

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

STUDENT G. DOE

v.

NORTH KINGSTOWN SCHOOL DEPARTMENT

**Interim Order and Decision**

Held: Student Doe's IEP requires that appropriate school staff provide him with the toileting assistance that he needs at school.

Date: April 2, 2013

## **Introduction**

This is a request for an interim order pursuant to R.I.G.L. 16-39-3.2. Petitioner seeks an order directing the North Kingstown School Department “to provide [Student Doe] with appropriate toileting assistance, including wiping, in order that his health and safety will be adequately provided for at school.”<sup>1</sup> [Petitioner’s Exhibit 1].

## **Background**

Student Doe is 16 years old and in the 11th grade. He is a very large young man.<sup>2</sup> He is diagnosed with autism, mental retardation, and episodic mood disorder. Doe receives special-education and related services, including a one-on-one personal-care attendant. “Monitor hygiene in bathroom” is one of Doe’s individualized education program (IEP) services. He also receives occupational therapy.<sup>3</sup>

Doe’s mother testified that her son has always needed assistance in cleaning himself after a bowel movement. He will wipe himself first and state that he is clean, but according to his mother, that is not true 98% of the time. As a result, she will have to wipe Doe two or three times to finish the process.

During the 2011-12 school year, the number of times Doe came home from school with soiled underwear increased sharply. Doe’s attendant was replaced and the situation improved.

The soiled underwear problem returned during the 2012-13 school year. Doe would either be wearing or carrying soiled underwear when he came home from school. Doe’s mother and school staff met in October 2012, and in January and February 2013. Attempts to use a “wiping wand” failed. A portable bidet was tried. A permanent bidet was ordered.<sup>4</sup> The soilings persisted. The minutes from a February 28, 2013 team meeting record the district’s position as being “that in a public school setting – it is not appropriate for school personnel to wipe [Doe].” [Petitioner’s Exhibit 5]. The school’s protocol is to take Doe to a private bathroom when the need arises, and if he makes a

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<sup>1</sup> A hearing was held in this matter on March 13, 2013. The parties submitted memoranda on March 18, 2013. The Hearing Officer submitted a decision on March 22, 2013.

<sup>2</sup> We must withhold student Doe’s precise height and weight in order to protect his confidentiality rights.

<sup>3</sup> According to Doe’s IEP, the focus of this service includes “functional living skills.” [Joint Exhibit 1].

<sup>4</sup> It remains on order.

bowel movement, he is given wipes until he produces a clean one after wiping.<sup>5</sup> The attendant looks at the wipes, not Doe's buttocks.

Doe receives hygiene, self-care and toileting services at home. The coordinator of the service agency testified that because of his size, Doe cannot properly wipe himself after bowel movements. He requires assistance in cleaning himself. The agency's protocol is for Doe to wipe himself first and have a staff person do the final wipe.

Doe's underwear is checked when he arrives at school at 7:30 a.m. Many of his 2012-13 soilings have been discovered at this time. As of the hearing, Doe's underwear is being checked again at 10:30, 11:45, 1:00 and whenever he is known to have expelled gas. If Doe's underwear is soiled, he is given wipes until one comes back clean and his underwear is changed. Again, the attendant inspects the wipes, not Doe. The school day ends at 1:45 p.m., and Doe takes the bus home. He arrives home at about 2:10 p.m.

The record includes a doctor's note dated February 18, 2007 requesting that Doe's school "provide hygiene assistance for [Doe] after bowel movements as needed at school." [Petitioner's Exhibit 10]. The record does not show any past history of Doe being wiped in the bathroom at school.<sup>6</sup> Doe was treated for e coli about a year and a half ago, and last year he had cysts in his groin from a burst varicose vein. Doe sucks his fingers as a self-soothing technique.

Doe has not attended school since the February 28th meeting.

### **Positions of the Parties**

Petitioner contends that it qualifies for interim relief in this matter because there is a dispute as to whether providing assistance with wiping to Doe is part of the "status quo" for him per his IEP and because Doe's health and safety is presently threatened. Based on the record, Petitioner asserts that Doe needs "a final wipe from school personnel in order to ensure that he is appropriately cleaned." [Petitioner's Memorandum of Law, p. 8].

The School Department contends that it is complying with Doe's IEP. The one-to-one personal-care attendant is being provided and his hygiene in the bathroom is being

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<sup>5</sup> This may require 7 or 8 wipes.

