

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

**MAILED**

**JUL 15 2009**

Office of Administrative Hearings  
Spokane

IN THE MATTER OF  
PROSSER SCHOOL DISTRICT

SPECIAL EDUCATION

CAUSE NO. 2007- SE- 0111R

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

**RECEIVED**

**JUL 20 2009**

OFFICE OF PROFESSIONAL PRACTICES

A hearing was held in cause number 2007-SE-0111 before Administrative Law Judge (ALJ) John M Gaffney in Prosser, Washington on January 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 2008.

A decision was issued by the Office of Administrative Hearings in cause number 2007-SE-0111 on January 30, 2008. That decision ruled that the Prosser School District provided a Free Appropriate Public Education to the Student for the 2007-2008 school year. The decision rejected the Parents' claim that the appropriate educational placement for Student for the 2007-2008 school year would be at Woods Services, a private residential treatment facility in Langhorne, Pennsylvania at the School District's expense.

The Parents filed an appeal of the January 30, 2008 decision to the United States District Court Eastern District of Washington.

On January 20, 2009, Judge Robert H. Whaley, of the United States District Court Eastern District of Washington issued an Order remanding the case. The case was remanded for the ALJ to consider whether the daily behavior logs of the Student from March, 2006, to May, 2006 were relevant.

A hearing was held in the remanded cause number 2007-SE-0111R on June 8, 2009, and June 9, 2009, in Prosser, Washington. Testimony concluded on June 17, 2009, in Spokane, Washington.

The Prosser School District (School District) was represented by Joni Kerr, Attorney at Law. The Parents of the Student whose education is at issue<sup>1</sup> were represented by Marcie Meade, Attorney at Law.

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<sup>1</sup>In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student."

The following individuals testified in person under oath or affirmation in June, 2009: the Mother of the Student, Lisa Ancock (school psychologist) Chris Underwood, (paraeducator), Alice Perkins, (paraeducator), Kevin Lusk, [REDACTED] High School Principal), Christine Guzzardo, Ph.D. (psychologist), Dr. Ray Tolcacher, (Superintendent), Mark Derby, Ph.D (psychologist).

The following exhibits were admitted: Parents' Exhibits P 127, P 128, P 130A, P 130 B, P 132, and P 133. School District Exhibits D 101, D 102 and D 103 as well as Appendix 1 and Appendix 2 form the District's post hearing brief. The parties submitted post hearing briefing on June 26, 2009, and response briefing on July 3, 2009. The 45 day decision due date is July 17, 2009, 14 days after the July 3, 2009 post hearing brief deadline.

### ISSUE

1. Whether the daily behavior logs of the Student from March 22, 2006, through May 31, 2006, are relevant.
2. Whether the ALJ should grant the new requested remedies of the Parents. Those remedies are:
  - A) That the services of a ABA Behavioral Interventionalist be provided to the Student.
  - B) That transportation to the ABA Behaviorist in Spokane, Washington be provided by the School District.
  - C) That the Student receive tutoring in computer graphics.

### FINDINGS OF FACT

1. During the 2005-2006 school year, the Student had two full time paraprofessionals assigned to assist him in school. The paraprofessionals kept daily behavior logs in narrative form regarding the Student's conduct. The paraprofessionals had no specific training in what behavior to examine, or how to complete the logs.
2. 154 pages of daily behavior logs of the Student dated August 30, 2005 through March 21, 2006, were admitted into evidence during the January, 2008, hearing.

3. The first page of the behavior logs for the start of the 2005-2006 school year contained the following entries concerning the Student:

- said he would kill everyone that came near him
- was going to slice his neck
- was going to kill both paras [paraprofessionals]
- threatened to punch two male students in the face
- punched his fist across the table at one male student telling him "to bring it on"
- spit at Marco making fists at him saying "you're dead"
- stood behind Ms. Moore and left maybe an inch of space and saying "you're dead, I'm going to kill you"
- told one female student she was a fat, ugly pig and she would be dead
- told Mrs. Alice he would slit her throat
- told Mr. Merrick he would not come to class because he would be dead along with all the idiots in this room
- name calling, foul language.

Exhibit P 131 page 1.

4. The remainder of the 153 pages of behavior logs from August 30, 2005 through March 21, 2006 admitted at the January 2008 hearing contain information on what the Student did at school each day. The behavior logs also included assignments of the Student and noted acceptable and unacceptable behavior of the Student.

