

# COLLIER COUNTY PARENTS SEEKING REFORM

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NAPLES FL 34114

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January 29, 2008

John P Higgins, Assistant Secretary  
Office of Inspector General  
400 Maryland Ave SW  
Washington, D.C. 20202

Department of Justice  
1430 G Street NE  
Washington, D.C. 20002

Re: Compliance and Oversight  
Responsibilities of the Office of Civil Rights,  
the Department of Education, and the  
Office of Special Education Programs

Gentlemen:

Patty Portenier is a seventy year old retired teacher, educational advocate, former Due Process Hearing Officer, and co-founder of Collier-ESE-Reform. I have been involved in special education issues since the inception of IDEA; first referred to as Public Law 94-142. William Hughes is the parent and educational advocate for his disabled son, Co-Plaintiff in a pending Federal lawsuit against District School Board of Collier County, FL (CCSB), and co-founder of Collier-ESE-Reform.

We serve as the Representatives for Class Discrimination Complaints filed April 23 & May 11, 2007 with the Regional IV Division of the Office of Civil Rights (OCR) in Atlanta, Ga. against the Florida Department of Education (FDOE), the Department of Administrative Hearings (DOAH), and CCSB. As directed by attorneys for OCR, the IDEA issues were subsequently segregated from the Section 504 / ADA issues, in separate Class Discrimination Complaint filings with the Office of Special Education Programs (OSEP) on July 5 and July 17, 2007.

The purpose of this correspondence is to request independent agency reviews on behalf of DOJ and OIG, for the continual and protracted processing delays associated with these Class Discrimination Complaints, in relation to federal regulatory guidelines and procedures. Specifically, we challenge OCR, FDOE, and OSEP regulatory compliance in "discharging their supervisory responsibilities, and performing their affirmative duties", to protect the civil and procedural rights of the innocent Exceptional Student Education children, that are the subject of the Complaints, and clearly within their jurisdiction.

Given their lack of accountability, in conjunction with the resounding and ever increasing number of pending legal cases involving the violation of these ESE children's educational, legal, and civil rights, is it not time your offices investigate these government entities, in failing to enforce compliance of federal legal mandates?

In 2005, the Supreme Court, in the Schaeffer v. Weast case, found that the Wisconsin Department of Public Instruction (WDPI) failed to discharge its' oversight and supervisory obligations, and, in doing so, failed to insure Milwaukee Public Schools (MPS) were

in compliance with IDEA. Our OCR and OSEP Class Discrimination Complaints compel the agencies to investigate the very same allegations against the Collier County School Board and Florida Department of Education, expanded to include their non-compliance with Section 504 Of The Rehabilitation Act of 1973 ( 504), and The American With Disabilities Act (ADA).

When the Supreme Court determines that state authorities were lax and deficient in their oversight and supervisory obligations to the public, would not the same rationale apply to OCR, DOE, and OSEP? Is it not the responsibility of your respective offices to monitor the oversight, or lack of same, by these federal agencies who have been delegated the authority to oversee the states federal education mandates? Who oversees the overseers to insure mandated federal laws are being complied with? If the overseers were doing their jobs, instead of abdicating their responsibilities to the court system, then the courts rightfully would be responsible only to determine the consequences and compensations for non-compliance of the mandates.

Under the posture assumed by OCR, DOE, and OSEP, in educational, due process, and civil rights disputes involving these ESE children, the only recourse to the children and their parents is litigation; both lengthy and expensive. When OCR, DOE, and OSEP further allows school districts to then delay and deny the legal proceedings well beyond federal mandate, without oversight or accountability, this sole recourse for justice becomes time and cost prohibitive. Not only are the parents financing their own side of the protracted litigation, but their tax dollars are supporting the opposing litigation costs that enormous school budgets simply swallow. Simultaneously, the school districts complain to Federal authorities about the exorbitant costs of complying with the same educational laws.

The courts are over-crowded, which accounts for the extended time frames for resolution in educational cases (as the children's educational and medical needs, procedural rights, and civil rights are all neglected). Many of these cases clogging the court system could readily have been eliminated, if the oversight agencies were simply doing their jobs. In fact, Judge Goodstein, in *James S. vs. Milwaukee Public Schools*, acknowledged the need to address the issue of what sanctions and remedies are appropriate. He discussed the need for sanctions to bring compliance and expedite remedies. He also asked for "a mutually agreeable solution" that would have the effect of curtailing litigation." I suspect your investigation, should you accept accountability, would find such a solution for curtailing litigation, and that would be the simple enforcement of existing mandates by the federal agencies delegated the responsibility.

