

**COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

NO. 288986

**WELLPINIT SCHOOL DISTRICT NO. 49,
Petitioner**

v.

**JOHN L. HALE AND ROBBIN,
Respondent**

**BRIEF OF PETITIONER
WELLPINIT SCHOOL DISTRICT NO. 49**

EVANS, CRAVEN & LACKIE, P.S.
Patrick M. Risken, WSBA# 14632
Michael E. McFarland, Jr., WSBA 23000
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TABLE OF CONTENTS

A. Introduction.....1

B. Assignments of Error.2

C. Statement of the Case.....3

D. Argument.6

 1. Appeal of a Summary Judgment Proceeding.....6

 2. Mr. Hale's Claim Has Not Changed Because Of
 The Recent Supreme Court Decision.....7

 3. It Is Well Settled Washington Law That
 “Personality Conflict” Is Not Disability.11

 4. There Is No Obligation Under The WLAD To
 Accommodate A Personality Conflict.14

E. Conclusion.19

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.</i> , 115 Wn.2d 506, 799 P.2d 250 (1990).....	6
<i>Davis v. Microsoft Corp.</i> , 149 Wn.2d 521, 70 P.3d 126 (2003),	19
<i>Gaul v. Lucent Techs., Inc.</i> , 134 F.3d 576 (3d Cir.1998)	14
<i>Hale v. Wellpinit School District No. 49</i> , 165 Wn.2d 494, 198 P.3d 1021 (2009).....	1, 8, 9
<i>Jones v. Allstate Ins. Co.</i> , 146 Wn.2d 291, 45 P.3d 1068 (2002).....	6
<i>Mescall v. Marra</i> , 49 F.Supp.2d 365 (S.D.N.Y.1999)	14
<i>Osika v. Board of Educ.</i> , No. 98 C 5953, 1999 WL 1044838 (N.D.Ill. Nov. 16, 1999).....	18, 19
<i>Paleologos v. Rehab Consultants, Inc.</i> , 990 F.Supp. 1460 (N.D.Ga.1998)	13
<i>Pulcino v. Fed. Express Corp.</i> , 141 Wn.2d 629, 9 P.3d 787 (2000).....	8, 11, 19
<i>Potter v. Xerox Corp.</i> , 88 F.Supp.2d 109 (W.D . N.Y.2000)	14
<i>Reagan v. England</i> , 218 F.Supp.2d 742 (D.Md. 2002)	13
<i>Ruffer v. St. Francis Cabrini Hosp.</i> , 56 Wn.App. 625, 784 P.2d 1288, rev. denied 114 Wn.2d 1023, 793 P.2d 535 (1990).....	7

<i>Schneiker v. Fortis Ins. Co.</i> , 200 F.3d 1055 (7 th Cir. 2000)	13
<i>Snyder v. Med. Serv. Corp.</i> , 145 Wn.2d 233, 35 P.3d 1158 (2001).....	11, 13, 14, 15, 17, 20
<i>Snyder v. Med. Serv. Corp.</i> , 98 Wn.App. 317, 988 P.2d 1023.....	11
<i>Stroman v. Blue Cross and Blue Shield Ass'n</i> , 966 F.Supp. 9, (D.D.C.1997), <i>aff'd</i> , 159 F.3d 637, 1998 WL 230211 (D.C.Cir.1998)	14
<i>Vallandigham v. Clover Park Sch. Dist. No. 400</i> , 154 Wn.2d 16, 109 P.3d 805 (2005).....	7
<i>Wilson v. Wenatchee School District</i> , 110 Wn.App. 265, 40 P.3d 686 (Div. III 2002).....	16, 17, 20

STATUTES

RCW 49.60.040 et seq.	1, 9, 11
RCW 49.60.180	1

A. Introduction.

In April 2006, Petitioner Wellpinit School District No. 49 (hereinafter "Wellpinit SD") was sued by Respondent John Hale in part on a claim of disability discrimination under RCW 49.60.180. CP 3-8, 4. That is the only claim subject to this appeal.

