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(on appeal from Pierce County Superior Court Cause No. 06 2 08565 1)

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SUPREME COURT OF THE STATE OF WASHINGTON

MITCH DOWLER and IN CHA DOWLER, individually
and as limited guardian ad litem for NAM SU CHONG, et al.,

Appellants,

vs.

CLOVER PARK SCHOOL DISTRICT NO. 400,

Respondent.

FILED
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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

ANSWER TO AMICUS CURIAE BRIEFS OF THE AMERICAN CIVIL
LIBERTIES UNION OF WASHINGTON AND WASHINGTON
EMPLOYMENT LAWYERS ASSOCIATION; COUNCIL OF PARENT
ATTORNEYS AND ADVOCATES, INC.; DISABILITY RIGHTS
WASHINGTON AND THE ARC OF WASHINGTON STATE; AND
WASHINGTON STATE ASSOCIATION FOR JUSTICE
FOUNDATION

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I. INTRODUCTION

The Clover Park School District (“District”) submits this response to the amicus curiae briefs filed by the American Civil Liberties Union of Washington and Washington Employment Lawyers Association (“ACLU/WELA”); the Council of Parent Attorneys and Advocates, Inc. (“COPAA”); Disability Rights Washington and ARC of Washington State (“DRW/ARC”); and Washington State Association for Justice Foundation (“WSAJF”). In general, these briefs fall into two categories.

The briefs filed by the ACLU/WELA and WSAJF primarily argue that there is no statutory basis for requiring exhaustion of administrative remedies for state-law based claims. This argument fails, however, because the doctrine of exhaustion of administrative remedies is well established under Washington law, and the policy reasons favoring exhaustion—allowing for the exercise of agency expertise, developing the factual and technical record, potentially allowing the agency to correct deficiencies in a student’s education in a timely manner, and discouraging litigants from ignoring administrative procedures by resorting to the courts—are well served here. Moreover, in absence of exhaustion, Washington’s Law Against Discrimination is not an effective vehicle for assessing the appropriateness of the education and related services offered to special education students.

The briefs filed by the COPAA and DRW/ARC primarily argue that the exhaustion of administrative remedies can never apply to abuse or

discrimination claims. This argument fails because the Plaintiffs' claims—including their claims for discrimination and abuse—involve numerous educationally-related issues that could be redressed by the administrative procedures available to special education students. Whenever a plaintiff's alleged injuries could be redressed to any degree by these administrative remedies, exhaustion is required.

II. ARGUMENT

A. The Doctrine of Exhaustion of Administrative Remedies Is Well Established in Washington.

The ACLU/WEA and WSAJF primarily assert that the exhaustion of administrative remedies found in the Individuals with Disabilities Education Act (IDEA)¹ only applies to federal claims. This argument, however, ignores Washington's independent and long-standing recognition of the doctrine. *See Smith v. Bates Technical College*, 139 Wn.2d 793, 808, 991 P.2d 1135 (2000).

In general, "A party must exhaust all available administrative remedies before the superior court can grant relief." *Harrington v. Spokane County*, 128 Wn. App. 202, 209, 114 P.3d 1233 (2005) (affirming summary judgment dismissal for failure to exhaust). As the *Harrington* court stated: "The court will not intervene where an exclusive administrative remedy is provided." *Id.*

There are several reasons why courts employ the exhaustion doctrine. First, "The doctrine allows an administrative body to exercise its

¹ 20 U.S.C. §§ 1400-1491.

expertise in areas that may be outside the court's experience.”
Baumgartner v. State Dept. of Corrections, 124 Wn. App. 738, 743, 100
P.3d 827 (2004). In addition, the *Harrington* court explained that:

[The doctrine] avoids premature interruption of the administrative process, provides for full development of the facts, and allows the exercise of agency expertise. . . . The doctrine also protects the autonomy of administrative agencies by giving them the opportunity to correct their own errors. . . . It discourages litigants from ignoring administrative procedures by resort to the courts.

Harrington 128 Wn. App. at 210.

As discussed in the District's brief and in the brief of the Washington Schools Risk Management Pool (WSRMP), the policy reasons for applying the exhaustion doctrine—allowing for the exercise of agency expertise, developing the factual and technical record, potentially allowing the agency to correct deficiencies in a student's education, and discouraging litigants from ignoring administrative procedures by resorting to the courts—apply to this case. See Respondent's Br. at 49-50; WSRMP Br. at 9-12.

