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OCT 13 2003

Superintendent of Public Instruction  
Administrative Resource Services

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

**RECEIVED**

OCT 13 2003

IN THE MATTER OF:

Superintendent of Public Instruction  
Administrative Resource Services

WEST VALLEY SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO.2003-SE-0100

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

**MAILED**  
OCT 10 2003  
YAKIMA OAH

Administrative Law Judge Johnette Sullivan conducted a hearing in Yakima, Washington, on September 12, 2003. The student was represented by non-attorney advocate Karen Schademan. The West Valley School District (hereinafter District) was represented by Special Services Director Hans Michielsen.

**PROCEDURAL STATEMENT**

On June 10, the student's mother requested a private evaluation at public expense. The District requested a due process hearing to show that its assessment of the student's special education needs was appropriate. The Office of the Superintendent of Public Instruction (OSPI) received the District's request on June 23, 2003. OSPI forwarded the request to the Office of Administrative Hearings, where the case was assigned to Administrative Law Judge Janice E. Shave. Judge Shave conducted a prehearing telephone conference with the parties on July 16, 2003, pursuant to notice mailed to the parties on July 7, 2003. She found good cause existed to postpone the prehearing conference to July 23, 2003, and to extend the hearing date outside the 45-day time limit requirements of WAC 392-172-356. A second prehearing conference was held on July 23, 2003. The hearing was set for August 28, 2003. The parties requested a continuance, which was granted to September 9, 2003. The parties requested another continuance, which was granted to September 12, 2003. The due date for written decision was extended for good cause, at the request of the parties, to 30 days after the record of the hearing closes. The matter was reassigned to Administrative Law Judge Johnette Sullivan pursuant to a notice issued September 4, 2003, to ensure the availability of an ALJ, since the due process hearing had been continued at the request of the parties.

The parties exchanged exhibits and witness lists by Friday, September 5, 2003. At hearing, the testimony of Hans Michielsen, Special Services Director, Jeanne Lancaster, School Psychologist, the mother of the student, and advocate Karen Schademan were received in evidence. Also admitted into evidence were Joint Exhibit J1, District Exhibits

D1 through D9, and Parent Exhibits P2, and P5 through P11. On the record at hearing, Parent Exhibits P1, P3 and P4 were ruled inadmissible. Parties requested opportunity for post-hearing written briefs, which request was granted. The deadline for submission of initial briefs was September 19, and reply briefs were due by September 26, 2003, on which date the record closed. The due date for written decision is 30 days thereafter, or October 24, 2003.

### FINDINGS OF FACT

1. The student is 10 years of age, born \_\_\_\_\_, 1993. He resides with his mother and stepfather.
2. The student attended kindergarten, first and second grade at Harrah Christian School. He attended third grade at \_\_\_\_\_ Elementary. He began the fourth grade (2002-2003) at \_\_\_\_\_ Elementary in West Valley School District. He is currently in the fifth grade at \_\_\_\_\_ (2003-2004).
3. The student's mother loves him very much. She enjoys that he is affectionate and has a good sense of humor. She reports that her son learns very well by observing and by experience. For example, the student is very knowledgeable about archery, and is able to tell his mother about many aspects of that sport in detail. He did not acquire his knowledge about archery through reading, but rather through observation, practice and example.
4. The student's participation in kindergarten and first grade was unremarkable and ordinary. His parents and his teachers did not have any specific concerns. In second grade, the student's need for glasses was discovered. His teachers encouraged his mother to read at home with him. Mother and son began to read almost daily.
5. The student has the ability to focus and complete tasks of interest, such as archery and reading Bible stories. He also exhibits good work skills at home when he takes out the garbage, helps with laundry, mows the lawn, edges with the trimmer, and sets the water. In addition to home chores, he works with his mother at the post office one day per week doing yard work and other tasks. His mother is very proud of these activities and his strengths. However, she has also observed weaknesses or areas of difficulty and has shared her concern with school staff.
6. Sometimes the student is inattentive and easily distracted. The student frequently has difficulty reading out loud. He is a very poor speller. His mother began to wonder if perhaps he was a visual learner.

