

January 29, 2008

William Hughes
491 31st St NW
Naples, FL 34120

Mr. Roger Mills, Esq.
Office of Civil Rights, Region IV
61 Forsyth St S.W., Suite 19T70
Atlanta, Ga. 30303

Re: Complaint # 04-07-1264

Dear Mr. Mills:

In our most recent telephone conference regarding the above-captioned Complaint, you requested I provide file documentation in support of the D.H. vs CCSB 504 issues; specifically:

- 504 demands made on CCSB in or following the February 3, 2006 504 Meeting.
- 504 demands made on CCSB after the Administrative Law Judge (ALJ) segregated the 504 / ADA elements from the IDEA issues in the case.

Enclosed for your additional consideration please find:

1. A February 6, 2006 correspondence from D.H.'s attorney to CCSB, admonishing CCSB for the delays in providing their ADA grievance procedures, despite repeated written requests, and requesting a copy of the 504 Plan unilaterally drafted by CCSB following the Feb 3rd 504 meeting.
2. A February 9, 2006 Criminal Misdemeanor Complaint against CCSB's Acting District ADA 504 Coordinator for denial of public

- access to all public areas of the school for the Certified Service Dog, per the February 3, 2006 504 Meeting.
3. A February 16, 2006 Due Process Complaint filed with the Due Process Administrative Law Judge (ALJ) for CCSB's repeated violations of D.H.'s procedural rights under IDEA and Section 504. See specifically Page 5, Section 3. VIOLATION OF SECTION 504 PROCEDURAL RIGHTS.
 4. A March 31, 2006 MOTION TO COMPEL filed by D.H.'s attorney with the ALJ. See specifically Page 2, Paragraphs 5.-9., whereby the attorney is compelling the ALJ to make CCSB comply with Section 504.
 5. An April 6, 2006 correspondence from D.H.'s attorney to CCSB demanding a meeting to address the 504 and related issues in the February 16, 2006 Due Process Complaint filed with the ALJ.
 6. The April 12, 2006 ALJ Order denying jurisdiction to hear the Section 504 issues "unless Respondent (CCSB) expressly authorizes DOAH to hear the claim" (Page 3). CCSB subsequently denied such authorization.
 7. An April 20, 2006 Motion For Clarification filed by D.H.'s attorney regarding the case 504 issues and demand they be incorporated and heard, as necessary to the delivery of FAPE and protection of Procedural Rights.
 8. An April 24, 2006 Facsimile from CCSB, acknowledging their selection of a 504 Hearing Officer under a separate hearing. CCSB provided no further contact, nor was a hearing ever scheduled.
 9. An April 24, 2006 Facsimile from CCSB, acknowledging the Service Animal, as a 504 Accommodation, would not be a subject of further consideration by CCSB, aside from litigation, despite the attorney-filed Motions to Compel and written demands for Section 504 procedural rights.

As you can see, not only did we repeatedly compel CCSB's compliance with Section 504, we even filed Motions to Compel and Due Process Complaints with the assigned Due Process ALJ, requesting he intervene,

and halt the continued violations of our son's procedural rights under Section 504, and his federal civil rights under ADA.

If this is not evidence enough, I have also enclosed a CERTIFIED COPY of the February 3, 2006 504 Meeting with CCSB, as provided by Southwest Florida Reporting Services, Inc., a court reporting service, paid for by the parents. Please specifically refer to Page 10, Line 19 in which I state:

Mr. Hughes: The last thing I would ask is, in a January 17th correspondence to Laurence Ruboe (Ruble) per the notice you just gave me, which is a Notice of Parent Student Rights Afforded by Section 504 of the Rehabilitation Act of 1973, at the bottom it clearly identifies CCSB 504 Coordinator Larry Ruboe (Ruble) and gives his contact information.

(as continued on Page 11, Line 2).....

We received this on January 24th and on January 27th we forwarded to Mr. Ruboe (Ruble) a pretty comprehensive correspondence three pages in length. With that we had signed and returned the notice and consent for initial Section 504 evaluation and we had asked Mr. Ruboe (Ruble) to do a couple of things. We had asked him to immediately get with George Brenco (Principal) and get a copy of the Exhibits 1, 2, 3 to our IDEA request for a due process hearing, that he attach those to an ADA Local Grievance, and that an ADA Local Grievance be immediately filed on our behalf.

(as continued on Page 11, Line 14).....