The State of Washington has established an administrative agency, the Office of the Superintendent of Public Instruction (OSPI), that has the authority and expertise to address many of the claims advanced by the Plaintiffs. OSPI has established mechanisms for resolution of complaints, and the administrative agency can, if warranted, provide much, if not all, of the relief sought by the Plaintiffs.

OSPI has adopted rules that incorporate Washington's Administrative Procedure Act for governing hearings. WAC 392-172A-05100. The APA itself requires litigants to exhaust all administrative remedies unless the remedies would be patently inadequate, exhaustion would be futile, or irreparable harm would occur. RCW 34.05.534; WSRMP Br. at 9.

For these reasons, the position of ACLU/WELA and WSAJF that exhaustion only applies to federal claims is without merit. The principles governing exhaustion of administrative remedies in Washington should apply to this case.

In addition to arguing against exhaustion, the ACLU/WEA contend that the IDEA does not preempt state-law. ACLU/WEA Br. at 7-13. This preemption position is a straw man argument.

The District has never asserted that the IDEA preempts state law or prohibits a disabled student from seeking judicial review. On the contrary, a party that has satisfied IDEA's exhaustion requirement may then pursue meritorious claims in court. *See, e.g., Witte v. Clark County Sch. Dist.*, 197 F.3d 1271, 1275 (9th Cir. 1999) (not requiring exhaustion in part because "all educational issues already have been resolved . . . through the [administrative] process."); *Blanchard v. Morton Sch. Dist.*, 420 F.3d 918, 922 (9th Cir. 2005) (exhaustion not required because plaintiff had "resolved the educational issues implicated by her son's disability" while obtaining the relief available under the IDEA).

As noted in the District's brief and in the amicus brief of the WSRMP, the IDEA and state regulations provide that "any party aggrieved" by an administrative decision has the right to bring a civil action. 20 U.S.C. § 1415(i)(2)(A); WAC 392-172A-05115. Respondent's Br. at 13; WSRMP Br. at 4-5. Thus, the lack of preemption argument of the ACLU/WEA is without merit.

B. Requiring Exhaustion of Administrative Remedies Would Not Be Futile Because Plaintiffs Have Requested Relief That Could Be Addressed by IDEA's Remedies.

The WSAJF contends that Washington's exhaustion of administrative remedies is inapplicable here because the IDEA cannot provide the relief sought by the Plaintiffs, "such as damages for personal injury and emotional distress." WSAJF brief at 13. The DRW/ARC and COPAA also claim that IDEA cannot provide relief for personal injuries. DRW/ARC at 19-20; COPAA Br, at 14-16. This position is wrong for two reasons.

First, as the Ninth Circuit held in *Robb v. Bethel School District*, the IDEA provides several remedies that could address damages for personal injury and emotional distress:

The Robbs seek money to compensate them for "lost educational opportunities" and "emotional distress, humiliation, embarrassment, and psychological injury." Why do they want this money? Presumably at least in part to pay for services (such as counseling and tutoring) that will assist their daughter's recovery of self-esteem and promote her progress in school. Damages could be measured by the cost of these services. Yet the school

district may be able (indeed, may be obliged) to provide these services *in kind* under the IDEA. . . .

...

The regulations implementing the statute provide that “psychological services” include “psychological counseling for children and parents.” 34 C.F.R. § 300.24(b)(9)(v). This battery of educational, psychological, and counseling services could go a long way to correct past wrongdoing by helping Ms. Robb to heal psychologically and to catch up with her peers academically, if she has not done so already. It would be inappropriate for a federal court to short-circuit the local school district's administrative process based on the possibility that some residue of the harm Ms. Robb allegedly suffered may not be fully remedied by the services Congress specified in the IDEA. We are not ready to say that money is the only balm.

Robb v. Bethel Sch. Dist., 308 F.3d 1047, 1050 (9th Cir. 2002) (footnotes omitted).

In addition, a due process hearing can address discrimination or abuse claims if those claims interfere with the free appropriate public education (FAPE) provided to a special education student. *See M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 650 (9th Cir. 2005) (if teasing or abuse prevents the student from benefiting from his or her education, then “the child has been denied a FAPE.”); *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 289 (5th Cir. 2005) (a wheelchair-bound student's claim of inaccessible school facilities resulted in denial of FAPE addressed in IDEA administrative proceeding).