7. In third grade, the student participated in the District's Title 1 reading program. The teachers continued to encourage his mother to read with him at home. The mother has observed the student has come to dislike reading, particularly when he feels unsuccessful. An exception is when the student is reading Bible stories. He has for several years enjoyed Bible stories, understands them, and is not discouraged by unusual or difficult vocabulary.

8. The student participated in Title 1 in fourth grade. Title 1 was offered twice daily, but the early class was full. The student was assigned to the later class, which required he be pulled out of his regular classroom in order to participate.

9. The student was assessed in Title 1 in January, March and June 2003. The assessment measured accuracy, rate, phrasing and retelling. These categories were scored from 1 to a top score of 4. The student consistently scored 4 in accuracy, with 96 to 100 percent of words read correctly. His reading rate improved from score 2 (50 to 89 words per minute) to a score of 3 (103 words per minute). The student scored 3 in phrasing, meaning that he mostly phrased, some word-by-word, but mostly meaningful phrases, and used punctuation most of the time.

10. When tested in January 2003, the student scored 1 in retelling. He was unfocused and sketchy, and misinformation or little information was provided. He may include some points from the passage, some details, but missed the main idea or problem and significant areas. His retelling did improve. He scored 2 when tested in March and June 2003. His retelling has some information from the passage but misses the main idea or problem. He may have a few key events, information or details but they are not integrated into the larger story and have little or no sequence.

11. The student's overall total score in the Title 1 program was borderline in the January and March 2003 testing, but totaled 12 points or grade level by June 2003. Grade level was measured at 12 to 16 points.

12. The student's mother spoke to his fourth grade teacher and other school staff, about whether the student might have a learning disability. She did not specifically request special education services and it was not her intent to do so. She simply wanted help for her child. She observes him struggle. She observes him become frustrated. She sees his growing dislike for reading and school. She wants to identify any problems or disabilities sooner than later. She does not want to wait until he experiences greater educational problems or learning delays and then discover a disability.

13. The student's mother provided information to the District about the student's health and family history. The information she provided was accurate to the best of her knowledge, but incomplete. Some information concerning family relationships and other

private matters were undisclosed. She rated her son's past general health as good, that he met developmental milestones at appropriate times, and that he had no serious or significant illnesses, diseases, high fevers, or hospitalizations.

14. The District responded to the mother's request by scheduling a series of evaluations and tests for the student. These tests were conducted in April and May 2003. They included intelligence evaluation, academic achievement evaluation, behavior rating, and observational data.

### The District's Assessment

15. The District selected the Wechsler Intelligence Scale for Children, 3rd Edition, (WISC-III) to evaluate the student's intellectual capacity. The test was completed by a school psychologist on May 19, 2003. The school psychologist considered the results to be valid. The student scored a verbal IQ of 93, performance IQ of 86, and a full-scale IQ of 89. An average IQ (50 percent of the overall population) on the WISC-III is 100. In addition to reporting his overall score, the WISC-III measured various strengths and weaknesses in certain sub-tests. In most sub-test areas the student measured in the average range. However, some of his sub-test scores were within a low average range.

16. The student scored within a low average range in: short-term auditory memory for number sequences (Digit Span, 16th percentile); visual alertness and the ability to pay attention to, and grasp the meaning of, details (Picture Completion, 16th percentile); visual motor speed, short-term visual memory and the ability to learn non-verbal material (Coding, 16th percentile). The student demonstrated a significant weakness in the ability to evaluate the social relevance of pictured situations, to anticipate the consequence of actions, to distinguish essential from irrelevant details, and to appropriate sequence ideas and temporal events (Picture Arrangement, 5th percentile) and poor processing speed and visual discrimination (Symbol Search, 9th percentile).

