

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

MAILED  
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OFFICE OF  
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

LAKE WASHINGTON SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. 2004-SE-0081

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Andrea Conklin on July 19 and 20, 2004. The Lake Washington School District (District) was represented by Timothy McCredie, attorney at law. The Parents appeared in person and *pro se*. Parents' Exhibits P-201 through P-214, P-216 and P-217 were admitted. District's Exhibits D-101 through D-124 were admitted. An illustrative exhibit was marked as D-125, but was not admitted.<sup>1</sup>

The following witnesses testified at the hearing: Theresa Fewel (special education coordinator), (special education teacher at elementary (sixth grade teacher at Deborah McC Carson (principal of Kirkland Junior High ("Kirkland")), special education teacher at Cindy Duenas (principal of and Cynthia Dupuy, MA, Ph.D. (Parents' expert.)

**STATEMENT OF THE CASE**

The Parents filed a request for hearing on June 16, 2004 regarding the location of their son's seventh grade education during the 2004/2005 school year. P-201. A prehearing conference was scheduled for June 28, 2004. A hearing was scheduled for July 12, 2004. The case was initially assigned to ALJ Jill L. Geary. The District filed a motion and affidavit for change of hearing officer. The case was reassigned to ALJ Conklin on June 22, 2004. At the prehearing conference held on June 28, 2004, the hearing was continued to July 19 and 20, 2004. The 45-day due date was not continued.

Two business days prior to the hearing the Parents filed a brief raising a new issue regarding the denial of a free and appropriate public education (FAPE). At the beginning of the due process hearing, the Parents' brief was treated as a motion to amend the Parents' initial hearing

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<sup>1</sup>Parents' Exhibits shall be referred to as P-201, etc. and District's Exhibits shall be referred to as D-101, etc.

request. The motion to amend was denied. The Parents were informed they could file another hearing request regarding the FAPE issue.

At the conclusion of the hearing, the parties requested additional time to file closing briefs. The parties filed written closing briefs and the District filed a response to the Parents' closing brief. The record closed on August 6, 2004. The 45-day due date was extended to August 20, 2004.

In the response to the closing brief, the District moved to strike portions of the Parents' closing brief because facts were raised in the closing argument for the first time. Some facts were raised for the first time in the Parents' closing argument. However, as the facts were not relevant to the decision, the District's motion will not be ruled upon.

### ISSUE

As set forth in the June 29, 2004 Prehearing Order, the issue for the hearing is whether the Student should attend a Choice school or

### FINDINGS OF FACT

1. The Student has received special education services since he was in the first grade. D-110.1. During the 2003/2004 school year, the Student, who resides within the District, attended the sixth grade. The Student has attention deficit and hyperactivity disorder (ADHD) and qualifies for special education under the category of health impairment.

#### *School Options*

2. The District has an open enrollment policy. There are several junior high schools the Student could attend. The normal school the Student would attend for the seventh grade is Junior High. The Student can apply to other junior high schools, including Kirkland and the Choice schools.

3. There are five different Choice schools; North Star, ICS, EAS, Stella Schola, and Family Learning Center. D-101. In order to attend a Choice school, a child must apply and then be chosen by a computerized lottery.

4. The Student in this case applied to and The maximum number of students at 370 for grades 7 through 12. For the 2004/2005 school year, 255 students applied to and 66 were offered positions. There are 34 to 35 students per class at The Student would have five or six teachers all three years while attending. Students who do best at are those who are independent. Of the Choice schools, has the most rigorous academic standards.

5. Consists of students from sixth to ninth grade. At, the goal is for students to be stewards of their environment. Environmental issues are the main theme for a number of

school projects. Students work on quite a number of projects at [redacted] Students are required to be independent at [redacted] The total student population at [redacted] is 138. For the 2004/2005 school year 105 students applied to [redacted], and 35 students were offered positions.