The second reason underscoring the fallacy of WSAJF's position that IDEA cannot provide appropriate relief is the relief actually sought by

the Plaintiffs. WSAJF premised its argument on the notion that Plaintiffs sought only monetary damages. That is incorrect. In Plaintiffs' Third Amended Complaint, the last Complaint filed by the Plaintiffs, they seek relief for the "loss of educational opportunities," and for "loss of academic, vocational and athletic opportunities," and they request an award of "compensatory education"² to offset the losses allegedly caused by the District's conduct. CP 87, 90. Similarly, the deposition testimony of the Plaintiffs, where the Plaintiffs seek educationally-related relief, establishes that IDEA can provide relief, if warranted. *See* Respondent's Br. at 30-45.

C. In the Absence of Exhaustion, Washington's Law Against Discrimination Is Not an Effective Vehicle for Adjudicating Claims by Special Education Students.

The briefs of the ACLU/WEA and WSAJF contend that IDEA's exhaustion requirement should not apply to claims under Washington's Law Against Discrimination (WLAD), chapter 49.60 RCW. ACLU/WEA Br. at 13-19; WSAJF Br. at 11-15. In the absence of IDEA exhaustion, however, the WLAD is not an appropriate vehicle for addressing educationally-related claims of special education students.

First, a school district's compliance with the requirements of IDEA should satisfy the requirements of a more general anti-discrimination statute like the WLAD. Federal courts routinely hold that a school district's compliance with IDEA also means that the school district has

² Compensatory education is a remedy available under the IDEA. *Miener v. Missouri*, 800 F.2d 749, 753-54 (8th Cir. 1986).

complied with the requirements of the American Disabilities Act or § 504 of the Rehabilitation Act.³ *See e.g., Pace*, 403 F.3d at 297 (a finding that school had not violated student's IDEA rights collaterally estops student's ADA and § 504 claims); *Independent Sch. Dist. No. 283 v. S.D.*, 88 F.3d 556, 562 (8th Cir. 1998) (dismissal of IDEA claim bars student's ADA, § 504, and state civil rights claims); *Moubry v. Independent School Dist.*, 9 F. Supp.2d 1086, 1111-12 (D. Minn. 1998) (dismissal of IDEA claim precludes ADA and state civil rights claim).

In addition, compliance with the rights provided by a specific statute, such as Washington's special education law, should prevail over a more general statute, such as the WLAD. For example, in *Jenkins v. Carney-Nadeau Pub. Sch.*, 505 N.W.2d 893 (Mich. Ct. App. 1993), the court held that compliance with the administrative procedures provided by the state's special education law prevailed over the state's more general disability discrimination statute. *Jenkins*, 505 N.W.2d at 894. As the court reasoned, Michigan's special education law "more specifically addresses the education of disabled children than does HCRA [Michigan's law against disability discrimination]." *Id.*

³ Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), states:

No otherwise qualified individual with handicaps . . . shall solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .

Thus, the District's compliance with the requirements of IDEA, as implemented in RCW 28A.155, should prevail over claims predicated on a violation of the more general anti-discrimination statute, RCW 49.60.

Second, WLAD requires only that school districts provide special education students with services comparable to those services offered to non-disabled students; the WLAD does not require that school districts provide special services to disabled students. *See Fell v. Spokane Transit Authority*, 128 Wn.2d 618, 639, 911 P.2d 1319 (1996). For these reasons, the provision of special education services should not be governed by the WLAD.

In *Fell*, the plaintiffs argued that the Spokane Transit Authority ("STA") must provide transportation services to disabled people who live within the STA's boundaries, regardless of whether the STA provided similar services to non-disabled people. *Id.* at 638-39. The *Fell* court rejected that argument and instead held that that the key issue under the WLAD is whether the defendant offered "plaintiffs services comparable to those of nondisabled people." *Id.* at 639-40. Unlike federal laws such as the ADA, which may mandate an entitlement to services not available to the non-disabled population, the *Fell* court held that there is no similar requirement under the WLAD:

While entitlement to services may be in the ADA, the Legislature has not enacted a counterpart to the ADA in Washington creating such entitlements. . . .

...

[T]he plaintiffs' approach might thereby effectively require STA to offer greater service to disabled people than is available to nondisabled people. We cannot find a basis for that requirement in Washington's Law Against Discrimination. Rather, the test is comparability of treatment, . . .

Id. at 640.

Similar to the ADA, the IDEA requires school districts to provide special services to disabled students, services that are not available to non-disabled students. For example, the IDEA requires schools to develop individual education programs for special education students. IDEA, 20 U.S.C. §1414(d). The IDEA also requires school districts to provide a wide range of services—including speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling and medical services—when these services are required to assist a disabled student in benefiting from special education. IDEA, 20 U.S.C. § 1401(22).