17. Overall, the student's intellectual functioning measured within the average range according to the Wechsler scales.

18. To measure the student's academic achievement, school counselor administered on May 7, 2003, the Woodcock-Johnson Tests of Achievement – 3rd Edition (WJ-III). The school psychologist opined that the student performed better than could be predicted on the WJ-III, based on his WISC-III IQ score. The WJ-III results indicated the student's oral language skills, oral expression skills, fluency with academic tasks, and performance within basic reading, reading comprehension, math calculation skills, math reasoning, and written expression measure within an average range. No severe discrepancy existed between the student's intellectual ability and his academic achievement. The scores demonstrated a reasonable expectation the student could

perform within an average range in all academic areas. A standard score "criterion value" of 75 or less is needed to determine a specific learning disability by state standards. The student's standard scores were greater than 75 in every one of the 20 subtest areas. His standard scores ranged from a low of 87 (in math fluency) to a high of 115 (applied problems).

19. To assess the student's behavior, his fourth grade teacher completed the Achenbach Teacher's Report Form for ages 6 to 18, on May 14, 2003. The form inquires into areas of anxious/depressed, withdrawn/depressed, somatic complaints, social problems, thought problems, attention problems, rule-breaking behavior, and aggressive behavior. His teacher had been observing him since September 2002 and rated him in the normal range. The instrument compared the student to thousands of other boys within his same age range, as a mean of 50 and yielded T scores: internal (T-59), external (T-55), and total (T-49). His scores fell within normal limits.

20. School counselor observed the student for one-half hour in a general class on May 6, 2003. He appeared to be on task 84 percent of the time, and off task 16 percent of the time. The student worked quietly without distracting anyone around him, but he did confer with other students regarding correct answers. He interacted appropriately when he worked in a small group with other students. The teacher assisted him individually as needed by proximity and when he raised his hand to request assistance.

21. The school counselor also observed the student in a Title 1 session. The student participated with one other student and a paraeducator. The student reviewed new vocabulary words with flash cards, read each word, and then used the word in context to demonstrate he understood the meaning. He acted somewhat silly when asked for further information, but with redirection by the paraeducator he regained his focus to the task at hand. He gave appropriate examples of words and their meanings, read accurately although at a methodical rate, and answered comprehension questions accurately. The date of this observation and amount of time spent observing are not known. There is no statistical "on-task-off task" measure of this observation in evidence.

22. The student's vision tested 20/30 in left and right eyes and in both eyes. He passed the hearing test.

23. An evaluation team met on May 27, 2003, to review the various test results. The team consisted of the student's fourth grade teacher, the Title 1 teacher, the school counselor, the school psychologist, a speech and language pathologist and the special services director. The team determined the student did not have disabilities that adversely affected his educational performance and that he did not require specially designed instruction. They determined that none of the disability category criteria were met.

However, they did make a variety of recommendations for his general education teachers. Their recommendations to the general education teacher were extensive and included:

- a. Allow the student to use a hi-liter pen for any assignments, as writing in a textbook is not appropriate.
- b. Provide the student with reading strategies to assist him with fluency and comprehension.
- c. Continue Title reading instruction.
- d. Allow the student to use colored overlays if they assist him with reading.
- e. Read stories aloud and allow the student to listen, when he reports remembering 100 percent, than if he reads it himself, when he recalls only 20 percent of the passage.
- f. Provide directions that are specific, simple, and give one direction at a time. Check for understanding by proximity or by asking the student to repeat them before beginning a task. Ask the student to wait for the complete set of directions prior to beginning the assignment.
- g. Provide visual/auditory/and tactile instruction, as good teaching typifies.
- h. Allow breaks as needed.
- i. All learning situations should emphasize teaching essential details in visually presented information.
- j. Allow the student time to copy information; explain homework and assignments in a step-by-step manner.
- k. Consider the student may require a bookmark of post-it notes to maintain his place while reading, writing or copying information.
- l. Reinforce student motivation to complete independent tasks.
- m. Encourage the student to participate in group activities.

