prehearing conference on February 11, 2004. At the February 11, 2004, prehearing conference the parties agreed the hearing would be held on March 18, 2004, and a readiness conference would be held on March 4, 2004. The 45-day due date for issuance of the written decision was extended to April 5, 2004.

On March 4, 2004, the ALJ assigned to the case, Janice E. Shave, was not available. Therefore, ALJ Andrea Conklin held the prehearing conference. The parties agreed the matter was ready to proceed to hearing. ALJ Shave was not available on the scheduled date of the hearing. Therefore, a Notice of Reassignment was sent out on March 11, 2004, assigning the matter to ALJ Conklin.

ISSUES

As outlined in the February 12, 2004 Prehearing Order the issues for the hearing are:

Whether the School District has appropriately evaluated the Student in the suspected areas of disability,

And, whether the Parent is entitled to her requested remedy, which includes the provision of an independent educational evaluation (IEE) at public expense. The Parent has not identified a specific individual to perform the requested IEE, but has identified that she is requesting new cognitive (ability), academic (achievement), social-emotional and behavioral evaluations. The Parent orally amended her initial request for an IEE to add a request for a psychiatric evaluation.

FINDINGS OF FACT

1. At the age of five the Student, , qualified for special education under the category of seriously behavioral disabled. D-27, p. 1, and P-4, p. 1. The Student was exited from special education services for a short period of time in fifth grade. He was reevaluated pursuant to the Parent's request. The Student was then returned to special education and was qualified as a student with a specific learning disability (SLD).

2. The Student attended during his sixth grade year. The Student's family moved to for his seventh grade year. The Student returned to in the 2003-2004 school year for his eighth grade year. Upon the Student's return, the Parent requested a

reevaluation be performed. The three-year reevaluation of the Student was due in June of 2004. However, the School District and the Parent agreed the reevaluation would be performed earlier.

3. On October 2, 2003, the School District forwarded a notice to the Parent that it was proposing to reevaluate the Student based on the Mother's request. D-20. The Parent signed a Consent Form for the reevaluation on October 6, 2003. D-21.

Cognitive and Behavior Testing.

4. Penny Holmes, Ph.D., is the School Psychologist. She has been employed by since 1979. She has been a school psychologist for more than ten years. Simultaneously, she has acted as a school counselor. Dr. Holmes has a Bachelor of Science from the University of Washington in Psychology. She has a Master's Degree from Central University in Psychology and Counseling. She has a doctorate from Seattle University in Education. Dr. Holmes is certified as a school psychologist and a counselor. In addition, Dr. Holmes is a licensed mental health counselor.

5. Dr. Holmes first met the Student in September of 2003. In October of 2004, Dr. Holmes administered the WISC-III, a cognitive ability test, to the Student. In addition, Dr. Holmes administered the Burks Behavior Rating Scale. D-28 p.1.

6. The Student's performance on WISC-III subtests was as follows:

<u>Verbal Subtests</u>	<u>Scaled Scores</u>
Information	6
Similarities	5
Arithmetic	5
Vocabulary	9
Comprehension	7
Digit Span	7
Verbal I.Q.	80
<u>Performance Subtests</u>	<u>Scaled Score</u>
Picture Completion	13
Coding	9
Picture Arrangement	15
Block Design	8
Object Assembly	8

<u>Performance Subtests</u>	<u>Scaled Score</u>
Performance IQ	104
Full Scale IQ	90

D-28, pgs. 1 and 2

7. In May of 2001, the Student had taken another cognitive test, the Stanford Binet. D-27 p. 3. The scores between the Stanford Binet and the WISC-III were quite similar. The Student's scores decreased in verbal understanding, which is not unusual in students who are not interested in school and are not trying hard. The WISC-III is designed to test the student's cognitive potential to learn and it is not surprising the Student's scores remained the same from the Stanford-Binet to the WISC III over the years. It is not expected the Student's cognitive score will increase.

8. Based on her testing, Dr. Holmes determined there was a significant difference between the Student's verbal and nonverbal skills. In some nonverbal tasks, such as visual memory for details and visual understanding, the Student's performance was excellent.

9. Dr. Holmes also administered the Burks Behavior Rating Scale (Burks) as a behavioral rating for the Student. Dr. Holmes had the Student's teachers complete the rating forms on October 7, 2003. Based on the teachers' responses, the Student's behavior was rated as "very significant," meaning having problems, in the areas of poor academics, poor intellectuality, poor attention and excessive resistance. The Student's behaviors were rated as "significant" in the following areas: poor ego strength, poor impulse control, excessive aggressiveness, and poor social conformity. D-28, p. 2.