Like the transit authority in *Fell*, a school is a place of public accommodation under the WLAD. RCW 49.60.040(2). As in *Fell*, however, the WLAD does not require school districts to provide the special education services mandated by the IDEA.

Moreover, the WLAD, unlike the IDEA, offers no mechanism for determining the appropriateness of the education and related services offered to special education students. Thus, the WLAD is not an appropriate vehicle for assessing the treatment of special education students.

D. Exhaustion Is Required Whenever a Plaintiff's Claim Could Be Redressed to Any Degree by IDEA's Administrative Remedies.

The briefs of DRW/ARC and COPAA acknowledge that IDEA's exhaustion requirement applies to educationally-related claims. DRW/ARC Br. at 8-10; COPAA Br. at 5. Indeed, the standard in the Ninth Circuit is that exhaustion is required whenever a plaintiff's alleged injuries could be redressed to any degree by IDEA, and even when it is not clear whether IDEA could provide a remedy. *Kutasi v. Las Virgenes Unified Sch. Dist.*, 494 F.3d 1162, 1168 (9th Cir. 2007).

Nevertheless, COPAA and DRW/ARC claim that IDEA's exhaustion requirement can never apply to claims involving discrimination or abuse. COPAA Br. at 6-7; DRW/ARC Br. at 13-17. Numerous cases, however, have required exhaustion when the plaintiff has alleged discrimination or abuse:

In *Kutasi, supra*, the Ninth Circuit required exhaustion even though the plaintiffs had alleged discrimination based on the student's disability because some of the plaintiffs' alleged injuries could be redressed by IDEA's administrative procedures and remedies.

In *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13 (1st Cir. 2006), the First Circuit held that where the essence of the claim is a denial of a free appropriate public education (FAPE) under IDEA, a plaintiff may not use the ADA or § 504 of the Rehabilitation Act in an attempt to evade the "remedial structure of the IDEA." *Id.* at 29.

In *Cudjoe v. Independent School Dist. No. 12*, 297 F.3d 1058 (10th Cir. 2002), the Tenth Circuit held that plaintiff's discrimination claim was barred by her failure to exhaust IDEA's administrative remedies because the "genesis and manifestation" of the claims were educational in nature and squarely within the scope of available relief under the IDEA. *Id.* at 1068.

In *M.T.V. v. DeKalb County School Dist.*, 446 F.3d 1153 (11th Cir. 2006), the Eleventh Circuit held that plaintiffs' ADA, § 504, and First Amendment claims were barred by plaintiffs' failure to exhaust under IDEA.

In *Polera v. Board of Educ. of Newburgh Enlarged City School Dist.*, 288 F.3d 478 (2nd Cir. 2002), the Second Circuit applied the IDEA's exhaustion of remedies requirement to bar ADA and Section 504 discrimination claims.

In *Rose v. Yeaw*, 214 F.3d 206 (1st Cir. 2000), the First Circuit held that allegations of discrimination by the school were subject to IDEA's exhaustion requirement because they related to the provision of a free appropriate public education to the student.

In *Weber v. Cranston School Committee*, 212 F.3d 41 (1st Cir. 2000), the court held that a mother's retaliation claim under the Rehabilitation Act was subject to IDEA's exhaustion requirement.

In *Babicz v. Sch. Bd. of Broward County*, 135 F.3d 1420 (11th Cir. 1998), the Eleventh Circuit held that plaintiffs must exhaust their administrative remedies prior to filing suit under the ADA or § 504.

In *Charlie F. v. Board of Educ. of Skokie Sch. Dist. No. 68*, 98 F.3d 989 (7th Cir. 1996), the court dismissed plaintiff's discrimination and state law tort claims based upon allegations of abuse by school employees for failure to exhaust because the allegations "have both an educational source and an adverse educational consequence." *Charlie F.*, 98 F.3d at 993.

In *Hayes v. Unified Sch. Dist. No. 377*, 877 F.2d 809, 812-13 (10th Cir. 1989), the court required exhaustion because discipline—including use of time-out room—was educationally related.

In a recent case, a Federal District Court dismissed plaintiffs' discrimination and state law tort claims for failure to exhaust because:

[A]ll of the plaintiffs' claims in this case—the plaintiffs' Title VI claim, § 1983 claims, intentional infliction of emotional distress claim, First Amendment claim, *Monell* claims, and negligent supervision claim—arise from the same nucleus of facts and relate to conduct encompassed and mandated by the IDEA.