Wellpinit SD previously sought summary judgment of Mr. Hale's disability claim, which was granted in May 2007. CP 304-306. That decision ascended to the Washington Supreme Court on an issue of the retroactive application of the legislative amendment of the definition of "disability" in RCW 49.60.040(7)(d), while this case was pending. *Hale v. Wellpinit School District No. 49*, 165 Wn.2d 494, 198 P.3d 1021 (2009). Finding that the legislative amendment did apply to the case, it was remanded to the Trial Court for further proceedings without a determination of whether Mr. Hale was, in fact, "disabled."

In November 2009, Wellpinit SD again sought summary judgment dismissal of Mr. Hale's disability claim (CP 428-429), this time because he had not presented any evidence or argument of "disability" under that or any other definition, and because his the sole accommodation sought by Mr. Hale – a new supervisor – was not reasonable. CP 430-439. Mr. Hale complained of personality conflict with his supervisors at Wellpinit SD, admitting both in testimony and in writing that if he could work for any

other boss he would be able to perform the tasks of his employment. Wellpinit SD argued that such a circumstance is not a "disability" that requires accommodation under the Washington Law Against Discrimination. The entire record of relevant deposition testimony and documentation was presented to the Trial Court.

On February 22, 2010, the Trial Court entered an Order which, in part, denied Wellpinit SD's summary judgment motion. CP 533-535, 534. In effect, the Trial Court ignored clear precedent dismissing "disability" claims based upon personality conflict, allowing that claim to proceed to a jury at trial. Wellpinit SD respectfully submits that the record simply does not support the result of allowing a jury to manufacture relief under facts which by law do not support the disability claim.

B. Assignments of Error.

1. The Trial Court decision, denying Wellpinit SD's motion for summary judgment, allows a jury determination of whether a "personality conflict" falls within the definition of "disability" in RCW 49.60.040 and requiring an accommodation, as a question of fact, even though Washington precedent dismisses that type of claim.

2. The decision of the Trial Court has created a cause of action in this case, wherein an employee may sue an employer to force an accommodation of either a new supervisor or unsupervised work strictly

because of a personality conflict between a supervisor and the employee. That is error under Washington precedent and a majority of cases.

3. The decision of the Trial Court throws into question the requirement that even if a diagnosed condition exists, the accommodation must relate specifically to the employee's inability to perform his or her specific job, rather than generally to the employee's displeasure with his or her superiors, or the overall management of the employer's personnel or business.

4. The decision of the Trial Court allows a claim to go to the jury which, under proper instructions, has no chance of success.

C. Statement of the Case.

Plaintiff John Hale was hired by the Wellpinit School District on February 11, 2002, to provide support services at the Wellpinit High School. CP 45-46. As an instructional assistant, Mr. Hale was considered to be a classified employee. CP 50. His job offer came to him verbally (CP 49) and was never told that his position would last longer than that particular school year. CP 51.

Mr. Hale was originally hired to work at Wellpinit but in late May 2002 was transferred to a Wellpinit SD facility in Fort Simcoe, Washington. CP 52-53. At Wellpinit he was supervised by Magne Kristiansen and Superintendent Reid Riedlinger. CP 58. Mr. Hale

complains generally that as his employment continued at Wellpinit his treatment by Kristianson was “unfair”, “abusive”, and “critical” (CP 53, 55-56, 58-60) through criticism, jokes about Mr. Hale or "glances of the eye, smacking the lips or responding incredulously." CP 59-60. Otherwise he considered his time at Wellpinit to be “great.” CP 65-66.

Mr. Hale first complained of his treatment by supervisors by letter dated August 25, 2002, to Superintendent Riedlinger. CP 69, 74-75, 117. He complained about “arrogant” and “disrespectful” treatment by his supervisor Kristiansen. *Id.* Mr. Hale complained of stomach pain. *Id.* He intended to spur Mr. Riedlinger to do something to ease the tension between Hale and Kristiansen. CP 111. The so-called “abusive” behavior stopped in September 2002. CP 110.