10. Based on the teachers' ratings and her observations, Dr. Holmes concluded the Student had difficulties with attention in class. He appears easily distracted, lacks continuity of effort and lacks perseverance. Even in a small quiet room, the Student's weakest skill is screening out distraction. The Student has difficulty completing homework, following academic directions, and staying in a "calm, student-like mode." D-28, p. 2. The Student is disrespectful and sometimes aggressive toward other students. D-28, p. 2.

Academic Testing.

11. Special Education Coordinator Carol Pelander administered the Woodcock-Johnson test to the Student. Ms. Pelander has been employed as a special education director or coordinator for the middle school at _____ for 32 years. She has a Bachelor's Degree in Education from Central Washington University with a major in Special Education and a minor in Elementary Education and Psychology. Ms. Pelander is a certified special education teacher in K through 12th grade. She has administered the Woodcock-Johnson 15 to 20 times a year for the last 32 years. The Woodcock-Johnson measures the Student's academic abilities.

12. Based on Ms. Pelander's testing, the Student received the following scores on the Woodcock-Johnson test:

<u>Subtest</u>	<u>Standard Score (age based)</u>	<u>Grade Equivalent</u>
Letter-Word Identification	78	3.6
Passage Comprehension	90	5.1
Match Calc	84	5.6
Applied Problems	94	6.3
Dictation	72	3.3
Writing Samples	93	5.6
Broad Reading	81	4.1
Broad Math	86	5.9
Broad Written Language	78	3.9
Word Attack	77	2.2
Basic Reading Skills	76	3.0
Reading Comprehension	87	4.6

D-27, p. 3. According to Ms. Pelander's assessment, the Student was reading at a fifth-grade level.

Special Education Teacher.

13. The Student's special education teacher is Mr. [redacted] teaches the self-contained eighth-grade special education classroom at [redacted]. The Student is in Mr. [redacted] class from second through fifth period. Mr. [redacted] graduated from Alabama State University in 1974 with a degree in History and a minor in Political Science and Education. He was in the military for 17½ years and retired in 1994. In 1996, Mr. [redacted] returned to the University of Puget Sound and Portland State University and received his endorsement in special education. Mr. [redacted] has been employed by [redacted] as a special education teacher in the middle school for almost six years.

14. The Student's self-contained classroom includes ten other students. The students in the classroom range from those who are mentally retarded, those with specific learning disabilities, and those who have behavioral disabilities, as well as Tourette's Syndrome. Mr. [redacted] teaches the students math, social studies and language arts. The Student goes to another classroom for technology and physical education.

15. Mr. [redacted] wrote the October 2003 Individualized Education Program ("IEP") for the Student. D-34. To prepare the IEP, Mr. [redacted] reviewed the assessments performed by Dr. Holmes and Ms. Pelander. Based on his review of the Student and a review of the evaluation report, Mr. [redacted] believes the assessments performed by Dr. Holmes and Ms. Pelander correctly reflect the Student and his behaviors and the October 2003 IEP is appropriate for the Student.

16. As part of the IEP, a behavioral intervention plan ("BIP") was prepared for the Student along with a daily monitoring sheet. D-35, p. 7; P-1, p. 7. The Student's behavior is documented on a daily monitor sheet which is given to the Student to return to his mother.

17. The Student's IEP contains goals regarding math, reading, language arts and behavior. The goal for reading in the October 2003 IEP is the Student will improve his reading skills to a sixth-grade level. Mr. [redacted] believed this was an appropriate goal because the Student was reading at either a high fourth grade or a fifth-grade level in the beginning of the 2003/2004 school year. It was the goal of the IEP team that by the end of the IEP, October

2004, the Student would be reading at a sixth-grade level. The Student has been progressing on this goal, but has not met the goal.

18. In the beginning of the 2003/2004 school year, the Student was playing on a football team. The Student is very motivated by football and his behavior was good during the months of September and October 2003. He only received one or two detentions. However, after October of 2003 the Student was no longer playing football and his behavior deteriorated.

19. The Student has received several suspensions and other student discipline since November 2003. Most of these have been for violating the school dress code. However, the Student was involved in two altercations with other students. In the first instance, the Student pushed another student. In the second instance, the Student was involved in a physical fight with another student. The Student was suspended as a result of the fight. The Student's BIP was modified after a manifestation meeting was held with the Parent regarding the Student's behavior. The parties took the existing behavior intervention plan and revised it, producing D-57 dated February 4, 2004. The handwritten portions of D-57 were made by Ms. Pelander.

20. On December 12, 2003, the Parent requested an IEE including a cognitive, academic, social, emotional and functional behavioral assessment. C-1.3. On December 22, 2003, the School District denied the request. C-1.2. The School District requested a hearing on December 22, 2003. C-1.1.

CONCLUSIONS OF LAW

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

2. WAC 392-172-182(2) provides:

Each school district or other public agency shall ensure:

That a reevaluation of each student is conducted in accordance with the evaluation and reevaluation procedures contained in this chapter if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years[.]