- n. Present information in a systematic, orderly manner to make sure the student understands the appropriate sequence. Complete directional puzzles that include sequencing. Draw pictures to denote the introduction, body, and conclusion of a passage. Complete exercises that have a specific sequence, play dominoes or card games requiring sequencing, state the sequence of events heard aloud, and complete an open-ended story.
- o. Provide opportunities for exercise and drills to focus attention to tasks/learning in new situations.
- p. Provide practice for scanning, tracking, and any visual discrimination task that will build processing speed, rate of speech, and academic skills in spelling, math, and reading (find hidden pictures, trace hidden pictures from memory, complete/solve mazes, complete puzzles-jigsaw of USA-timed, complete mosaic projects, play same/different games, assemble three-dimensional puzzles, arrange jumbled words, play word games, play Concentration, complete paper-folding as in Origami, and any games/activities requiring visual discrimination tasks.
- q. Allow the student to time himself and compete against himself in any timed activity or task.

### The Request for an IEE

24. The student's mother was disappointed with the District's results. She met with school staff to discuss the results on June 4, 2003. She remained concerned about a possible learning disability that if undiagnosed would detrimentally affect her son for the rest of his life. On June 10, 2003, the student's mother wrote to the District superintendent to state her dissatisfaction with the findings. She requested a private evaluation at public expense.

25. On June 19, 2003, the Special Services Director sent a letter and Notice of Proposed Action to the student's mother. He explained the District's position regarding its belief that its assessment was appropriate and that it was denying her request for private evaluation at public expense. The District also explained that its only procedural remedy was to request a due process hearing.

26. On June 23, 2003, the District filed with OSPI a request for due process hearing, to show that its assessment of the student's special education needs was appropriate.

27. Meanwhile, the student's mother made arrangements for the student to be evaluated by Gary Campbell, who has a Master's degree in Education. Mr. Campbell is well known and recognized as an expert by the District. Prior to the assessment by Mr. Campbell, the student's mother provided a more complete statement of family structure and background history.

### Mr. Campbell's Assessment

28. Pending hearing, Mr. Campbell evaluated the student over a four-day period, August 5, 12, 19, 20, 2003. He consulted with the District appropriately to determine the type of testing by the District. Test protocol requires tests not be repeated unless a specified amount of time has passed. Accordingly, Mr. Campbell utilized different testing measures to evaluate the student's intellectual, academic, behavioral and observational data.

29. To measure the student's intellectual functioning, Mr. Campbell utilized the Woodcock-Johnson III Test of Cognitive Abilities (WJ-III Extended Battery). The results were consistent with those obtained on the WISC-III administered by the District in May 2003. While the WISC score was slightly higher, the difference was not statistically significant and both evaluations placed the student's intellectual abilities within the low average to average range for his age population.

30. To evaluate the student's academic skills, Mr. Campbell utilized the Wechsler Individual Achievement Test – 2nd Edition (WIAT-II), which is a standardized achievement test similar to the WJ-III test of achievement administered by the school in May 2003. Consistent with the District's evaluation, a reading disability was not disclosed by the WIAT-II findings. Likewise, no disorder in mathematics was disclosed. Likewise, no disability was disclosed in writing skills. Using Washington State Special Education Regression tables pertaining to ability-achievement discrepancy analysis, an achievement standard score of less than or equal to 73 was specified as criterion for determining severe deficit and eligibility to receive Special Education services under the specific learning disability category. None of the student's academic scores met that requirement.

31. Mr. Campbell asked the student's mother to complete the Behavioral Assessment System for Children (BASC) which is a standardized behavioral rating scale with normative data based on age, gender, and clinical populations. The test produces "T-score" results. A T-score of 41-59 is considered within normal limits. A T-score of 60-69 falls in the at-risk range and identifies a significant problem that may not be severe enough to require formal treatment but may need further evaluation or careful monitoring. A T-score of 70+ is in the clinically significant range and suggests the possibility for the need for formal treatment.