By that time he had transferred to the Wellpinit SD facility at Fort Simcoe. CP 52-53. There he was supervised by Principal Phyllis Magden. CP 61. Mr. Hale was assigned to classroom support, including assistance with software issues. CP 45-46. Mr. Hale states that Principal Magden’s attitude toward him changed in July 2002. CP 67-68. He believed Mr. Kristiansen wanted him to “fail” so that Mr. Kristiansen could “keep his power.” CP 70. Ms. Magden became “arrogant.” CP 72-73. Mr. Hale believed that Magden and Kristiansen were “conspiring” to make Mr. Hale “look bad.” *Id.*

On January 3, 2003, Mr. Hale wrote a letter to the Wellpinit SD Board of Directors, regarding “abusive” treatment by “Wellpinit staff.” CP 78, 119-120. The “staff” was Mr. Kristiansen and Ms. Magden. CP 79. He again reported “abusive” behavior and hostility. CP 84-85, 91. Mr. Hale was concerned that Ms. Magden did not want to see Mr. Hale succeed so as to retain “more power.” CP 91-92. He complained of the tasks he was given at work. CP 113-115. Mr. Hale met with Superintendent Riedlinger on January 9, 2003, and thought that discussion was “productive” (CP 80-81, 85-86) but also thought that Riedlinger “could not handle” Mr. Hale’s “professionalism.” CP 92-93. Mr. Hale felt he had been “demoted” although that never occurred. *Id.* pp. 94-95, 113-114. He believed that Ms. Magden, Mr. Kristiansen and Mr. Riedlinger all wanted Mr. Hale to fail so they could each be deemed successful. CP 87-88. This alleged “abuse” was consistent with Mr. Hale’s past employment. CP 98-101.

Mr. Hale submitted his letter of resignation to Wellpinit SD on February 23, 2003. CP 122-124. Therein, Mr. Hale complained of “unfair” and “unprofessional” working conditions which allegedly caused health problems. *Id.* Dated March 3, 2003, Mr. Hale submitted a Voluntary Quit Statement to the Washington Employment Security Department. CP 129, 144-146. The stated reason for his resignation from Wellpinit SD was the treatment by his supervisors. CP 129. Mr. Hale

reported that he was capable of working for “reasonable management.” CP 130, 145. Mr. Hale represented no “injuries, illnesses, or other conditions” which would prevent him from working in his “main occupation.” CP 136. He did not ask to be rehired at Wellpinit SD because “unreasonable supervisors would remain.” CP 131-132, 146. The only “intolerable condition” at Wellpinit SD was the way Mr. Hale was treated by Ms. Magden, Mr. Kristiansen and Mr. Riedlinger. CP 133. After leaving Wellpinit SD Mr. Hale believed he could work anywhere but Wellpinit SD. CP 134.

Mr. Hale sued Wellpinit SD for violation of the WLAD, for failure to accommodate his alleged disability. CP 3-8. On February 22, 2010, Mr. Hale voluntarily dismissed his other two claims.

D. Argument.

1. Appeal of a Summary Judgment Proceeding.

The standard of review of an order of summary judgment is *de novo*, and the appellate court performs the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). The moving party bears the burden of demonstrating that there is no genuine issue of material fact. *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). The appellate court will view all facts in the light most favorable to the

nonmoving party.-*Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). When reasonable minds could reach but one conclusion regarding claims of disputed facts, such questions may be determined as a matter of law. *Ruffer v. St. Francis Cabrini Hosp.*, 56 Wn.App. 625, 628, 784 P.2d 1288, *rev. denied* 114 Wn.2d 1023, 793 P.2d 535 (1990).

In this case the record amply demonstrates that what Mr. Hale complains of is a personality conflict with his supervisors. Under settled Washington precedent, that complaint is not properly the subject of a WLAD claim and cannot be accommodated as intended by those statutory protections. Respectfully, the Trial Court committed reversible error when it denied the Wellpinit School District's summary judgment motion.