6. The Student also applied to [redacted] a junior high with students from seventh to ninth grade. [redacted] emphasis is on art and science. There is a total of 90 students at [redacted] Each class has approximately 35 students.

7. The Student was not admitted to any of the Choice schools. The Student is on the wait list for these schools.

8. [redacted] the Student's neighborhood school, has more than 1,000 students enrolled. The Parents believe [redacted] is not appropriate for the Student and requested a "variance." A variance is when parents request a student attend another junior high within the District. The Parents' request for a variance was granted and the Student is scheduled to attend [redacted] the 2004/2005 school year.

9. [redacted] for seventh through ninth grade students. There will be 549 students enrolled in [redacted] the 2004/2005 school year. In the seventh grade, there will be 180 students. [redacted] will be in a brand-new building beginning the fall of 2004. The seventh graders will be in their own "pod," which is a section of the school. In the center of the pod will be a computer lab which all students can access.

#### *IEPs*

10. An individualized education program (IEP) meeting was held regarding the Student on April 1, 2004, pursuant to notice mailed to the Parents. D-116.2. In attendance at the IEP meeting were the Parents, [redacted] (special education teacher), Sally Madge (school psychologist), and the Student's [redacted] grade teacher, [redacted]. At the time of the April 1, 2004 IEP meeting, the Student did not know whether or not he had been accepted into the Choice schools. An IEP was prepared dated April 1, 2004. D-116.

11. The April 1, 2004 IEP reflects the Student's present levels of performance based on an April 11, 2002 intelligence test given by Dr. Madge. Based on the intelligence test, the Student has above-average cognitive ability. D-116.5. The April 1, 2004 IEP also reflects the March of 2003 Iowa Test of Basic Skills (ITBS) test taken by the Student. The Student was above-average in a number of areas. However, he was below average in spelling, capitalization, punctuation, usage, and total language. The Student's strengths are in math. In addition, the Student often does quite well in reading.

12. The April 1, 2004 IEP provides the Student will be in a general education setting. The IEP provides the Student will have several accommodations and supplementary aides and services. D-116.10. For example, the Student will have the teacher make sure he is attending to task, he will need to sit in the front of the room and his assignments may be reduced. The Student

will be given more time on tests and the number of problems may need to be reduced. In addition, long term projects would be simplified and broken down. The April 1, 2004 IEP also indicates the Student will be receiving special education services 90 minutes a week. D-116.9. At the time of the April 1, 2004 IEP meeting, since the parties did not know what school the Student would be attending, the parties did not indicate a location on the IEP.

13. When the Student was not admitted into any of the Choice schools, the IEP team met again on June 15, 2004 pursuant to a notice mailed to the Parents. D-120.1. In attendance at the IEP meeting were the Parents, the Student, (special education teacher), (grade teacher), Ms. Fewel (special education coordinator), (principal of (special education teacher at and (principal at The parties made some modifications to the April 1, 2004 IEP. In particular, the parties agreed the Student would attend a special education class once a day while at Therefore, the Student's minutes in special education increased from 90 to 300. D-120.8. Additional accommodations were made for the Student regarding access to word processing in the classroom. D-120.9. A new IEP was prepared and dated June 15, 2004. D-120.

14. The principal at has reviewed the June 15, 2004 IEP. Based on her knowledge of the special education department, it is the principal's opinion that can provide the special education services outlined on the June 15, 2004 IEP to the Student.

15. The Student could also receive special education services at any of the Choice schools. However, it would be more difficult at the Choice schools because there is not a special education classroom on any of the sites. Special education teachers are taken from other schools. The Student would have to receive the special education services before or after school, or be pulled out from his regular classes.

16. On June 16, 2004, the Parents requested a hearing objecting to the location of the Student's program for next year. P-201. The Parents objected for several reasons. The Student is very shy and the Parents are concerned he will not be able to access his education. The Parents are concerned and are too large and the District will not be able to provide the special education services needed at those locations.