Murphy v. Town of Wallingford, No. 3:10-CV-278 CFD, 2011 WL 1106234 at *6 (D. Conn. Mar. 23, 2011).

See also, *R.S. v. Bedford Cent. Sch. Dist.*, No. 7:10-CV-0613, 2011 WL 1404969 at *4 (S.D.N.Y. Mar. 17, 2011) (dismissing retaliation claim seeking only money damages because plaintiffs failed "to show why the administrative relief available—even if not the relief they preferred—would be inadequate."); *S.S. v. E. Ky. Univ.*, 307 F. Supp.2d 853 (E.D. Ky. 2004) (dismissing Section 504 and ADA claims for lack of exhaustion because claims related to FAPE where school allegedly failed to protect

disabled student from abuse and harassment by peers);⁴ *Thomas v. East Baton Rouge Parish School Bd.*, 29 F. Supp.2d 337 (M.D. La. 1998) (holding that “exhaustion of administrative remedies under IDEA is required by a plaintiff, even if the plaintiff is alleging violations of the ADA and the Rehabilitation Act exclusively”).

As these cases demonstrate, exhaustion of administrative remedies is required whenever a plaintiff has alleged injuries that could be redressed to any degree by IDEA.

E. Because Plaintiffs’ Claims Are Educationally Related, Exhaustion Is Required.

The last Complaint filed by the Plaintiffs, their Third Amended Complaint, not only seeks the remedy of compensatory education, it also makes several allegations that concerned the education received by the Plaintiff students, including:

- The “District has implemented a curriculum that objectively demeans developmentally disabled students.” CP 78;
- The District discriminated against the Plaintiffs in “extracurricular activities.” CP 78;
- Developmentally disabled students have been inappropriately disciplined and that the District engaged in “Discriminatory Application of Student Discipline.” CP 78;
- A teacher stated he was not responsible for teaching anything new to the students. CP 80;
- Teachers failed to work with Plaintiff Vance Stevens and instead gave him “busy work to do.” CP 81;

⁴ The S.S. case was subsequently vacated and remanded because the plaintiff exhausted administrative remedies during pendency of appeal. *S.S. v. Eastern Kentucky University*, 431 F. Supp.2d 718, 726 (E.D. Ky. 2006).

- Plaintiff Dobrinski alleged that the District failed to follow her son's Individualized Education Program. CP 82;
- The District ignored the special needs of Plaintiff Vollmer by placing him in a team sport with non-disabled students. CP 83;
- The District failed to pay attention to "the actual instruction given" to Plaintiff students and the students were left without supervision in the classroom. CP 84;
- Para-educators worked only with "easy students" while ignoring "difficult students." CP 84;
- That teachers in the special education department referred to their positions as "glorified babysitting positions" and "Little if any attention was given to the actual instruction of these developmentally disabled children." CP 84, 85;
- Para-educators "were often witnessed during class time searching the internet, reading newspapers." CP 84;
- "Instead of being taught, these children have often been subject to repeatedly watching the same movies over and over again." CP 85.

This Complaint, coupled with the deposition testimony of the Plaintiffs and their briefing submitted *after* they moved to withdraw their educationally related claims,⁵ illustrates that educationally-related issues are intertwined throughout this case. As the Honorable Judge Thomas Felnagle stated, the Plaintiffs cannot wave their "magic wand" and make these issues disappear through artful pleading or motions to withdraw their educationally related claims. RP, Jan. 25, 2008, at p. 34.

F. Requiring Exhaustion Furthers IDEA's Goal of Providing an Appropriate Education at the Earliest Time Possible.

The IDEA is designed to assure appropriate education for special education students at the earliest time possible. *Alexopoulos v. San*

⁵ See Respondent's Br. at 45-46.

Francisco Unified School Dist., 817 F.2d 551, 555-56 (9th Cir. 1987). As the *Alexopoulos* court stated:

Congress structured the [IDEA] to emphasize that parental involvement was essential to assure an appropriate substantive educational program for a child. . . .

In instituting these safeguards, Congress recognized that it is critical to assure appropriate education for handicapped children at the earliest time possible. Failure to act promptly could irretrievably impair a child's educational progress.

Alexopoulos, 817 F.2d at 555-56.

