

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

IN THE MATTER OF:

Central Valley School District

SPECIAL EDUCATION  
CAUSE NO. 2003-SE-0041

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

Pursuant to due and proper notice, a hearing in the above-entitled matter was held before Senior Administrative Law Judge David G. Hansen, in Spokane, Washington, on April 17, 2003. The parent (Parent herein) of the child (Student herein) who is the subject of this proceeding appeared and represented herself. The Central Valley School District, (District herein) appeared and was represented by Gregory L. Stevens, Attorney at Law. Post hearing briefs were submitted by the parties on April 30, 2003, and on that date the record closed. The Administrative Law Judge, having sworn the witnesses, heard the testimony, and considered the admitted exhibits, briefs, and arguments of the parties, hereby enters the following:

**STATEMENT OF THE CASE**

By letter dated March 24, 2003 and received by the Office of the Superintendent of Public Instruction on March 27, 2003, the Parent, pursuant to WAC 392-172-350, requested a due process hearing in order to challenge the appropriateness of the District's special education placement of the Student. Additionally, the Parent contends that the District failed to comply with the transition services provided for in the Student's Individualized Education Plan.

**FINDINGS OF FACT**

I.

At the time of hearing the Student, whose date of birth is \_\_\_\_\_, 1988, was attending eighth grade at the District's \_\_\_\_\_ Middle School. It has been previously determined that the Student is a special education student in need of special education and necessary related services, qualifying under the category of mental retardation. The Student has "significantly diminished overall mental ability for school learning as evidenced by her full scale WISC-III IQ score of 53... ." Exhibit 13, Page 2. Special education evaluations of the Student show her to be "a very hard worker, conscientious individual,

having good relationships with peers and staff." Exhibit 13, Page 2. Evaluations also indicate the Student to have "low average development in..." the area of adaptive behavior. Exhibit 13, Page 2. Testimony at hearing from District staff shows the Student to be very well liked and considered "delightful" to work with by staff.

## II.

The 2002/2003 academic school year was the first year operated as a middle school. As such, it has grade levels six, seven, and eight. Prior to the 2002/2003 academic school year, operated as a junior high for several years. As a junior high housed grades seven, eight, and nine. The District chose to change to a middle school format because educational research suggests that the development and maturation of sixth, seventh, and eighth grade students are more akin than that of seventh, eighth, and ninth graders. Numerous classes currently taught at Middle School contain a blend of students from all three grade levels.

## III.

The curriculum at Middle School has four Core subjects, consisting of math, social studies, language arts, and science. The curriculum also consists of Encore classes such as physical education, band, orchestra, and health. Additionally, there are Exploratory classes which differ each trimester. Exploratory classes are designed not to be grade level specific. They are designed to be for high student activity and student interest. Examples are such things as bike safety, or a class in law.

## IV.

The Student's Individualized Education Program (IEP herein) requires that the Student receive instruction in science, social studies, and language arts in a self contained class room, math in a resource room, and Encore and Exploratory classes in a general education setting. Exhibit 4. The IEP further provides that the Student is to participate with general education students in all school activities such as lunch, assemblies, transportation, and field trips. Exhibit 4, Page 4.

## V.

During each of the three trimesters during the 2002/2003 academic school year the Student's Exploratory class was given during the sixth period, the last school period of the day. The Student's Exploratory class during the second trimester of the school year was a general music course in what the District contends is a general education setting. The class consisted of 23 sixth graders, three seventh graders, and three eighth graders.

All of the seventh and eighth grade students in the class were classified as special education students.

VI.

The District contends that general music curriculum is designed to meet the needs of all three grade levels, not any specific grade level.

VII.

At or near the beginning of the second trimester Ms. [redacted] sent home with the Student a document entitled "6th Grade General Music Expectation Sheet." Exhibit 1. The form letter was intended to be read and signed by the Student's parent and returned to Ms. [redacted]. The Parent signed the form letter and added the following comment: "This is not an 8th grade class. [redacted] is an eighth grade student. So could you please provide her with an eighth grade elective or Block Class. This was a[n] issue last trimester also." Exhibit 1, Page 2.

VIII.

At or near the end of the second trimester Ms. [redacted] sent an announcement home to the parents of the students in the class. That announcement advised the parents that the music department at [redacted] Middle School would have a presentation on March 6, 2003 in the cafeteria featuring "6th Grade General Music Classes." Exhibit 2. The Student progressed in the class, receiving an "A" for the trimester.

IX.

In response to the Parent's expressed concerns regarding the Student's placement in the "6th Grade General Music Class," the District offered to place the student in another Exploratory class in health and fitness. The Student was already participating in after school sports, and had had a femoral transplant. The Parent felt that this would be too much physical activity for the Student and rejected the placement.

X.

The Parent contended that placement of the Student in a class with primarily sixth grade age students was detrimental to the Student's educational progress. She questioned whether 11 and 12 year old sixth graders should receive instruction in the same educational setting as 13 and 14 year old eighth graders. The Parent offered no medical or psychological evidence to support this contention. Likewise, the Parent offered no evidence in regard to how or in what way the Student's educational progress as outlined

in her IEP was adversely impacted by this placement. Parent offered no proposed "remedy" other than to state in her closing brief that she wanted "some kind of legal documentation stating that wrongful placement was noted... ."

XI.

At hearing, the Parent asserted that the sixth period Exploratory class in which the Student was placed was not in compliance with the IEP and was not the least restrictive environment for the Student because it was not in fact a general education class. The only non-sixth graders in the class being special education students. At the same time the Parent suggested that a more appropriate placement for the Student would have been in a Core support class where she would receive tutoring in math.