2. Mr. Hale's Claim Has Not Changed Because Of The Recent Supreme Court Decision.

In this case Mr. Hale's alleged WLAD claim stems from a personality conflict with his Wellpinit SD supervisors, Hale's wide-ranging complaints regarding the management of the schools and the Wellpinit SD's alleged failure to accommodate those complaints. Controlling Washington precedent and cases throughout the United States demonstrate clearly that a personality conflict does not give rise to an accommodation claim. Yet in this case the "disability" and

accommodation claim survived Wellpinit SD's summary judgment motion. That was obvious error.

Wellpinit SD previously sought dismissal of Mr. Hale's disability claims in December 2006. While that motion was pending the Washington Legislature amended the definition of "disability" to statutorily adopt the standard of *Pulcino v. Fed. Express Corp.*, 141 Wn.2d 629, 641, 9 P.3d 787 (2000), that a claimant prove that he or she had a sensory, mental, or physical abnormality that had a "substantially limiting effect upon the individual's ability to perform his or her job." RCW 49.60.040(7)(d). The question herein then became whether the amended definition of "disability" applied retroactively. In *Hale v. Wellpinit School District No. 49*, 165 Wn.2d 494, 198 P.3d 1021 (2009), the Supreme Court ruled that it did apply. But the Supreme Court also stated: "We do not decide whether or not Hale is in fact disabled." *Id.*, 165 Wn.2d at 503.

Respondent Wellpinit SD submits that the wrangling between the Courts and the Legislature had no impact on Washington law that holds that a personality conflict is not a "disability" requiring accommodation under the WLAD. Yet when Wellpinit SD brought another motion for summary judgment on that issue in November 2009 (CP 428-429, 25-38, 430-439, 39-153) the Stevens County Superior Court denied that motion, finding that "genuine issues of material fact exist" precluding Wellpinit

SD's motion. The only possible issue is whether Mr. Hale's complaints of disability and accommodation fall within the statutory protections of RCW 49.60. The denial of summary judgment was error.

A claimant can satisfy his or her burden under RCW 49.60.040 either: (1) by showing that the alleged disability has a "substantially limiting effect" on the individual's ability to perform his job (RCW 49.60.040(7)(d)(i)), or (2) the employee must show the employer medical documentation which establishes "a reasonable likelihood that engaging in job functions without an accommodation *would aggravate* the impairment to the extent that it would create a substantially limiting effect. RCW 49.60.040(7)(d)(ii). The revised definition of disability "eliminated the requirement that the plaintiff demonstrate that the allegedly disabling condition limits 'one of his major life activities.'" *Hale v. Wellpinit*, 165 Wn.2d 494, 502, 198 P.2d 1021 (2009). This revised definition does not create an infinite basis for accommodation claims. It does require proof that an individual is "substantially limited" in job performance without the accommodation. Admittedly, Mr. Hale is not limited in his performance.

Mr. Hale has never contended that he is incapable of performing the job for which he was hired. Instead, Mr. Hale claims that he simply could not work with his Wellpinit supervisors and that he objected to the way the schools were run. CP 119-120. Under RCW 49.60.040(7)(d), Mr.

Hale is not “impaired”. The record before the Trial Court clearly demonstrated that Mr. Hale considered himself to be at the top of his abilities; he just did not like working for Mr. Riedlinger, Mr. Kristiansen and Ms. Magden.

Q. [To Mr. Hale] If Magne Kristiansen, Phyllis Magden and Reid Riedlinger weren't your supervisors at Wellpinit, is there anything else about the Wellpinit School District that would have made it impossible for you to continue your work?