17. The Parents called as a witness Dr. Dupuy who has some limited experience with Dr. Dupuy has a Ph.D. from Northwestern University in 2001 in the area of learning disabilities. She worked at Newport High School for five months as a general education teacher. Dr. Dupuy has worked at Bellevue Community College as a special education teacher.

18. Dr. Dupuy never tested the Student. Dr. Dupuy also never visited any of the Choice schools. Dr. Dupuy was concerned would not be able to deliver the Student's special education services. However, she could not state would or would not be able to deliver the special education services to the Student. Similarly, Dr. Dupuy could not state that the Choice schools could or could not deliver the special education services to the Student.

## 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. § 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 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.

3. The IDEA requires a school district to implement an eligible student's IEP in his or her least restrictive environment (LRE). Inclusion in the general education classroom is presumed to be the LRE 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.

4. The law also requires 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.

5. 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).

6. In this case, the District has established the general education environment with one special education class along with other accommodations for the Student is his LRE. The only issue is the Student's educational placement. WAC 392-172-180, regarding educational placement, provides:

(1) The educational placement of each special education student, including a preschool student, shall be determined at least annually at a meeting conducted pursuant to WAC 392-172-15700 and 392-172-15705.

(2) The selection of the appropriate placement for each special education student shall be based upon:

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

(Emphasis added.)

7. "Educational placement" is not defined by the IDEA. *AW v. Fairfax County School Board*, 372 F. 3d 674 (4th Circ. 2004). As educational placement is a term of art, the term lacks ordinary meaning and the "IDEA must be examined to distill a definition that 'can most fairly be said to be in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested.'" *AW*, 372 F. 3d 674 quoting *Commissioner v. Engle*, 464 U.S. 206, 207, 78 L.Ed. 2d 420, 104 S.Ct. 597 (1984). After examining the IDEA, the *AW* court held:

Although the foregoing indicates that the definition of "educational placement" should reflect the "mainstreaming" ideal of the LRE requirement, it does not appear that the term also includes the precise physical location where a disabled student is educated. The LRE requirement directs that the disabled student be assigned to a setting that resembles as closely as possible the setting to which he would be assigned if not disabled. See *Rowley*, 458 U.S. at 202-03 & n. 24. The IDEA's concern with location thus focuses on the degree to which any particular assignment segregates a disabled student from nondisabled students, rather than on the precise location of the assignment itself. Given the IDEA's concern with "mainstreaming" and appropriate educational content, we find little support in the IDEA's underlying principles for *AW*'s assertion that "educational placement" should be construed to secure his right to attend school in a particular classroom at a particular location.

Thus, the Student's physical location for junior high is not an issue for the IEP team.

8. Even if the actual location of the school was a question for the IEP team, the District established the placement option at \_\_\_\_\_ provides a reasonably high probability of assisting the Student in obtaining his annual goals.

9. The Parents failed to establish, through any of the witnesses, including their expert, that the Student could not make progress on his IEP goals and objectives at \_\_\_\_\_. In fact, the Choice schools may make it more difficult for the Student to make progress because they do not have the special education staff readily available to provide services to the Student. Based on the testimony, if the Student was admitted to the Choice schools, it is reasonably calculated that the Student would receive meaningful educational benefit and

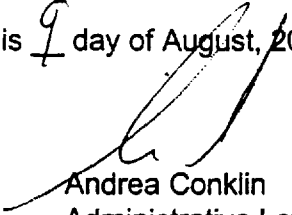
the Student could progress towards his goals. However, the evidence did not establish the Student in any way needed the Choice schools in order to progress on his IEP goals and objectives.

**ORDER**

1. The Parents' motion to amend the hearing request to include an issue regarding denial of FAPE is DENIED.

2. The Parents' request that the District be ordered to admit the Student to one of the Choice schools is DENIED.

Dated at Seattle, Washington this 9 day of August, 2004.

  
Andrea Conklin  
Administrative Law Judge  
Office of Administrative Hearings