In the fall of 2003 the Parent requested the Student be reevaluated. It was appropriate pursuant to WAC 392-172-182(2) to reevaluate the Student.

3. WAC 392-172-106 provides:

General areas of evaluation.

(1) The evaluation of a student shall be in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(2) The evaluation shall be sufficiently comprehensive to identify all of the student's special education and any necessary related services needs, whether or not commonly linked to the disability category in which the student has been classified.

4. The October 2003 reevaluation was conducted in the Student's suspected areas of disability which include academic, cognitive, and behavioral areas. As will be explained subsequently, the evaluation is sufficiently comprehensive to identify all of the Student's special education needs and necessary services.

5. WAC 392-172-108 provides, in pertinent part:

Evaluation procedures.

The evaluation or reevaluation of a special education student or any student being considered for special education services shall be performed using the procedures established in this chapter. Each school district or other public agency shall establish and implement evaluation procedures which meet the requirements of this chapter.

(2)(a) The evaluation of a student with a suspected disability will be conducted by a group of qualified professionals selected by the district or other public agency and knowledgeable about the student and the suspected areas of disabilities.

(b) For a student suspected of having a learning disability, the determination of whether the student is eligible under this chapter shall

be made by child's parent(s) and a group of qualified professionals which must include:

- (i) The student's general education classroom teacher;
- or
- (ii) If the child does not have a general education classroom teacher, a general education classroom teacher qualified to teach a child of his or her age; or
 - (iii) For a child of less than school age, an individual qualified to teach a child of his or her age; and
 - (iv) At least one individual qualified to conduct individual diagnostic examinations of children, such as school psychologist, speech language pathologist, or remedial reading teacher.

(3) Each professional member of the evaluation group shall be licensed, registered, credentialed, or certificated according to his or her professional standards in accordance with state statutes and rules.

(4) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the student, including information provided by the parents, and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining:

- (a) Whether the student is a special education student consistent with WAC 392-172-035(2); and
- (b) The content of the student's individualized education program.

(5) No single procedure shall be the sole criterion for determining a student's eligibility or disabling condition and/or for determining the appropriate educational program for a student.

(6) Tests and other evaluation materials, used for the purpose of identification, special education needs, related services needs, and placement shall be selected and administered so as not to be racially or culturally discriminatory.

...

(8) Any standardized tests and other evaluation materials that are given to a student shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the tests are designed to measure. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility for special education based on other evidence of the existence of a disability and need for special education. This professional judgment shall be documented in the evaluation report. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions

(e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

(9) All tests and other evaluation materials shall be administered by trained and knowledgeable personnel in conformance with the instructions of the test producer.

(10) Tests and other evaluation materials shall be provided and administered in a student's native language or other mode of communication, unless it is clearly not feasible to do so. Tests shall be selected and administered so as to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test is designed to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test is intended to measure). Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(11) Each school district or other public agency shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(12) Each school district or other public agency shall use assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the student.

...

(14) An evaluation report and documentation of determination of eligibility shall be developed consistent with the requirements of WAC 392-172-10905 through 392-172-111.

6. Ms. Pelander is a qualified, credentialed and certificated special education teacher who has administered the Woodcock-Johnson more than 500 times. Dr. Holmes is a qualified, credentialed and certificated school psychologist. Based on their credentials, they have sufficient education and practical experience to conduct the evaluation. Therefore, the School District has complied with WAC 392-172-108(2)(a) and (3).

7. Ms. Pelander and Dr. Holmes used a variety of assessment tools and strategies to gather relevant information. Ms. Pelander administered the Woodcock-Johnson

test and Dr. Holmes administered the WISC-III as well as the Burks. To perform the Burks, Dr. Holmes spoke with the special education teacher in the classroom, Mr. _____ as well as with the Student's other teachers. Dr. Holmes also observed the Student on several occasions. The teachers were the individuals most knowledgeable about the Student's classroom behavior. Therefore, the School District has complied with WAC 392-172-108(4) through (6), (8) and (10) through (12).

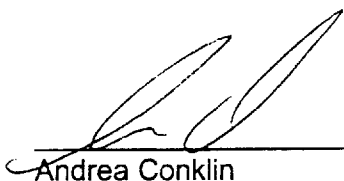
8. Based on the evidence presented, the October 2003 reevaluation was appropriate. The Parent did not produce any evidence to question the credibility or abilities of those administering the tests.

9. All arguments made by the parties have been considered. Arguments that are not specifically addressed have been duly considered but are found to have no merit or to not substantially affect a party's rights.

DECISION AND ORDER

The School District's evaluation regarding the Student's suspected areas of disability is appropriate. The Parent is not entitled to an Independent Educational Evaluation at public expense.

Dated at Seattle, Washington, on the date stamped above.



Andrea Conklin
Administrative Law Judge
Office of Administrative Hearings