The courts, regrettably, are not constrained to a time line in the handling of these cases. However, the educational laws mandate time lines for the protection of the children to whom the laws apply. Unfortunately, if and when these cases of non-compliance reach the courts (which, with proper monitoring, should not be allowed to happen), the services to which the children are entitled languish, along with the missed educational opportunities.

Even if the families prevail in court after years of delays, there is no way they can be compensated for the missed educational opportunities for the children.

These government agencies, in failing to enforce compliance within the federally-mandated procedures and time frames, facilitate and support those choosing to conspire to systematically deny services to these children, and to then systematically deny their legal rights to due process. This constitutes Intentional Discrimination against our most vulnerable members of society; Qualifying Disabled children under IDEA, ADA, and Section 504.

In the most recent federal case, *James S. vs. Milwaukee Public Schools* (E.C. WI, Case #01-C-928), Judge Goodstein cited the 2005 Supreme Court decision in *Schaeffer v. Weast* (set forth above), and went on to state:

"It appears to this court that the underlying problem was the failure of DPI to put any teeth into its bite. DPI required new procedures, but failed to impose appropriate sanctions where acronym programs did not produce satisfactory compliance."

Likewise, do your respective federal agencies have any bite in their teeth, to insure satisfactory compliance with federal mandates? The increasing number of IDEA and Section 504 proceedings, non-responsive or unresolved complaints to OCR, and educational court filings are clear indications OCR, DOE, and OSEP are abdicating their responsibilities to enforce compliance with federal mandates for which they have been delegated authority and oversight.

Should you opt for accountability, and initiate an investigation, OCR will accept responsibility for Section 504 issues, but will defer responsibility to the enforcement of IDEA to OSEP, who in turn, shows total disregard and disdain for regulatory time frames. In evaluating their areas of responsibility and accountability, do note there are few differences between IDEA's affirmative duty and Section 504's negative prohibition. The regulations implementing 504 adopt the IDEA language, requiring that schools which receive or benefit from federal financial assistance "shall provide a Free Appropriate Public Education (F.A.P.E.) to each qualified handicapped person who is in the recipient's jurisdiction; 34 CFR 104.33 (a). Due to that overlap, OCR should be monitoring compliance with the mandates of both 504 and IDEA under these regulations, and insuring the direct accountability of FDOE and OSEP for enforcing compliance with the mandates of IDEA.

Please further investigate the application of available sanctions in these educational cases to enforce compliance, and whether those sanctions, in fact, brought about compliance. How often were extensions provided, and for how long? What complaint areas were most often denied, approved, investigated, equitably resolved, sanctions imposed, compliance confirmed, etc?

Finally, the very real issue to investigate is whether there is a demonstrated need for top management and policy changes in agencies such as OCR, DOE, and OSEP since it is evident they are not presently doing the job mandated by federal law. The IDEA, Section 504, and ADA laws are in place; they simply are not being followed, and these agencies are not requiring compliance!

At a minimum, your investigation should help determine whether the lack of oversight and enforcement by these agencies is a significant contributor to the cause of educational litigation, as alleged. As educational advocates, we simply want the educational and related services, and due process and civil rights mandated by law,

to be provided to those entitled. As tax payers, we want accountability for the money that appears to be wasted, supporting bureaucratic incompetence and failure to enforce federal educational mandates.

A timely response, with established processing and procedural guidelines, would be appreciated.

Respectfully Submitted,

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Collier-ESE-Reform  
Class Representative,  
OCR Complaints vs FDOE and DOAH  
Parent Advocate

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Mr. William Hughes, Co-founder  
Collier-ESE-Reform  
Class Representative,  
OCR Complaint vs CCSB  
Parent Advocate

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Ms. Catherine Cannivet, Co-founder  
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Class Participant,  
OCR Complaints vs CCSB, FDOE and DOAH  
Parent Advocate

cc: Governor Charlie Crist  
Senator Bill Nelson  
Senator Mel Martinez  
Congressman Connie Mack