A. [Mr. Hale] I don't think so.

CP 142. The only identifiable conditions which required accommodation were Mr. Hale's desire not to work under Riedlinger, Magden and Kristiansen (CP 133) and Hale's dissatisfaction with the overall management of the District. CP 117, 119-120, 122-123. Mr. Hale himself described the exacerbation of his anxiety as a “personality conflict” with Kristiansen and "his policies" (CP 76-77) but not the job itself or any physical limitations associated with performing that job. Mr. Hale considered Kristiansen to have "an arrogant personality" toward Mr. Hale because Mr. Hale was not "an important person." CP 64. Magden eventually became "arrogant" as well. CP 72. He expected Riedlinger to intervene to ease tensions. CP 110-111. He believed that Riedlinger, Kristiansen and Magden all wanted him to fail (CP 87-88) or at least take advantage of Mr. Hale for their own respective success. CP 88. Mr. Hale

never claimed that he could not perform the work assigned because of an disability that was not accommodated. He merely did not like his bosses.

Generally, whether an employer reasonably accommodated the employee or whether the employee's request placed an undue burden on the employer are questions of fact for the jury. *Pulcino*, 141 Wn.2d at 644, 9 P.3d 787 (citing *Snyder*, 98 Wn.App. at 327, 988 P.2d 1023). But certain types of requests have been found unreasonable as a matter of law. *Pulcino*, 141 Wn.2d at 644, 9 P.3d 787. It is difficult to imagine an issue of fact in light of the nature of Mr. Hale's claim of "impairment" and failure to accommodate. He simply did not get along with his supervisors and did not like the way the schools were run. Yet the Trial Court left that determination to the trier of fact, as if the precedent no longer applied because of the amendment of RCW 49.60.040(7). The Trial Court committed obvious error when it allowed this claim to survive Wellpinit's summary judgment motion.

3. It Is Well Settled Washington Law That "Personality Conflict" Is Not Disability.

In *Snyder v. Med. Serv. Corp.*, 145 Wn.2d 233, 240-41, 35 P.3d 1158 (2001), the claimant/ employee Ms. Snyder claimed post-traumatic stress disorder due to a previous encounter with her supervisor. Snyder argued that she was qualified to perform the essential functions of the job

but could do so only with a new supervisor, precisely what Mr. Hale has claimed in this case. CP 130-132. In this case Mr. Hale testified:

A. My symptoms weren't intolerable, the hostility that Mr. Kristiansen approached me with was what was intolerable.

Q. . . . The intolerable conditions were the treatment by Mr. Kristiansen?

A. Correct.

Q. The treatment by Mr. Riedlinger?

A. Yes.

Q. And the treatment by Ms. Magden?

A. Correct.

Q. Were there other intolerable conditions which you experienced at Wellpinit?

A. No.

CP 133. Mr. Hale failed to identify a physical barrier, a hygienic condition or any other type of impediment to his job performance other than the fact that he did not like the people that were his superiors within the Wellpinit SD structure. But for the presence of his supervisors, Mr. Hale was just fine to perform his duties at the Wellpinit SD. CP 142. Based upon those admitted facts the disability claim in this case has no legal basis in Washington.

However[,] if Snyder can perform the job, then she has no disability requiring accommodation simply because she has a personality conflict with her supervisor.

Snyder v. Med. Serv. Corp., 145 Wn.2d at 241. The analysis of this case need go no further than that.

Many other courts have recognized the absence of disability in a personality conflict, or the inability to work for a specific individual.

Standing alone, a personality conflict between an employee and a supervisor – even one that triggers the employee's depression – is not enough to establish that the employee is disabled, so long as the employee could still perform the job under a different supervisor. *See id.* at 524-25; *cf. Palmer v. Circuit Court of Cook County*, 117 F.3d 351, 352 (7th Cir.1997) (observing that “if a personality conflict triggers a serious mental illness that is in turn disabling,” and thus makes the employee incapable of working, the employee may have a disabling mental illness within the meaning of the ADA), *cert. denied*, 522 U.S. 1096, 118 S.Ct. 893, 139 L.Ed.2d 879 (1998).

Schneiker v. Fortis Ins. Co., 200 F.3d 1055, 1062 (7th Cir. 2000).