Our concern being that since January 12th, in a correspondence to Mr. Brenco, we had outlined what we considered were ADA violations on behalf of our son's civil rights.

(as continued on Page 11, Line 18).....

In that same correspondence we had specifically asked that we be provided a written outline of any and all administrative preconditions to our request for ADA Grievance. We asked for a copy of the district's ADA

written grievance procedures. We asked for contact information on the ADA Coordinator.

(as continued on Page 11, Line 25).....

In the January 17th IEP Meeting, I specifically requested those documents and that information. They were not made available. So I pointed that out to Mr. Ruboe (Ruble) and said I'm asking you very specifically because of that and because we construe this a continued delay of this information, as the parents, that you assemble the documents to our IDEA due process, those exhibits, and attach them to a Local Grievance under Section 504. And my question is has that been done?

(as continued on Page 12, Line 10)....

Ms. Clancy: I cannot speak to that. The reason we're meeting today is to discuss if Derek does in fact meet eligibility under 504, or basically to reconfirm that he does because since he is an ESE student and is protected under IDEA, he does have 504 rights, We are aware of that. Our meeting today is to discuss the current accommodations, to consider all the evaluation data we've received and as a team to make a determination from there if any additional accommodations are needed to ensure FAPE for him.

(as continued on Page 12, Line 22).....

Mr. Hughes: I respect and appreciate that and I'm anxious to get on with the meeting, I really am. I just want to get some of these preliminary things out of the way. I want to make the clarification again that the reason for the immediate Local 504 Grievance and the request for that filing was what we construed to be continued violations of our son's civil rights under Section 504, review everything that had been presented to the district relative to the ADA side of these issues, and give us a reasonable time frame in which he (the 504 Coordinator) would make a determination, if he agreed with the district's decision or didn't, as it related to Section 504. I want to make that distinction.

(as continued on Page 13, Line 12).....

Ms. Clancy: Again, to reiterate what Mr. Gamret shared with regard to Mr. Ruboe (Ruble), he has a broken leg and will be out at least until February 9th because of that broken leg.

(as continued on Page 13, Line 16).....

Mr. Hughes: I appreciate that, but I just want you to understand also as a parent, my son has been out of Pine Ridge Middle School since January 17th. We believe it's because his civil rights under ADA are being violated. So I understand Mr. Ruboe's (Ruble's) circumstance. The reason for the Local 504 Grievance was to isolate the ADA issues under Pine Ridge Middle School's procedures and the school district's procedures and say let's evaluate and focus on these ADA issues. Because back in the January 12th correspondence to George Brenco in which I outlined the ADA complaints, I said focus on these issues. So that's of paramount importance to us.

(as continued on Page 14, Line 6).....

Mr. Hughes: So I'm asking again, I guess I would direct to you Mr. Gamret, that as the Designated Responsible Employee in Lawrence Ruboe's (Ruble's) absence, that you take it upon yourself to take a look at this correspondence and address the issues in it, and let's try to set a reasonable time frame in which those concerns are in fact addressed, that there is a determination on behalf of the district of the requests that are in that correspondence, and that the local grievance be in fact filed in a timely manner so that it can be heard.

(as continued on Page 14, Line 17)....

Mr. Gamret: Okay.

Despite these exhaustive and repeated parental requests, MADE IN A 504 MEETING, IN THE PRESENCE OF A COURT REPORTER, the document exhibits identified and summarized above, prove the continued intentional, retaliatory, and discriminatory actions on behalf of CCSB personnel, in systematically denying our son's procedural rights under ADA / 504. Even attorney-filed Motions to Compel, and parent-filed Due

Process Complaints with the assigned Due Process ALJ, following this 504 Meeting, could not compel compliance on behalf of CCSB.