32. The mother's ratings on attention problems (T-score = 73) fell in the clinical range and noted significant behaviors: easily distracted, forgets things, seldom completes work on time, fails to listen to directions, and never completes homework from start to finish without taking breaks. Conversely, his score on the hyperactivity scale (T-score = 38) was below average. The student's rating on the anxiety scale (T-score = 69), the depression scale (T-score = 65), and the internalizing composite scale (T-score = 69) were in the at-risk range. These suggested the student is more likely to internalize psychological distress than externalize or act it out.

33. Mr. Campbell considered that the mother's BASC T-scores were very different from the fourth grade teacher's T-scores on the Achenbach. The teacher's scores were all in the normal range, while the mother's scores were either below average, or in the at-risk or clinical ranges.

34. Mr. Campbell administered to the student, in order to assess his feelings of self confidence and emotional functioning, the Kovac's Children's Depression Inventory, and a semi-structured clinical interview. The ineffectiveness subscale of the Children's Depression Inventory measured in the clinical range, while negative self esteem scale was moderately elevated. The Anhedonia scale was moderately elevated with the student's feelings of loneliness, trouble sleeping, eating, and tiredness. However, the remaining subscales were within the normal range and his total score (T-score = 58) was in the normal range for his age and gender, which tended to rule out generalized depression as a primary condition underlying his difficulties.

35. Mr. Campbell assessed the student's relative strengths, including verbal comprehension, auditory processing, visual-spatial reasoning and executive processes. He also considered the student's weaknesses, including processing speed, cognitive fluency, long-term retrieval and associative memory, and short-term memory and working memory. He considered whether the student had a central auditory processing disorder. He concluded the results from the WJ-III did not support a central auditory processing disorder as a condition underlying the student's difficulties.

36. Mr. Campbell considered attention and distractability functions. To further assess those functions directly, Mr. Campbell administered to the student the Gordon Diagnostic System where the variables of vigilance and distractability were assessed by presentation of continuous performance tasks. The student tested in the first percentile and on both measures tested in the abnormal or clinical range. However, there was too much contradictory information presented to conclude that the data, in and of itself, provided sufficient evidence to support a classification of attention deficit disorder.

37. Mr. Campbell concluded that the student did not suffer from a specific learning disability and otherwise did not meet any of the eligibility conditions for special

education. He recommended that the student have a thorough and comprehensive medical evaluation to address complaints of migraine headaches, decreased endurance, low energy and fatigue. The parent and child reports, and the direct psychometric measures, showed the characteristics of attention deficit disorder (ADD), predominantly inattentive type, but the findings were not supported by school observation. Also, there were too many uncertainties regarding the student's physical status to feel confident that ADD underlay his school performance issues.

38. Mr. Campbell made recommendations for the District's evaluation team, as well as outside school for the student's mother, father, and stepfather. The recommendations related to the student's personal relationships with his father and stepfather are not recounted here.

39. Mr. Campbell recommended the student be allowed to carry a water bottle at school, as he felt better when well hydrated. To the extent possible, he recommended exploring ways of modified lighting that helped minimize or eliminate glare as well as provide the right intensity for the student's needs to be taken into consideration. He recommended the District's evaluation team reconsider the student's participation in the Title 1 program (that required pull-out from the classroom) if pull-out contributed to his missing classroom instruction and assignments. Mr. Campbell recommended providing a quiet, properly lighted space with minimal visual distraction where the student could complete independent class work which may help him concentrate. Perhaps the student could wear unattached headphones or ear plugs as an aid to screen out noise. In general, Mr. Campbell recommended the type and intensity of environmental stimuli should be taken into consideration. He recommended the student sit in close proximity to the teacher, near students who are on task and away from the street, window, hall, pencil sharpener, or other areas of high student movement and traffic, as well as away from the noise of heating/air conditioning systems. He also recommended a helpful text and guide that would allow collaboration and communication between the parents and teachers as they work together to focus on the student's weakened motivation for school work and tendency toward procrastination.