Here, not only do Reagan and her psychologist claim that she could perform her current job if she is separated from Whitney, Reagan also claims that she could perform many other jobs.

Reagan v. England, 218 F.Supp.2d 742, 747 (D.Md. 2002).

. . . a personality conflict between an employee and a supervisor – even one that triggers the employee's depression – is not enough to establish that the employee is disabled, so long as the employee could still perform the job under a different supervisor.

Schneiker v. Fortis Ins. Co., 200 F.3d 1055, 1062 (7th Cir. 2000). See also *Paleologos v. Rehab Consultants, Inc.*, 990 F.Supp. 1460, 1465 (N.D.Ga.1998) (stress condition triggered by mere thought of interaction with defendant's management does not constitute a disability under the

ADA); *Stroman v. Blue Cross and Blue Shield Ass'n*, 966 F.Supp. 9, 11 (D.D.C.1997), *aff'd*, 159 F.3d 637, 1998 WL 230211 (D.C.Cir.1998) (inability to work for a particular supervisor does not qualify as disability); *Gaul v. Lucent Techs., Inc.*, 134 F.3d 576, 580 n. 3 (3d Cir.1998) (observing "a plaintiff who is unable to work with individuals who cause him 'prolonged and inordinate stress' cannot be said to be incapable of performing a 'class of jobs or a broad range of jobs in various classes' "); *Potter v. Xerox Corp.*, 88 F.Supp.2d 109, 112 (W.D . N.Y.2000) (" . . . plaintiff's impairment is his inability to work under the supervision of Danylyshyn [which] does not rise to the level of a disability under the statutory definition."), *aff'd*, 2001 WL 15617 (2d Cir. Jan. 5, 2001); *Mescall v. Marra*, 49 F.Supp.2d 365, 373 (S.D.N.Y.1999) ("Mescall's inability to work as a guidance counselor under the supervision of Delgado does not constitute a disability within the meaning of the ADA.")

4. There Is No Obligation Under The WLAD To Accommodate A Personality Conflict.

The duty of reasonable accommodation does not extend to providing an employee with a new supervisor or a position with a new supervisor, even with an underlying "emotional distress" condition presented and a doctor's orders to avoid that supervisor. *Snyder v. Med. Serv. Corp.*, 145 Wn.2d 233, 238 and 242, 35 P.3d 1158 (2001). After

surveying and identifying persuasive ADA cases from several federal circuit courts of appeal, our Supreme Court held:

We ... conclude that there is no duty under WLAD to reasonably accommodate an employee's disability by providing her with a new supervisor.

Snyder, 145 Wn.2d at 242, 35 P.3d 1158. The court emphasized that:

Snyder claims she could continue to perform the essential functions of her position so long as she did not have to report to Ms. Hall. However if Snyder can perform the job, then she has no disability requiring accommodation simply because she has a personality conflict with her supervisor.

Snyder, 145 Wn.2d at 241, 35 P.3d 1158 (emphasis added).

The record before the Trial Court in this case demonstrated no more “disability” than was presented in *Snyder*. Mr. Hale complains herein that while working under Principal Magden, Mr. Hale “had to depend on Mrs. Magden for all my information” (CP 108) and he railed against the way the Wellpinit School District was run. CP 119-120. Mr. Hale admitted to anti-social behaviors that had nothing to do with Wellpinit SD. CP 137-138, 139-141. Mr. Hale’s answer to the problems was to work without supervision. CP 140-141. The record produced herein amply demonstrates that there was neither a disability nor an accommodation available to Mr. Hale under Washington law:

- In the Voluntary Quit Statement (signed by Mr. Hale on March 3, 2003), Mr. Hale represented to the Washington Employment Security Department that he (1) blamed the treatment he was allegedly receiving from supervisors as the reason for leaving his

employment with the Wellpinit School District; (2) he stated that he was capable of working at "anything with reasonable management"; (3) that the management at Wellpinit SD was "not reasonable"; and (4) that he had "no injuries, illnesses, or other conditions" that would prevent him from returning to work in his "main occupation." CP 144-146, 136.

