

SEP 20 2007

OFFICE OF
ADMINISTRATIVE HEARINGS

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

IN THE MATTER OF:

LAKE WASHINGTON SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NOS. 2007-SE-0079 and
2007-SE-0080

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Mattie Harvin-Woode in Redmond, Washington, on September 6, 2007. The Parent¹ of the Student whose education is at issue appeared *pro se*. The Lake Washington School District (District) was represented by James Dionne and Lynette Baisch, Attorneys at Law.

The following exhibits were admitted: District Exhibits D126 through D145, Parent Exhibit P224 and Court Exhibits C1 through C6.

The following individuals testified at the hearing: Mother, Father, [REDACTED] (Director of Special Education), and [REDACTED] (School Psychologist).

STATEMENT OF THE CASE

The District filed a Due Process Hearing Request (District's Complaint) on July 26, 2007, asserting its evaluation of the Student was not complete, and that the Parent's request for an IEE was not yet ripe for adjudication. The District's Complaint was assigned cause number 2007-SE-0079.

The Parent filed a Due Process Hearing Request (Parent's Complaint) on July 26, 2007, asserting the District's evaluation was not appropriate, and requesting an independent educational evaluation (IEE). The Parent's Complaint was assigned cause number 2007-SE-0080.

The Office of Administrative Hearings (OAH) issued a Scheduling Notice for each cause number, setting a prehearing conference for August 16, 2007, and a hearing for August 27, 2007, before ALJ Janice E. Shave. The parties held a resolution session as required by the regulations.

On August 2, 2007, the District filed a Motion to Dismiss the Parent's Complaint on the basis that the Parent's Complaint is not ripe, since the District has not completed its evaluation.

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SEP 24 2007

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¹In 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."

A prehearing conference was held before ALJ Shave on August 16, 2007. At the prehearing conference, the two matters were consolidated for administrative efficiency, the hearing was scheduled to be held September 6 and 14, 2006, and the matter was reassigned to ALJ Mattie Harvin-Woode. In addition, ALJ Shave determined the District's Motion to Dismiss was based upon a factual dispute between the parties, and that this factual issue would be determined at hearing.

A prehearing conference was held before ALJ Mattie Harvin-Woode on August 27, 2007. Discovery was granted to both parties. After hearing argument from both parties, Mother was ordered to sign and return release forms to the District no later than August 28, 2007. It was also determined that the hearing would be bifurcated to hear evidence solely on the factual issue of whether the District completed its evaluation. If the preponderance of evidence established the District's evaluation was complete, the hearing would move forward as to the appropriateness of the evaluation and the Parent's entitlement to an IEE. On the other hand, if the preponderance of evidence established that the evaluation was not complete, the Parent's (and District's) Complaints would be dismissed as not ripe for adjudication.

The written decision is due on or before October 9, 2007.

ISSUES

- a. Whether the District appropriately evaluated the Student in all suspected areas of disability and whether that evaluation is complete;
- b. And, whether the Parent is entitled to her requested remedy, which includes the provision of an IEE at public expense, or other equitable remedies, as appropriate.

FINDINGS OF FACT

1. The District received Mother's signed consent to evaluate the Student on June 4, 2007.
2. In June 2007, the District initiated an evaluation of the Student for special education services.
3. The District scheduled a meeting for June 27, 2007. The purpose of the meeting was to review the testing results, consider any feedback from the Parents, and decide if any additional information was needed. The District sent Mother and Father, who maintain separate residences, invitations to attend the meeting. Both Parents have court-ordered joint decision-making authority in regards to the Student's education. Father attended the meeting. Mother did not.
4. The following District personnel attended the meeting: the Director of Special Education, the Occupational Therapist, the School Psychologist, and two Special Education teachers. During the meeting, the School Psychologist went through the report and reviewed the test results. Father participated in the discussion.
5. Before the team could move into a discussion of the Student's IEP, [REDACTED] the District's Director of Special Education, stopped the process because Mother had not yet participated in the discussion of the evaluation results. [REDACTED] decided to set another meeting so that Mother would

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Findings of Fact, Conclusions of Law and Order SEP 24 2007
Cause No. 2007-SE-0079 and 2007-SE-0080
Page 2

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have another opportunity to sit down with the evaluation team before the evaluation was finalized.

6. Another meeting was scheduled with Mother and held on July 13, 2007. In the meantime, Mother sent an email to the District, objecting to the development of the IEP as premature because she had not had an opportunity to participate in the process.

7. The July 13, 2007 meeting was attended by the School Psychologist, the Occupational Therapist, a Special Education teacher, the Student's two General Education teachers, the school Principal, Mother, and [REDACTED]

8. During the discussion of the evaluation, Mother stated that she had read the evaluation, and that she disagreed with the eligibility determination and recommendations. Mother also questioned why her input, information from Children's Hospital, and information from the Student's private counselor were not included in the report. Mother indicated that she wanted an IEE. The meeting concluded before any further decisions were made.

