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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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January 7, 2019

Parents

Paul Vine, Director of Special Education
Lake Washington School District
PO Box 97039
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Two Union Square
601 Union Street, Suite 800
Seattle, WA 98101

In re: Lake Washington School District
Cause No. 2018-SE-0042
Docket No. 04-2018-OSPI-00504

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(i) (Individuals with Disabilities Education Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order, the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

MATTHEW D. WACKER
Administrative Law Judge

cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

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

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IN THE MATTER OF:	OSPI CAUSE NO. 2018-SE-0042
	OAH DOCKET NO. 04-2018-OSPI-00504
LAKE WASHINGTON SCHOOL DISTRICT	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER**

本檔案包含有關您聽證會的重要資訊。如果您沒有出席或採取其他措施，您可能會失去重要權利。如果您在理解本檔案方面需要幫助，請致電1-800-845-8830。

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Redmond, Washington, September 20 and November 2, 2018. The Parents of the Student whose education is at issue[1] appeared and represented themselves. The Lake Washington School District (hereafter "the District") was represented by Lynette Baisch, attorney at law. Also appearing for the District was Paul Vine, associate director of special services. A court-certified Mandarin interpreter was present for the Parents each day. ALJ Dana Diederich was present as an observer on September 20, 2018.

STATEMENT OF THE CASE

Procedural History

The Parents filed a Due Process Hearing Request ("the Complaint") on April 6, 2018. On April 9, 2018, a Scheduling Notice was entered which set a prehearing conference for May 8, 2018, and a one-day due process hearing on May 22, 2018. On April 16, 2018, the District filed its Response to the Complaint. On May 2, 2018, an Order of Continuance was entered, granting the Parents' request to continue the prehearing conference, and resetting the prehearing conference to May 9, 2018. The parties appeared for the prehearing conference on May 9, but due to the unavailability of a court-certified Mandarin interpreter, the prehearing conference was continued. On May 10, 2018, an Order of Continuance was entered, which reset the prehearing conference to May 21, 2018. On May 16, 2018, another Order of Continuance was entered, continuing the prehearing conference to May 22, 2018, due to a scheduling conflict. The prehearing conference was held on May 22, 2018.

On May 23, 2018, another Order of Continuance was entered, setting a second prehearing conference for May 30, 2018. The prehearing conference was held on May 30, 2018, and the parties agreed to pursue mediation. On June 22, 2018, the First Prehearing Order was entered. That order set another prehearing conference for July 9, 2018, set the due process hearing for

[1] In the interest of preserving the family's privacy, this decision does not use the actual names of parents or the student. Instead, they are identified as the "Mother," "Father," or "Parents," and the "Student."

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August 1, 2018, and granted the parties' motion to extend the due date for a written decision to the close of record plus thirty calendar days. On June 29, 2018, the Second Prehearing Order was entered. That order denied the Parents' request to continue the prehearing conference set for July 9 as well as the due process hearing set for August 1 due to the Mother's medical status. However, it left open the possibility of reconsidering the Parents' request in the event the Mother provided additional medical evidence. On July 6, 2018, the Mother renewed her request to continue both the prehearing conference and the due process hearing, this time providing a note from her physician. On July 23, 2018, the Third Prehearing Order was entered. That order granted the Parents' request, struck the July 9, 2018 prehearing conference, struck the August 1, 2018 due process hearing, and reset the prehearing conference for August 1, 2018.

The prehearing conference was held on August 1, 2018. On August 2, 2018, an Order of Continuance was entered which set another prehearing conference for August 13, 2018. The parties appeared on August 13, 2018, and agreed to hold another prehearing conference on August 17, 2018. On August 14, 2018, an Order of Continuance was entered, setting the prehearing conference for August 17, 2018. The prehearing conference was held on August 17, and the Fourth Prehearing Order was entered on August 20, 2018. That order set the due process hearing for September 20, 2018. On September 14, 2018, another prehearing conference was held by agreement of the parties. The Parents moved to amend their Complaint to add issues for the due process hearing. After hearing from the parties, the Parents' motion to amend was denied at the prehearing conference. On September 17, 2018, the Fifth Prehearing Order was entered. That order memorialized the denial of the Parents' motion to amend.