40. Like the District, Mr. Campbell made a series of recommendations for the general education teachers, as follows:

#### **Problems with Processing Speed/Cognitive Fluency**

- a. Provide more time or shorter segments to complete assignments.
- b. Reduce quantity of work in favor of quality.

- c. Limit or structure copying activities.
- d. Provide activities to increase rate and fluency (e.g., flash cards, speed drills, educational software, particularly math.
- e. Provide extended time for tests or prior arrangement for a time and place to complete any item not finished during testing session.

### **Problems with Long-Term Retrieval and Associative Memory**

- f. Redundancy of previously learned material is critical for learning new concepts.
- g. Provide overlearning, review, and repetition fluency.
- h. Provide immediate corrective feedback.
- i. Provide list of steps (written or pictorial) that will help organize behavior and facilitate recall.
- j. Teach memory strategies such as verbal mediation or rehearsal, chunking, visual imagery, mnemonics.
- k. Provide multisensory learning; use visual, kinesthetic, vocal, and auditory channels as appropriate.
- l. Provide context and meaning-based instruction, relate new information to personal experience and interest whenever possible.
- m. Use graphic organizers such as diagrams, webs, mind-mapping, highlighting and color-coding of salient points, and interrelationships.

### **Problems with Short-Term Memory**

- n. Keep directions short and simple.
- o. Ensure directions are understood: have him paraphrase.
- p. Provide compensatory aids:
  - Write directions, procedures, and assignments on board or paper.

- Arrange for peer-shared notes or pair partnering.
  - Provide study guide to be filled out during pauses in presentation.
- q. Maintain consistent predictable routines for materials placement, turning in assignments, time for organization of book, backpack, assignments, school binder, etc.

41. Mr. Campbell prepared a 15-page report on September 1, 2003, summarizing his initial evaluation. The District's Special Services Director spoke with Mr. Campbell and received an oral report of the evaluation's conclusions. The timing of the conversation was unfortunate. The District learned of Mr. Campbell's recommendations before the parents. That fact was particularly galling to the parents, because the district had resisted doing further evaluation itself and had refused to pay for the independent evaluation.

42. The student's mother is concerned that the student's extremely low scores in some subtests might be evidence of a possible disability. She believes that the independent evaluation may well have resulted in a diagnosis of attention deficit disorder were it not for the contradictory observations of the student's fourth grade teacher and the school counselor. The mother asserts that little or no reliance should be placed upon the observations of the school counselor because it was a one-time observation, of limited duration, and the student was aware that he was being observed. His ability to stay on task under such conditions 84 percent of the time should not be given the same weight as her own lifetime observation of the student.

43. The mother's challenge to the weight to be given the observations of the school counselor is reasonable. However, Mr. Campbell also considered the observations of the student's fourth grade teacher (the Achenbach), who had been observing the student throughout the 2002-2003 school year. Also, the discrepancy between the mother's observations and those of the school personnel were not the sole basis for Mr. Campbell's conclusion that attention deficit disorder could not be diagnosed. Mr. Campbell very specifically considered that there were too many uncertainties regarding the student's physical status to feel confident that attention deficit disorder underlay his school performance issues. Accordingly, he recommended a thorough and comprehensive medical evaluation to address the student's physical complaints.

44. The mother is also concerned that the District has repeatedly described her child as average, even though some subtest scores showed deficiencies that were far below average. She believes those scores are indicators of problems that should prompt further investigation.

45. The mother questions the significance of "subtest scatter", when there is large variation between subtest scores. She questions whether the fact the student scored very low in some subtest areas should prompt further testing or use of different test instruments.

46. The District responds to the mother's concerns by offering expert opinion testimony that individual subtest scores are not significant, in and of themselves, in determining the existence of a disability or in determining eligibility criteria. The District's school psychologist and special services director both opine that focus should not be on individual subtest scores. Rather, they opine that test protocols produce an overall or total score, and only those scores are meaningful or significant in determining eligibility criteria and existence of a qualifying disability.