9. Mother sent an email the afternoon of July 13, 2007, formally requesting an IEE. According to [REDACTED], the information from Children's Hospital and the Student's counselor was new to the evaluation team, and should have been considered as part of the evaluation. [REDACTED] decided to keep the evaluation open to obtain this information from the Student's healthcare providers, obtain input from Mother, and incorporate the information into the final evaluation report. [REDACTED] sent Mother an email notifying her that the District was refusing to grant her request for an IEE, and would keep the evaluation open to obtain the additional information from the Student's healthcare providers and from Mother.

10. At the outset of the evaluation process, the District sent both Parents release forms to obtain information from the Student's healthcare providers. Although Mother asserts she signed releases for these providers prior to the evaluation meetings, the preponderance of evidence establishes the District did not receive any signed release forms from Mother. After the July 13, 2007 evaluation meeting, the District sent Mother release forms several times to obtain the information from Eric Schlocker at Children's Hospital, Bothell Pediatric and Hand Therapy, and Carol Lee Smith of Family Services in Bellevue. However, Mother did not sign these forms.

11. [REDACTED] acknowledges the District would have proceeded to the IEP process had both Parents agreed with the first draft of the evaluation. However, once it became apparent that additional information needed to be considered, (the Student's healthcare providers and Mother's input) the evaluation process was held open to include and consider that information.

12. The above findings of fact establish by a preponderance of evidence that the District did not complete its evaluation. At the August 27, 2007 prehearing conference, after hearing argument from both parties, Mother was ordered to sign and return the release forms to the District no later than August 28, 2007.

CONCLUSIONS OF LAW

1. 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 Improvement Act (IDEA, sometimes referred to as IDEIA),

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SEP 24 2007

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 IDEA requires educational agencies to conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability. 34 CFR §300.301(a); WAC 392-172A-03020. The public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability, and the content of the child's IEP including information related to enabling the child to be involved in and progress in the general education curriculum. 34 CFR 300.304(b)(1); WAC 392-172-03020(2)(a).

3. Once the school district has conducted an evaluation or reevaluation, a parent has the right to an IEE at public expense if the parent disagrees with the evaluation obtained by the school district. 34 CFR §300.502. When a parent requests an IEE, a school district must either initiate a due process hearing to show the appropriateness of its evaluation, or provide the parent with an IEE at public expense. 34 CFR §300(3)(b)(2); WAC 392-172A-05005. A parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. 34 CFR §300.502 (b)(5); WAC 392-172A-05005(2)(b)

4. Here, Parent's right to an IEE is not triggered until the District has completed its evaluation. The preponderance of evidence establishes the District was in the process of finalizing the evaluation by discussing the results of the evaluation testing and report with both Mother and Father. However, once Mother brought additional information to the attention of the evaluation team on July 13, 2007, the evaluation was not finalized, and the District took steps to obtain the information Mother referenced. Mother asserts the District completed its evaluation because the report referred to the testing "results", and used headings referencing the report's "Decision" and "Summary." However, the evidence is clear the evaluation report was a draft report which was not finalized because Mother brought additional relevant information to the attention of the evaluation team. Therefore, because the District did not complete its evaluation, Parent's request for an IEE is premature. As such, the Parent's Complaint and the District's Complaints must be dismissed.

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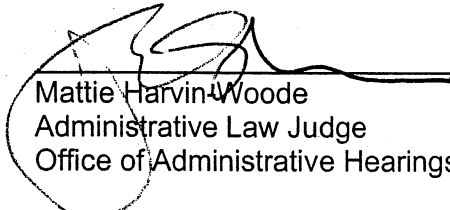
SEP 24 2007

Superintendent of Public Instruction
Administrative Resource Services

ORDER

- A. Parent's request for an IEE is denied as premature because the District's evaluation was not complete.
- B. The District's Complaint, filed under cause number 2007-SE-0079, is DISMISSED without prejudice as it is not ripe for adjudication.
- C. The Parent's Complaint, filed under cause number 2007-SE-0080, requesting an IEE is DISMISSED without prejudice as it is not ripe for adjudication.

Signed at Seattle, Washington on September 20, 2007.


Mattie Harvin-Woode
Administrative Law Judge
Office of Administrative Hearings
Final Decision

Further Appeal Rights: Information About Your Right To Bring A Petition For Reconsideration And Your Right To Bring A Civil Action

Reconsideration

This is a final administrative decision. Pursuant to RCW 34.05.470, either party may file a petition for reconsideration within 10 days after the ALJ has served the parties with the decision. Service of the decision upon the parties is defined as the date of mailing of this decision to the parties. A petition for reconsideration must be filed with the ALJ at his/her address and served on each party to the proceeding. A copy of the petition must be provided to OSPI, Administrative Resource Services. The filing of a petition for reconsideration is not required before bringing a civil action under the appeal provisions of the IDEA.

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. If a timely petition for reconsideration is filed, this ninety-day period will begin to run after the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

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SEP 24 2007

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