<sup>6</sup> Neither of Doe's two prior IEPs provide for "wiping" in the bathroom.

monitored. There is no mention in any of Doe’s last three IEPs that the personal-care attendant must “wipe” Doe. There is no evidence that it has been done in the past. The status quo is that Doe is not wiped by staff in the bathroom. “Absent evidence of [a] health risk”<sup>7</sup> to Doe, there is no basis to change the status quo, and the request for an interim order must be denied.<sup>8</sup>

## **Discussion**

The crux of this case can be found in the February 28, 2013 team meeting minutes, which describe the School Department’s position in this matter as “in a public school setting -- it is not appropriate for school personnel to wipe [Doe].” This statement is categorically incorrect.

It is clear that Doe is presently having difficulty cleaning himself after bowel movements in school. The testimony of his mother and home-service coordinator attests to that, as do the wand and bidets that have been tried or ordered. Doe is a very large young man with cognitive and physical limitations.

Putting aside Doe’s IEP for the moment, we look at section 7.2 of the Rules and Regulations for School Health Programs. It states as follows:

Each public and non-public school shall provide adequate and appropriate personnel and/or equipment to render individualized health services to all students enrolled in the school. At a minimum, said services shall include those ordered by a physician, such as medication administration.

The Rules and Regulations define “health” as “the quality of a person's physical, psychological, and sociological functioning that enables him or her to deal effectively with self and others in a variety of situations.” [Section 1.24]. We find that feces on a student’s buttocks or underpants adversely affects his or her “physical, psychological, and sociological functioning,” and impairs his or her ability “to deal effectively with” himself or herself and others in the school setting. Therefore, any student is entitled to

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<sup>7</sup> School Department’s Memorandum of Law, p. 5.

<sup>8</sup> The School Department also argues that Doe may be soiling his pants during the bus ride home from school.

assistance from appropriate school personnel that is needed to keep his or her buttocks free of feces, if ordered by a physician.<sup>9</sup>

Returning to Doe's IEP, we note that it provides a one-on-one personal-care attendant who is to monitor Doe's hygiene in the bathroom, and it offers occupational therapy focusing, in part, on "functional living skills." In this caretaking and remedial context, we take "monitor" to mean that appropriate staff is observing Doe to make sure that he is dealing effectively with his bowel movements. The ultimate proof of that is Doe's buttocks, not the wipes he uses. Staff must inspect Doe's buttocks after he attempts to wipe himself and if Doe is not clean, staff must take steps to make him clean. If Doe is physically unable to complete the job himself, staff must clean Doe. If this requires wiping, staff must wipe Doe. In Doe's case, this is the related health service that his IEP requires.<sup>10</sup>

Because Doe is being denied an education in accordance with applicable state and federal law, i.e., consistent with his IEP, he is entitled to interim relief. Because our ruling herein is a final disposition of this issue, we shall issue a decision as well.

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<sup>9</sup> The 2007 doctor's note mentioned above would accomplish this purpose if it were current.

<sup>10</sup> We take note of a 1998 publication from the Office of Civil Rights of the U.S. Department of Education entitled "Auxiliary Aids and Services for Postsecondary Students with Disabilities." The document includes the following:

An issue that is often misunderstood by postsecondary officials and students is the provision of personal aids and services. Personal aids and services, including help in bathing, dressing, or other personal care, are not required to be provided by postsecondary institutions. The Section 504 regulation states:

Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Title II of the ADA similarly states that personal services are not required.

*In order to ensure that students with disabilities are given a free appropriate public education, local education agencies are required to provide many services and aids of a personal nature to students with disabilities when they are enrolled in elementary and secondary schools. However, once students with disabilities graduate from a high school program or its equivalent, education institutions are no longer required to provide aids, devices, or services of a personal nature. See, [www2.ed.gov/about/offices/list/ocr/docs/auxaids](http://www2.ed.gov/about/offices/list/ocr/docs/auxaids)*

## Conclusion

Student Doe's IEP requires that appropriate School Department staff provide him with the assistance that is needed to clean his body after he makes a bowel movement at school. This is the same type of health service that must be provided to any student presenting a valid physician's order.<sup>11</sup> We hereby order the North Kingstown School Department to provide Doe with the assistance described above, when necessary, and to offer Doe the requisite compensatory educational services to the instruction he has missed since March 1, 2013.<sup>12</sup>

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Deborah A. Gist  
Commissioner of Education

Date: April 2, 2013

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<sup>11</sup> If Doe does not have an individualized health care plan, the parties should discuss the need to develop one.

<sup>12</sup> The School Department shall also check Doe's underpants closer to the time he leaves school.