- Mr. Hale expected his health to improve after leaving Wellpinit SD because he would no longer be working for "unreasonable management." CP 130-131.
- He did not ask to be rehired at Wellpinit SD because "unprofessional supervisors would remain." CP 131-132.
- The only "intolerable conditions" identified by Mr. Hale was the way he was allegedly treated by his supervisors. CP 133.
- If his immediate supervisor, the Superintendent and the Principal had not been Mr. Hale's supervisors, there was nothing that would have prevented Mr. Hale from performing his job at Wellpinit SD. CP 142.
- Mr. Hale applied for the same or similar positions with other school districts after leaving Wellpinit SD. CP 127-128.

Even in light of that evidence – clear admissions by Mr. Hale – the Trial Court denied summary judgment, leaving it to the jury as to whether the Wellpinit SD had acted in violation of the WLAD by failing to give Mr. Hale either new bosses or no bosses at all. The enactment of RCW 49.60.040(7)(d) does not require that result.

In *Wilson v. Wenatchee School District*, 110 Wn.App. 265, 40 P.3d 686 (Div. III 2002), elementary teacher Wilson claimed that working under his supervising principal caused him severe stress. A doctor diagnosed an anxiety disorder (like Hale's) related to that supervision.

Wilson requested a transfer away from his supervisor as an accommodation after announcing his intent to take an extended leave of absence. After his leave, Wilson advised the District that he was willing to accept any other lower grade assignment than one under his old supervisor. The District offered, and Wilson accepted, a full-time position as an instructor in its program aimed at helping school dropouts. Later, Wilson sued the District for ‘handicap discrimination’ for failing to accommodate his disability. *Wilson*, 110 Wn.App. at 266, 40 P.3d 686.

This Court held that Wilson's accommodation request was ‘grounded on his desire to work under a different supervisor.’ *Wilson*, 110 Wn.App. at 271, 40 P.3d 686. Under *Snyder* the District had no duty under the Act to accommodate Wilson's disability by transferring him to a position under a different supervisor. *Wilson*, 110 Wn.App. at 271, 40 P.3d 686 (citing *Snyder*, 145 Wn.2d at 242, 35 P.3d 1158). Accordingly, this Court held that the Wenatchee School District was entitled to summary judgment dismissing the claim. *Wilson*, 110 Wn.App. at 271.

It speaks volumes that Mr. Hale’s written complaints to Wellpinit were primarily concerned not with his treatment by his supervisors but with the overall management of the schools and students and procedures. CP 119-120, 122-123. He did not submit any documentation of his perceived medical condition until he submitted his letter of resignation

dated February 23, 2003. CP 124. Even then the physician did not or could not relate Mr. Hale's condition to the alleged events at the schools but rather merely reported that "John feels" and "he attributes" and "he feels." *Id.* The Wellpinit SD had no time to react since Mr. Hale had already quit. Even if it had the time to consider that condition the "accommodation" was modification of the overall management the Wellpinit SD, the administration of its curriculum and supervision.

Mr. Hale does not claim that he cannot work or that he cannot perform the functions of the job that he was hired to perform for the Wellpinit SD. Simply, Mr. Hale claims that *he could not work for his supervisor Kristiansen, Superintendent Riedlinger and Principal Magden.* Mr. Hale believed that he could do the same job for any other school district "with reasonable management" (CP 145) and that his health would improve away from Wellpinit SD. CP 130-131.

In suggesting a transfer [from allegedly stressful environment at a school where plaintiff worked] as her only accommodation, Plaintiff undermines her own case by underscor[ing] the fact that she is not restricted from performing a wide spectrum of jobs, a prerequisite to proving a disability recognized by the ADA.

Osika v. Board of Educ., No. 98 C 5953, 1999 WL 1044838, at 4 (N.D.Ill. Nov. 16, 1999).