The due process hearing was held but not completed on September 20, 2018. On September 28, 2018, a telephonic conference call was held, at which the parties agreed to resume the due process hearing on November 2, 2018. On October 1, 2018, a Notice of Hearing was entered, setting the due process hearing for November 2, 2018. The due process hearing was held and completed on November 2, 2018. At the end of the hearing, the parties requested to file written closing briefs or arguments. After hearing from the parties, the ALJ set the due date for written closing briefs as December 7, 2018. On December 7, 2018, the Parents filed what was considered a motion to extend the due date for closing briefs. On the same day, an Order Granting Extension for Parents' Closing Brief was entered, which extended the due date for the Parents' closing brief to December 14, 2018.[2] On December 14, 2018, the Parents filed a second request for an extension of time to file written closing brief. That motion was denied in an Order Denying Extension for Parents' Closing Brief entered December 17, 2018. On December 26, 2018, the Parents filed a third request to extend the due date for their written closing brief. That motion was denied in a Second Order Denying Extension for Parents' Closing Brief entered December 28, 2018. The Parents did not file a written closing brief.

Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. *See* June 22, 2018 First Prehearing Order. The record of the hearing closed on December 14, 2018. Thirty calendar days form December 14, 2018, is January 13, 2019. Therefore, the due date for a written decision in the above matter is **January 13, 2019**.

[2] The District timely filed its closing brief on December 7, 2018.

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EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parents Exhibits: P1 – P16;[3]

District Exhibits: D1 – D22.[4]

The following witnesses testified under oath. They are listed in order of their appearance:

The Mother of the Student;
Mackenzie Paine, District special education teacher.

ISSUES AND REMEDIES

The statement of the issues and requested remedies for the due process hearing is:

a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by developing an individualized education program (IEP) with an inappropriate restroom routine goal[5] for the Student; and

b. Whether the Parents are entitled to their requested remedy: an IEP for the Student with an appropriate restroom goal, or other equitable remedies as appropriate.

See June 22, 2018 First Prehearing Order.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

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[3] At the due process hearing on September 20, 2018, the Parents offered additional Parents Exhibits P17 – P27. The District objected, and the objection was sustained. The exhibits were not admitted because they had not been exchanged five business days before the hearing began. See Washington Administrative Code (WAC) 392-172A-05100(1)(c) and the August 20, 2018 Fourth Prehearing Order, ¶21.

[4] At the hearing on September 20, 2018, the Parents requested and were granted additional time to review the District's proposed exhibits. The Parents offered their objections at the hearing on November 2, 2018. After hearing the Parents' objections, the District's proposed exhibits were admitted.

[5] Although the issue is identified as whether the "restroom routine" goal was appropriate, at hearing it became clear that the more appropriate term to describe the issue is "potty-training" or "toilet-training" goal.

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General Background

1. The Student has been determined eligible to receive special education and related services under the Autism disability category, and has had an individualized education program (IEP) in place in the District every year since at least November 2012 when the Student was in kindergarten. D1p1.[6]

2. The Student attended fifth grade in the District during the 2017-2018 school year. His special education teacher was Mackenzie Paine. Ms. Paine was also the Student's special education teacher during fourth grade. (Testimony of Paine).[7]

3. Ms. Paine has been a special education teacher in the District for the last six or seven years. She earned her undergraduate degree in special education at the University of Washington. In June 2018, she earned her Masters Degree in special education at the University of Washington, with a focus on low-incidence and moderate to severe disabilities. She is certificated as a special education teacher by Washington State. During the two school years when she was the Student's special education teacher, Ms. Paine taught in a "learning center" classroom for students with moderate to severe disabilities. (Paine).

4. Potty training or toilet training is the ability to control one's bladder and bowel in between trips to a restroom. The students in Ms. Paine's classroom follow a "restroom routine," which is a series of steps to use the restroom, including removing clothes, wiping, and hand washing. Combining toilet training with a restroom routine allows students to use a restroom independently. (Paine).

5. The Student was not toilet-trained during the 2017-2018 school year and wore a pull-up under his pants while in Ms. Paine's classroom. (Paine).

6. Toilet training is a developmentally appropriate goal for the Student. This was particularly true during the 2017-2018 school year, as the Student would be moving from elementary school to middle school in the District for the 2018-2019 school year. There are also demonstrable health benefits to toilet training, including reduced chaffing and discomfort and a reduced potential for infections. In addition, toilet training is an important skill or ability for students after they leave school as young adults. All students who enter her classroom who are not toilet-trained work on that as a goal. (Paine).

