

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

IN THE MATTER OF:

CENTRAL VALLEY SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2007-SE-0031

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) David G. Hansen in Spokane, Washington, on May 8, 2007. The Mother (Parent) of the Student¹ appeared pro se. The Parent was assisted by Debi Snyder of Washington PAVE. The Central Valley School District (District) was represented by Gregory L. Stevens, Attorney at Law. The following exhibits were admitted: P1, 2, 4, 11, 12, 13, 15, and 19; D4, 5, 6, 7, 8, and 9. The following witnesses testified: Mother of the Student, Father of the Student, [REDACTED], School Psychologist, [REDACTED], Physical Therapist, [REDACTED], Physical Therapist, [REDACTED], Director of Special Services, [REDACTED], Physical Therapist and [REDACTED], Assistant Principal.

PROCEDURAL HISTORY

By letter dated March 21, 2007, the Parents requested an Independent Educational Evaluation (IEE) of the Student at District expense. The District, on April 3, 2007, gave written notice to the Parent denying the request for an IEE at District expense, contending that the District's current evaluation of the Student was adequate. By letter dated and received by the Superintendent of Public Instruction on April 4, 2007, the District requested a special education due process hearing in order to establish the appropriateness of the District's evaluation.

Pursuant to due and proper notice a telephone pre-hearing conference was conducted on April 16, 2007. At the pre-hearing conference it was agreed that, among other things, the original date for the due process hearing of April 30, 2007, would be moved to May 8, 2007. The parties agreed to the extension of the 45 day time line from May 21, 2007 to May 29, 2007. At the conclusion of the hearing on May 8, 2007, the ALJ

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

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set the close of record, the deadline for filing briefs, at May 21, 2007. The record closed on that date. As a result the 45 day deadline for the issuance of a written decision was continued from May 29, 2007 to June 11, 2007 in order to accommodate the briefing schedule.

ISSUES

The issue for the hearing was identified in the pre-hearing order dated April 17, 2007 as follows: Is the District's physical therapy assessment appropriate, and if not, are the Parents entitled to an Independent Educational Evaluation at District expense?

FINDINGS OF FACT

1. As of the date of hearing the Student was enrolled in the eighth grade at one of the District's middle schools. He was 13 years of age. He has been diagnosed with congenital microcephaly, cerebral palsy, and spastic quadriplegia. Additionally, he has scoliosis. These conditions are significant and cause cognitive defects as well as defects in fine and gross motor skills. He qualifies for special education services under the category of health impaired.

2. On December 7, 2006, the Student's Individual Education Program team (IEP team) met at the Student's middle school. Two of the Student's physical therapists were present, his school nurse, his case manager, his special education teacher, the special education coordinator, the assistant principal, the school psychologist, the Parents, and a parent advocate were present. General agreement was reached by the IEP team on several matters. The District agreed to contact the Student's primary care physician and arrange for the physician to observe the Student in the school setting. The District agreed to procure a Supine stander for an evaluation and potential use by the Student. The District's physical therapists were to evaluate the effectiveness of the three types of standers, prone, supine, and upright, and determine which would be most helpful to the Student and, at the same time, allow him to participate in his educational program. They established a goal of the Student standing in a stander for at least 30 minutes, with the staff checking for any circulation problems at scheduled intervals. The IEP team agreed that the Student would be removed from his gait trainer should they be unable to engage him, and he was not moving and had his head dropped for five minutes. Until otherwise determined the Student was to have a staff person within arms reach and with constant visible contact when he is either in the stander or gait trainer. An additional staff person will be within auditory reach should transferring of the Student be required. While in the stander or gait trainer should the Student allow his head to drop for more than 10 seconds, the staff will attempt to

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engage him through verbal prompts or visual enticements in order to have him raise his head. The staff will monitor the Student to ensure he is breathing freely at these times. If the Student appears to be struggling with his breathing or does not raise his head for a total of five minutes, he will be removed from the gait trainer or stander. The District agreed that additional classified staff will be trained and added to the school in order to assist with the transfer of the Student to various devices as well as ensure one-to-one supervision of the Student while he is in his stander or gait trainer. Two staff will be involved in transferring the Student in and out of equipment with the use of a gait belt. Pending the availability of the Supine stander, the Student will be in his body jacket while in a stander. The body jacket will be removed once he is transferred from the stander. The District agreed to continue to have close communication with the Parents through a variety of means.