Here, many of the Plaintiffs' allegations could have been addressed through the student's individualized education program (IEP) if brought to the school's attention. CP 1575. For example, if a student is being called derogatory names, whether by teachers, paraeducators or other students, and that was having a psychological effect on the student, then the IEP team—which includes the student's parents, special education teachers, general education teachers, and if appropriate, school psychologists, parent advocates and others—could look at that issue and determine whether counseling services or other services should be provided to that student. CP 1575-76. The same would be true for the allegations regarding physical abuse or discrimination based on a student's disability or race. If those issues were not addressed in the student's IEP or were not addressed to the satisfaction of the parents, then the parents could raise those same issues through a due process hearing. CP 1576.

Parents who object to disciplinary or other practices of the District have an obligation to raise their objections in a timely fashion. Allowing parents to ignore their administrative remedies while stockpiling claims for a suit against the District harms special education students and thwarts IDEA's policy of providing appropriate education at the earliest time possible.

G. The Related Doctrine of Primary Jurisdiction Also Favors Referral to the Administrative Process.

As noted in the brief of the WSRMP, the doctrine of primary jurisdiction also favors deference to the expertise of an administrative agency. WSRMP Br. at 12-13. The doctrine of primary jurisdiction "applies where a claim originally is within the jurisdiction of the courts, but the enforcement of that claim 'requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body[.]'" *Northwest Ecosystem Alliance v. Washington Dep't of Ecology*, 104 Wn. App. 901, 915, 17 P.3d 697 (2001), *aff'd in part, rev'd in part*, 149 Wn.2d 67, 66 P.3d 614 (2003) (citations omitted). The doctrine "guides the court in determining whether to 'refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.'" *Id.* at 915 (citation omitted).

As the *Northwest Ecosystem Alliance* court noted:

In deciding whether to apply the doctrine of primary jurisdiction, a court should consider: (1) whether the administrative agency has the authority to resolve the

issues; (2) whether the agency has special competence over all or some part of the controversy and is thus better able than the court to resolve the issues; and (3) whether the claim before the court involves issues that fall within the scope of a pervasive regulatory scheme creating a danger that judicial action would conflict with the regulatory scheme.

Id. (citing *Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 345, 962 P.2d 104 (1998)).

As discussed above, an administrative agency in Washington, OSPI, has the authority and expertise to resolve issues of special education and is better able than a court to resolve these issues. Furthermore, Plaintiffs have challenged the special education programs and services provided to Plaintiffs and these challenges are best resolved by the state agency with expertise in this area, OSPI.

III. CONCLUSION

As Judge Felnagle stated when he granted the District's summary judgment motion:

[E]ach of these cases has not only an initial claim for remedying the inadequate education, but they have about them questions of discipline, of appropriate educational setting, of appropriate educational process, of all aspects of the setting in which these kids are educated, and that is exactly what is anticipated in the IDEA and that is why administrative exhaustion is required first. It's not to say that you can't ultimately get to court. It's just saying you've got to go through the administrative process first

RP, January 25, 2008, at p. 35.

For the reasons articulated by Judge Felnagle, the District requests that this Court affirm the summary judgment dismissal of Plaintiffs' claims.

Respectfully submitted this 6th day of May, 2011.

VANDEBERG JOHNSON &
GANDARA, LLP

By 
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H. Andrew Saller, Jr., WSBA #12945
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SUPREME COURT OF THE STATE OF WASHINGTON

MITCH DOWLER and IN CHA DOWLER, individually
and as limited guardian ad litem for NAM SU CHONG, et al.,

Appellants,

vs.

CLOVER PARK SCHOOL DISTRICT NO. 400,

Respondent.

PROOF OF SERVICE

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FILED
MAY 06 2011
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

ORIGINAL

I hereby certify under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct:

That on May 6, 2011, I caused to be delivered a true and correct copy of the ANSWER TO AMICUS CURIAE BRIEFS OF THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON AND WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION; COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.; DISABILITY RIGHTS WASHINGTON AND THE ARC OF WASHINGTON STATE; AND WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION via email to:

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DATED this 6th day of May, 2011, at Tacoma, Washington.



MARK L. GANNETT

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Subject: RE: Dowler v Clover Park School District, Case #84048-2

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Subject: Dowler v Clover Park School District, Case #84048-2

Dear Clerk:

Please find attached for filing in the above-referenced matter:

1. Respondent's ANSWER TO AMICUS CURIAE BRIEFS OF THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON AND WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION; COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.; DISABILITY RIGHTS WASHINGTON AND THE ARC OF WASHINGTON STATE; AND WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION; and
2. PROOF OF SERVICE

Counsel have been served via email per agreement of the parties.

Thank you.

Mark L. Gannett
Vandeberg Johnson & Gandara, LLP
(253) 383-3791, Ext. 6631

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