XII.

The Student's IEP provides for transition services. In part, the IEP states that the Student "will take part in interest inventories this year **and** class electives will be suggested that correlate with those interests." (Emphasis added.) Exhibit 4, page 2. The Parent expressed concern that the Student had not taken part in any "class electives" during the 2002/2003 school year and therefore the District had failed to comply with the IEP. The District argued that the above quoted language from the IEP means that, based on interest inventories conducted at or near the end of the 2002/2003 school year, class electives will be suggested for the Student to be taken the following school year, when the Student enters high school as a ninth grader. The transition language was not meant to mean that the student "will take part in...elective classes" during the current 2002/2003 school year.

XIII.

At hearing and in the post-hearing brief, the Parent specified no remedy or relief for the District to implement in order to compensate the Student for the District's alleged failure to comply with the IEP in regard to the Student's placement in general education classes.

**CONCLUSIONS OF LAW**

I.

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. §§1400 et. seq. (Individuals with Disabilities Education Act), and the regulations promulgated thereunder, 34 CFR 300 et. seq., Chapter 28A.155 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, Chapter 392-172 WAC.

## II.

The Individuals with Disabilities Education Act (IDEA or Act herein) was adopted upon a finding by Congress that "improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." *20 U.S.C. § 1400 (c) (1)*. Part of the stated purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living..." as well as "to insure that the rights of children with disabilities and parents of such children are protected..." *20 U.S.C. § 1400 (d) (1)*. Free appropriate public education (FAPE herein) means special education and related services that "have been provided at public expense, under public supervision and direction, and with out charge... and are provided in conformity with the individualized education program..." required by IDEA. *20 U.S.C. § 1401 (8)*.

## III.

In order to accomplish the goals of FAPE, the IDEA requires that state and local educational agencies enact the substantive and procedural requirements of the Act. Key to these requirements is the development of an individualized education program (IEP herein). An IEP has been described as "the educational blueprint that specifies how the child is to be taught, sets goals and determines how progress is to be measured." *Tatro v. State of Texas*, 703 f.2d 823 (5th Cir. 1983). An IEP shall contain, among other things, what specific special education and related services are to be provided to the student, as well as the extent to which the student will participate in the general education curriculum. *WAC 392-172-160*.

## IV.

Services provided by a district to those children identified as special education students shall, to "the maximum extent appropriate" be in the general education environment with students who are non-disabled. *WAC 392-172-172*. The educational placement of each special education student is to be based on "[t]he student's individualized educational program; [t]he least restrictive environment requirements of *WAC 392-172-172*; [t]he placement option(s) that provide a reasonably high probability of assisting the student to attain his or her annual goals; and [a] 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)*.

V.

The IEP for the Student in this case calls for a specific amount of instruction in the general education setting. The District contends that the Exploratory classes offered the Student comply with this requirement of the IEP. The undersigned disagrees. In regard to the "6th Grade General Music Expectation Sheet" and the program announcement referencing the "6th Grade General Music Classes", the undersigned appreciates how the error occurred. While these errors do create potential self-esteem issues for seventh and eighth grade special education students, they do not mean that the curriculum is not grade specific as the District states. The class may indeed be in the general education setting for those sixth graders in attendance. Additionally, were the class to have contained some general education students of the seventh or eighth grade level, the undersigned's conclusion may have been different. It cannot however be considered general education for the only non-sixth graders in the class, all of whom are special education students. While the undersigned is confident this is not the case, the situation has the appearance of one in which the District is simply putting six special education students in a placement convenient for the District. It must be noted that this Order addresses only the Student herein. The placement of the Student in a class with all sixth graders, in which she and five other special education students are the only non-sixth graders, is not in compliance with the Student's IEP. Furthermore, placing the Student in this type of class is not educating the Student, to "the maximum extent appropriate" in a general education environment with non-disabled students as required by WAC 392-172-172.

VI.

Having concluded that the District was not in compliance with the Student's IEP and not educating her to "the maximum extent appropriate," the undersigned must address what remedy or relief, if any, is suitable. The record herein will not support a conclusion that the District's actions in regard to the Student resulted in a denial of FAPE. There has been no showing of any loss to the Student of educational opportunity. From all appearances the Student has progressed well and as outlined in her IEP. No evidence to the contrary was presented by the Parent. The Parent objected to the placement in question as not being in the least restrictive environment as required by IDEA, yet suggested placement in a considerably more restrictive placement, a Core support tutorial in math. This is inconsistent with the Parent's hearing request, and was not included in the original IEP. The undersigned accordingly concludes that the District's general education placement of the Student in violation of the IEP did not result in a denial of FAPE to the Student. Accordingly, there is no remedy other than to direct the District that a similar placement of the Student in the future would be considered inappropriate if done under a like or similar IEP.

VII.

Regarding the Parent's concern about the transition services provided for in the Student's IEP, the undersigned concludes that the District has not failed to comply with that portion of the IEP. Therefore, the District has not denied FAPE to the Student, and has not acted in violation of IDEA. It is clear from a reading of the language in that portion of the IEP shows that interest inventories will be given the Student **this year**, and suggestions for elective classes will be given **this year** for elective to be taken **next year**.

**ORDER**

The District's placement of the Student in the general music Exploratory class was not in compliance with placement provisions of the Student's IEP. The District has complied with the transition services provisions of the Student's IEP. The District's actions did not result in a denial of FAPE to the Student.

Dated at Spokane, Washington this 19th day of May, 2003.



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David G. Hansen  
Senior Administrative Law Judge  
Office of Administrative Hearing