3. In January and February 2007 physical therapy assessments were done on the Student as part of his overall three year re-evaluation. Exhibits D4 and D5. Both these assessments were done by [REDACTED] a certified physical therapist employed by the District. She has 17 years of physical therapy assessment and treatment experience.

4. [REDACTED] on January 9 and January 11, 2007, conducted an assessment of the Student's gross motor skills. As part of the assessment she administered the Assessment, Evaluation and Programming System for Infants and Children (AEPS). The AEPS is a standardized test routinely used for, among other things, monitoring a student's fine and gross motor skills. The AEPS was also used at the Student's evaluation in 2004. At that time the Student's cognitive development was that of a 13 month old. In addition, she observed the Student in the classroom, reviewed physical therapist notes and prior physical therapy assessments, including one performed in January 2004 at the last re-evaluation. [REDACTED] made clinical observations in regard to the Student's neuromuscular status, muscular skeletal status, and his mobility and functional skills. In the area of neuromuscular status she noted that the Student has low muscle tone in his trunk. This low muscle tone creates considerable difficulty for the Student when moving or holding a position. She further noted that circulation in his hands and feet is poor. Due to the Student's neurological conditions he is nonverbal and nonambulatory. In regard to his musculoskeletal status she observed that due to his low muscle tone, scoliosis, and poor strength, he required physical support for educational activities and special equipment for positioning. Due to the Student's disabilities he was only capable of completing 16% of the elements of the AEPS in regard to gross motor skills.

5. [REDACTED] assessed the Student's mobility and functional skills as well. She noted that he needs special positioning equipment in the classroom. She noted that he "needs constant supervision and prompting to keep his head upright in positions when not engaged in activities. This is a concern to maintain an open airway. It is critical that

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supervision be adequate when using positioning equipment, in order to reposition or transfer [the Student] when he can no longer hold his head up in that position." Exhibit D4, page 1. She noted that the Student had two means of mobility, propelling in his gait training and "rolling." Exhibit D4, page 1. By this, ██████████ meant that he could roll himself over while lying down on a mat. The Student's ability to propel himself in the gait trainer had improved. He is capable of standing in the upright stander, with his head up when engaged in activities, for approximately twenty minutes. She noted that he required "moderate to maximum" assistance in all transfers, positioning, and self care activities. Exhibit D4, page 2. ██████████ concluded that based upon AEPS and her observations, that the Student had not gained any additional or new motor skills since his evaluation three years earlier. She noted that he had lost one skill, sitting unsupported, since the evaluation three years ago. ██████████ concluded her assessment with the following:

[The Student] has significant motor delays which interfere with his participation in his school program. The gross motor program of activities can be carried out by school staff with support and training by the physical therapist in positioning and activity tolerance. Because of [the Student's] need for maximum to moderate assistance in gross motor activities, these activities must be part of his daily educational routine (his daily schedule to be determined by the teacher with input and support from the physical therapist). The activities can be performed with the assistance of trained staff with regular input by the physical therapist. The physical therapist would be responsible to train staff, monitor positioning needs and equipment needs.

Exhibit D4, page 2.

6. As agreed on December 7, 2006, the District obtained a supine stander for evaluation and potential use by the Student. On February 6, and February 8, 2007 the District conducted an assessment in order to compare the upright stander with the supine stander. Exhibit D5. Observations were conducted by ██████████, the Parent, and a physical therapy aide on February 6, 2007. In addition, she reviewed professional literature on the physical therapy issues for others with disabilities similar to the Student's. Further observations were made by ██████████, along with ██████████ a District physical therapist, and a physical therapy aide. ██████████ concluded that the upright stander and the supine stander provided generally the same benefits to the Student. However, she concluded that the supine stander had fewer negative implications than the upright stander. Lastly, she noted that "The Pros & Cons of each standing frame should be weighed by the MDT to determine which stander is most beneficial for the classroom." Exhibit D5, page 2.