In reviewing the balance of the 504 Meeting transcript, you may further note the coercion and retaliatory tactics on behalf of CCSB personnel as it relates to:

1. The need for a 504 Accommodation Meeting. On Page 12, Line 10-15, CCSB acknowledges that since our son is a classified ESE student under IDEA that he is clearly 504 eligible. Therefore, CCSB's requirement for a separate 504 Meeting as necessary to consider the requested changes in his IEP for Related Services and 504 Accommodations was unjustified, and employed as a delay, retaliatory, and coercion tactic to deny his rights. This was challenged on Page 18, Lines 13-25, and Page 19, Lines 1-7, and Lines 18-25, Page 20, Lines 1-16.
2. The need for "persons of knowledge" to constitute a valid 504 Accommodation Meeting. On Page 7, Lines 4-13, this requirement is acknowledged by CCSB's Designated Responsible Employee. However, despite the medical issues being reviewed, CCSB did not engage any medical personnel to review the medical records or attend the 504 Meeting; not even the School Nurse! Despite this, CCSB personnel disregarded our son's primary physician's Medical Treatment Plan and Medical Prescriptions, deeming them "unnecessary accommodations", for the delivery of FAPE. This is despite the fact our son's attending physician was a Pediatric Neurologist, specializing in the treatment of children with Autism and Epilepsy (our son has both) with the Dan Marino Center in Miami, Fl. This was also without regard to our son's ADA rights to a service animal as a Qualifying Disabled Person, and equal access to all public areas of the school, as his non-disabled peers. My strong objections are first noted on Page 27, Lines 23, continuing through Page 31, Line 3. These objections are thereafter voiced clearly and repeatedly throughout the transcript.

3. Denial of Parent Participation / Coercion. On Page 17, Lines 12-25, and Page 18, Lines 1-12, CCSB acknowledges a “pre-504 CCSB Meeting”, in the absence of parental notice or participation, to review the 504 Accommodation issues, and establish a coercion strategy for the scheduled 504 Meeting.
4. Reasonable Accommodations. On Page 31, Lines 4-8, CCSB acknowledges their limitation in considering only reasonable accommodations to enable our son to achieve FAPE. “Reasonable”, in this context is a monetary consideration, and as the District was not being compelled to “provide for the expenses associated with the service animal, merely to accommodate him in providing our son equal access to all public areas of the school, as required by ADA / 504”, the reasonable test is moot.

The documentary evidence herein provided represents “irrefutable proof” of INTENTIONAL DISCRIMINATORY PRACTICE on behalf of CCSB, in direct retaliation for the filing of our Request for Due Process.

Again, as 28 CFR Part 35, Section 35.134 Retaliation and Coercion prohibits any act of retaliation or coercion in response to an individual's effort to exercise rights established by the Act (or to support the efforts of another individual), the section applies not only to public entities subject to this part, but also to persons acting in an individual capacity. Remedial action on behalf of the Assistant Secretary of OCR is specifically requested for both the public entity, **CCSB, and those persons acting in an individual capacity. As the evidentiary documentation supports, very specific and repeated requests for voluntary action **by CCSB** under the provisions of this Act were totally disregarded **by CCSB**.**

Again, under Florida's one-tier system, parents of Exceptional Student Education students (Qualifying Disabled Persons under ADA) are required to exhaust IDEA Due Process Proceedings and ADA / 504 Grievance Procedures, prior to being allowed to pursue their Federal legal and civil rights, under ADA. School District's like Collier County simply manipulate and abuse this system, and deny access to the Federal Courts by DELAYING AND DENYING the student's procedural rights to due process on the State level. In this case, the very specific and repeated requests of the parents, with legal notice to the assigned ALJ, did nothing to deter CCSB's malicious and intentional legal strategy to deny access to the Federal laws designed to protect their rights to both FAPE, and their rights to due process, when FAPE is denied.

I trust this documentation will serve as irrefutable proof of the allegations outlined in my original April 23, 2007 OCR Class Discrimination Complaint, and that your investigation of these matters can now be concluded in a timely manner.

To date, I have yet to receive a written response to my October 5, 2007 formal written request for reconsideration to those complaint issues you erroneously chose to abdicate responsibility for, in your initial review. I will anticipate your final report to encompass these issues as well.

Finally, for your consideration, I have enclosed copies of filed complaints this date with both OSEP and FDOE for their continued delays in the processing of our Class Discrimination Complaints relative to the IDEA issues, well beyond federal-mandated time frames. In a separate complaint directed to both the Department of Justice and Office of Inspector General, (copy also enclosed), we are compelling the independent investigation of these Class Discrimination Complaints at this point, given our inability to conclude investigations through OCR, OSEP, and FDOE, within regulatory guidelines.

Respectfully submitted,

William Hughes, as Representative for OCR Class Discrimination Against Collier County School Board (CCSB)

Cc: Patricia Howell & Bambi Lockman, FDOE
Patricia Guard & Deborah J. Morrow, OSEP
Robert S. Cohen, DOAH