Here, Plaintiff presents no genuine issue of fact that compels a finding [requiring accommodation.] By Plaintiff's own admission as well as that of her treating psychiatrist, she would have been able to fully perform her job functions, if only she were transferred

to another school. Essentially, Plaintiff's complaint, supported by her own admissions on the record, amounts to a charge that she is unable to work with her supervisors.

Id. at 5. In this case Mr. Hale is quite clear in that regard: if he was not required to work with Kristianson, Magden or Reidlinger he would have no impediments to the performance of his job. CP 133.

In Washington the WLAD does not authorize a plaintiff or court to tell an employer how to organize its workforce or structure individual jobs. *Davis v. Microsoft Corp.*, 149 Wn.2d 521, 536, 70 P.3d 126 (2003), citing *Pulcino v. Fed. Express Corp.*, 141 Wn.2d 629, 639, 9 P.3d 787 (2000) for the proposition that an accommodation should not work an undue hardship on the employer. In this case, to allow Mr. Hale's claim to proceed past summary judgment will result in just that: precedent allowing a disability claim based upon personality conflicts and unhappiness with the organization of the employer.

E. Conclusion.

Mr. Hale admittedly finds it "sickening" when he "loses control to an employer" (CP 139-140) but he had no difficulty working with anyone at Wellpinit SD who was not his supervisor. CP 141. Mr. Hale complained bitterly about the manner in which the school district was being run (CP 119-120) and even complained that he was being supervised by a principal who was "unqualified and incompetent." CP

122. He believed that he was belittled by his supervisors so that they could "keep their power" or "for their own lust for power and advancement." CP 70, 73. Mr. Hale believed that there was a conspiracy between his three supervisors to make him look "impotent." CP 73. When asked, he could think of nothing "intolerable" other than his treatment by his three supervisors. CP 133. Therefore, Mr. Hale has failed to present any evidence of an actual impediment to his ability to function in his work at Wellpinit SD other than to complain about his supervisors.

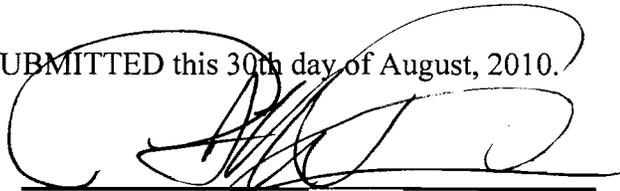
The Trial Court obviously became concerned that the newly enacted RCW 46.60.040(7) had somehow captured Mr. Hale's claim of disability and accommodation, even in light of his admissions, the record and precedent such as *Snyder* and *Wilson*. Neither of those cases has been overruled, directly or by implication. The Wellpinit School District is entitled to proper jury instructions under those cases. Yet the Trial Court's rejection of the Wellpinit School District's summary judgment motion implies that those cases have been overruled.

Mr. Hale's claim is based on a personality conflict. The accommodation sought was not specific to an alleged disability but rather demanded modifications in overall school personnel assignments and program management. He simply did not like the manner in which the schools were managed, classes were taught, or the personalities of his

supervisors. Ideally Mr. Hale would prefer to work without supervision, which is unrealistic in a public school setting.

The Washington Law Against Discrimination and controlling cases do not recognize Mr. Hale's alleged complaint as involving either a "disability" or a failure to accommodate. Allowing these claims to proceed to a jury will invite the jury to manufacture personnel and management remedies for Mr. Hale and others under the guise of the WLAD. Mr. Hale's WLAD claims should have been dismissed by summary judgment.

RESPECTFULLY SUBMITTED this 30th day of August, 2010.



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Wellpinit School District No. 49

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 30th day of August, 2010, a true and correct copy of the foregoing ***Brief of Petitioner Wellpinit School District No. 49***, was served upon the following parties and their counsel of record in the manner indicated below:

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<input type="checkbox"/>	U.S. Mail
<input checked="" type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Facsimile



Jan Hartsell