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7. [REDACTED] a licensed physical therapist with 28 years experience, and [REDACTED] a licensed physical therapist with a doctorate degree in physical therapy testified at the hearing along with [REDACTED]. All three testified, and the undersigned finds as fact, that due to the extent of the Student's disabilities, the AEPS test was the only such test appropriate for him. They further testified, and the undersigned finds as fact, that as the Student grows older and his weight and height increase, movement becomes more difficult given his disabilities. It is the opinion of [REDACTED], [REDACTED], and [REDACTED] that the supine stander is superior and recommended its use by the Student while at school. They do however consider the upright stander to be appropriate for the Student. The Parent opposed the use of the supine stander and the district agreed to use the upright stander for the Student while at school.

8. At hearing the Parent contended that the physical therapy evaluation conducted by the District was "inadequate and inaccurate." She questioned [REDACTED] statement that the Student had two means of mobility, and questioned what "rolling" meant. The Parent disagreed with the District's concern that the Student's inability to keep his head up could potentially obstruct his breathing. The Parent is concerned that the evaluation portrays the Student as weak, unmotivated, and fragile. The Parent believes that the evaluation should be more positive, and identify the Student's strengths. The evaluation does not, in the opinion of the Parent, reflect that the Student is relatively high functioning considering the degree of his disabilities.

CONCLUSIONS OF LAW

1. OAH has jurisdiction over the parties and the subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) § 1401 *et seq.* IDEA, Chapter 28A, 155 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR *et seq.*, and Chapter 392-172 WAC.

2. The parents of a student who has qualified for special education services have the right to obtain an independent educational evaluation if they disagree with the district's evaluation. WAC 392-172-150(1). The regulation goes on to define an independent educational evaluation as "an evaluation conducted by a qualified examiner who is not employed by the school district" WAC 392-172-150(3)(a). Should the parent request an independent educational evaluation at public expense, the district has the choice to either initiate a due process hearing within 15 days to show the appropriateness of its evaluation or to provide the evaluation at public expense. WAC 392-172-150(5). An evaluation needs to be "sufficiently comprehensive to identify all of the student's special education and any related services needs, whether or not commonly linked to the disability category in which the student has been classified. WAC 392-172-106(2).

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3. Detailed evaluation procedures are set forth at WAC 392-172-108. The evaluation or reevaluation of a student is to "be conducted by a group of qualified professionals selected by the district or other public agency and knowledgeable about the student and the suspected areas of disability." WAC 392-172-108(2)(a). Those professionals must be "licensed, registered, credentialed, or certificated according to his or her professional standards and in accordance with state statutes and rules." WAC 392-172-108(3). A variety of assessment tools and strategies are to be used to determine relevant functional and developmental information about the student. WAC 392-172-108(4)(a). No single assessment tool or strategy is to be used as the "sole criteria for determining the student's eligibility. . . ." WAC 392-172-108(5). "Any standardized tests and other evaluation materials that are given to a student shall have been validated for the specific purpose for which they are used and shall accurately reflect whatever factors the test are designed to measure." WAC 392-172-108(8). Those tests and evaluation materials "shall be administered by trained and knowledgeable personnel in conformance with the instructions of the test producer." WAC 392-172-108(9).

4. Applying the forgoing to the case at hand, it is the conclusion of the undersigned that the District's physical therapy evaluation of the Student performed in January and February 2007 was appropriate. The evaluation of the Student was conducted by professionals with knowledge of the student and the area of his disability. The evaluators possessed the requisite credentials for employment in the public schools of Washington. The evaluators utilized a variety of tools and strategies, namely, they administered the AEPS, observed the Student, reviewed past evaluation results, consulted with the Parents as well as other school staff, and reviewed professional literature, in the conduct of the evaluation. No single tool or strategy was used. The tools used by the evaluators were specifically designed to measure the Student's motor skills. Lastly, the tests were administered by well qualified individuals. The concerns of the Parents are not discounted. Indeed, the Parents' dedication to the Student is unquestionable. What was meant by "rolling" is obvious. The District's concern for the Student possibly restricting his airway is legitimate and necessary. These two issues have no effect on the validity of the physical therapy evaluation conducted by the District. There is no requirement that an evaluation portray the Student in a positive light. The physical therapy performed in this instance was "sufficiently comprehensive to identify all" the Student's special education and related services. Accordingly, the Parents' request for an independent educational evaluation at District expense is denied.

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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.

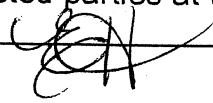
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CERTIFICATE OF SERVICE

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. _____



Parents

[REDACTED]
[REDACTED]

[REDACTED], Director, Special Services
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