### CONCLUSIONS OF LAW

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

2. The Individuals with Disabilities Education Act (IDEA) (formerly the Education for All Handicapped Children Act) and its implementing regulations provide federal 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 v. Rowley, 458 U.S. 1786, 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.

Clearly a "free appropriate public education: consists of both the procedural and substantive requirements of 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. The District has an obligation pursuant to the Child Find provision of WAC 392-172-100 to identify students for evaluation, and to evaluate all areas related to suspected disability. A parent, or teacher, or any other person may refer a student to the District for evaluation.

4. An evaluation must be sufficiently comprehensive to identify all of the student's special education and any necessary related service needs, pursuant to WAC 392-172-106.

5. The evaluation procedures are set forth in WAC 392-172-108. This case began when the parent expressed concern about her son's learning, which constituted a referral for evaluation under WAC 392-172-102. WAC 392-172-10900 provides for determination of needed evaluation data, and WAC 392-172-10905 provides for evaluation report and documentation of determination of eligibility.

6. Parents of a student referred for special education have the right to obtain an independent educational evaluation (IEE) of the student if the parent disagrees with the District's evaluation. WAC 392-172-150(1).

7. The parent may ask that the IEE be at public expense, and if the District objects, the District must establish through the hearing process that its evaluation is appropriate. WAC 392-172-150(5).

8. The District's evaluation addressed all areas of suspected disability, was sufficiently comprehensive, was conducted by a qualified team, used a variety of assessment tools which were not racially or culturally biased, was not based on a single instrument, and was conducted using standardized tests which are validated for their purposes, which accurately reflect measures adopted by the State to determine the existence of a specific learning disability. The test and assessment instruments were administered by qualified individuals who conformed to the test protocols, were

administered in the student's native language, and were based on instruments which were technically sound.

9. The District's evaluation reports and testing data meet the criteria of the regulations, particularly WAC 392-172-106 (General Areas of Evaluation), WAC 392-172-108 (Evaluation Procedures), WAC 392-172-10900 (Determination of Needed Evaluation Data) and WAC 392-172-10905 (Evaluation Report and Documentation of Determination of Eligibility). There is no dispute that the District complied with the determination of eligibility and parental notification requirements of WAC 392-172-111.

10. Lastly, it must be noted that the parent's IEE supports the appropriateness of the District's evaluation. The IEE failed to disclose a qualifying disability. The District has met its burden of proof and has shown that its evaluation was appropriate.

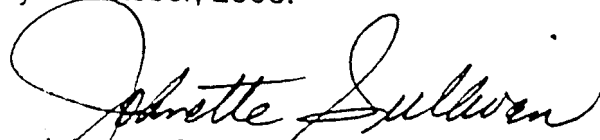
11. The rights under IDEA attach only to students who qualify for special education services. General education students do not have rights under IDEA. Nevertheless, the District intends to consider the recommendations of its own evaluation team, and those of Mr. Campbell, to meet the student's general education needs.

12. The mother's concern about her son's struggles are valid and reasonable. However, there is no legal basis for her challenge of the test protocols which by design focus on overall results rather than individual subtest scores. There is no legal basis for her challenge of state discrepancy tables for determining eligibility. The mother and the general education staff are encouraged to read and consider together the recommendations of the evaluation team and of Mr. Campbell. The mother is encouraged to share any additional medical information that might become available in the future, if she believes such data may aid the general education staff in serving her son's education needs. If the mother believes that new medical information or any other new information would cause the District to re-consider its assessment of the student's needs, she is encouraged to share that information and/or seek another referral for special education assessment.

## DECISION AND ORDER

The District has established that its evaluation was appropriate and that the student does not meet eligibility criteria for a disability, and does not require special education services with specially designed instruction. The parents are not entitled to reimbursement at public expense for the independent educational evaluation by Gary Campbell.

DATED at Yakima, Washington this 10<sup>th</sup> day of October, 2003.

  
Johnette Sullivan  
Administrative Law Judge

JS:mb