The Student's March 2018 IEP and Toilet-Training Goal

7. Acting as the Student's case manager, Ms. Paine drafted an IEP for the Student in March 2018 that included a toilet training goal. As part of the goal, the Student would wear a pull-up over his underwear, rather than under his underwear. (Paine); D16pp13-14.

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[6] Citation to the exhibits is to the exhibit and, as appropriate, page number. For example, citation to D1p1 is a citation to District Exhibit D1 at page 1.

[7] The first citation to the testimony of a witness will be "Testimony of (Witness Last Name)." All subsequent citations to the same witness' testimony will be "(Witness Last Name)." As warranted, citation to the transcript of the due process hearing by page number may also be made.

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8. Wearing a pull-up over underwear is an accepted and effective methodology for toilet training children with Autism. It allows a child to feel "wet" while still containing urine. This generally uncomfortable feeling encourages a child to use the toilet. It is a methodology or technique familiar to Ms. Paine. It is a very common routine to have students in her class wear pull-ups over underwear when toilet training. It is unlikely that the Student will be able to be toilet trained while he continues to wear his underwear over his pull-up. (Paine); D20 – D22.

9. The Parents attended the IEP meeting along with their attorney. An interpreter was also present at the IEP meeting for the Parents. The toilet-training goal was discussed by the IEP team, including the Parents. (Paine). Ultimately, the Parents disagreed with the goal. Testimony of Mother.

10. The IEP team agreed to give the Parents additional time to submit more health or medical information about the Student and the goal, but the Parents never submitted that information. (Paine).

11. On April 6, 2018, the Parents filed a Special Education Due Process Hearing Request to contest the adoption of the toilet-training goal in the Student's IEP.

12. At due process hearing, the Mother was unable to clearly explain why the Parents believe the proposed toilet-training goal is not appropriate for the Student. The Parents want the Student to continue to wear his underwear over his pull-ups at school. (Mother).

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

1. The Office of Administrative Hearings (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) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), 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) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the Parents. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

3. The IDEA 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 *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

> First, has 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

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requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley,* 458 U.S. at 200 - 201.

4. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

> To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

Endrew F. v. Douglas County Sch. Dist. RE-1, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew F.* standard as follows:

> In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," 137 S. Ct. at 994 (citation omitted), taking into account the progress of his non-disabled peers, and the child's potential.

M.C. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 138 S. Ct. 556 (2017).

5. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated:

> Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882 (9th Cir. 2001).

6. Procedural violations of the IDEA amount to a denial of FAPE, and therefore warrant a remedy, only if they:

> (I) impeded the child's right to a free appropriate public education;
> (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
> (III) caused a deprivation of educational benefits.

WAC 392-172A-05105(2). *See also* 34 CFR §300.513; 20 USC §1415(f)(3)(E)(ii).

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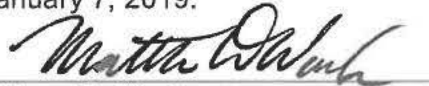
7. The only issue presented is whether the toilet-training goal in the Student's March 2018 IEP is appropriate for the Student. The Parents have simply offered no evidence upon which to conclude that goal is inappropriate. In response, the District has offered the informed opinion of Ms. Paine, an educated and experienced special education teacher, as well as objective documentation establishing that the methodology or technique proposed to implement the toilet-training goal is a well-recognized and established way to toilet train children or students with Autism. It is clearly the Parents' preference to have the Student wear his underwear over his pull-up at school. However, it is concluded this is not a methodology or technique that is likely to result in the Student becoming independent when using the bathroom. Accordingly, it is concluded that the Parents have not proven the toilet-training goal in the Students' March 2018 IEP is inappropriate. The District has not violated the IDEA or denied the Student a free appropriate public education. The District may implement the toilet-training goal with the Student.

8. All arguments made by the parties have been considered. Arguments not specifically addressed herein have been considered, but are found not to be persuasive or not to substantially affect a party's rights.

ORDER

The Lake Washington School District has not violated the Individuals with Disabilities Education Act or denied the Student a free appropriate public education. The Parents' requested remedy is **DENIED.**

Signed at Seattle, Washington on January 7, 2019.



Matthew D. Wacker
Administrative Law Judge
Office of Administrative Hearings

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 this final decision to the parties. 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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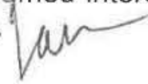
CERTIFICATE OF SERVICE

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein.



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