5. The 60 pages of behavior logs for the Student, covering March 22, 2006 through May 31, 2006 were admitted during the June, 2009 hearings. Exhibit P 128 pages 1-60.

6. The Parents argued that the March 22, 2006, through May 31, 2006, behavior logs showed an escalation in the Student's verbally assautive and physically assautive behavior. This argument is not adopted.

7. The March 22, 2006, through May 31, 2006, behavior logs show extremely similar behavior to the logs from August 30, 2005 through March 21, 2006. The March 22, 2006, through May 31, 2006, behavior logs show nothing more substantial than the first entry of the school year set forth in Finding of Fact number 3 above.

8. Dr. Christine Guzzardo testified on behalf of of the parents. Dr. Guzzardo reviewed the behavior logs from March 22, 2006, through May 31, 2006. Dr. Guzzardo did not review the behavior logs from August 30, 2005 through March 21, 2006.

9. Dr. Mark Derby testified in January, 2008 and June, 2009. Dr. Derby did not believe that any of the behavior logs from the 2005-2006 school year were relevant to the 2007-2008 school year. Dr. Derby's belief was predicated on the fact that there was an intervening school year, 2006-2007, when the Student was in private placement in Pennsylvania.

### 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 USC § 1401 *et. seq.* (Individuals with Disabilities Education Improvement Act (IDEA, sometimes referred to as IDEIA), formerly Education for All Handicapped Children Act), 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 392-172A Washington Administrative Code (WAC).

2. The testimony of Dr. Guazardo is not persuasive. Dr. Guzzardo, the expert witness of the Parents, did not review the behavior logs of the Student of August 30, 2005 through March 21, 2006. Dr. Guzzardo had no basis to believe that the logs of March 22, 2006 to May 31, 2006, were any different than the logs from the earlier part of the school year, August 30, 2005 through March 21, 2006. The behavior logs were kept in narrative form by paraprofessionals with no training as to what to look for each day and what to track each day in the behavior logs. The 60 pages of behavior logs of March 22, 2006 through May 31, 2006 are extremely similar, provide only cumulative evidence, and provide no qualitative difference to the 154 pages of behavior logs from August 30, 2005 through March 21, 2006. The behavior logs from March 22, 2006 through May 31, 2006 do not change the outcome of the case.

3. In a ruling on October 21, 2008, in a related case, involving the same Student for the 2006-2007 school year, Judge Fred Van Sickle, Senior United States District Judge, United States District Court, Eastern District of Washington, found that the Plaintiffs' new evidence, behavior logs of the Student from March to May, 2006, did not persuade the Court to alter its prior review and analysis, that the Parents were not entitled to reimbursement for the cost of the Student's private placement at Woods for the 2006-2007 school year.<sup>2</sup>

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<sup>2</sup> United States District Court, Eastern District of Washington, No. CV-07-5067-FVS, Order Denying Plaintiffs' Motion for Reconsideration dated October 21, 2008.

4. The Parents requested three specific remedies. Those remedies were:
- A) That the services of a ABA Behavioral Interventionalist be provided to the student.
  - B) That transportation to the ABA Behaviorist in Spokane, Washington be provided by the School District.
  - C) That the Student receive tutoring in computer graphics.

Because the behavior logs of March 22, 2006 through May 31, 2006 are of marginal relevance and not material, the issue of whether the Parents are entitled to the three new remedies is not reached.

### ORDER

1. The behavior logs of the Student from March 22, 2006 through May 31, 2006 are of marginal relevance, are simply cumulative, and provide no qualitative difference from the behavior logs of August 30, 2005 through March 21, 2006. The behavior logs of March 22, 2006, through May 31, 2006, are not material to the 2007-2008 school year and do not change the outcome of the case.

2. The Parents requested:
- A) That the services of a ABA Behavioral Interventionalist be provided to the student.
  - B) That transportation to the ABA Behaviorist in Spokane, Washington be provided by the School District.
  - C) That the Student receive tutoring in computer graphics.

The Parents' requests for relief are denied.

Signed at Spokane, Washington this 15<sup>th</sup> day of July, 2009.

  
John M. Gaffney  
Senior Administrative Law Judge  
Office of Administrative Hearings

