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Mr. Roger Mills, Esquire
Office of Civil Rights, Region IV
61 Forsyth Street S.W., Ste. 19T70
Atlanta, GA 30303

March 11, 2008

Re: Complaint # 04-07-1264

Dear Mr. Mills:

This follows Mr. Hughes' January 29, 2008 correspondence to OCR, with supporting documents, to facilitate your continuing investigation of the above-captioned Complaint.

Enclosed please find documentation which serves to further establish the pattern of intentional discrimination outlined in Mr. Hughes' January 29th correspondence, and our original OCR Complaint dated April 23, 2007. Specifically, Collier County School Board (hereinafter "CCSB") not only impeded, but blatantly denied and/or disregarded my son ██████████ ADA/504 due process rights, failed to set the proper course of action to have his critical 504 case issues heard, and failed to supply us with notice of each and every requirement to file complaints under 504, despite specific requests being made by our attorney, Mr. Paul Liles. Upon review, you will see that Mr. Liles asserted ██████████'s rights under ADA/504 on more than one occasion. Also upon review, it should be most evident that the issues which were the catalyst for the due process demand, and at the heart of the numerous disputes with the District both before and after the original due process demand was made, were medical and psychological (504) issues.

As you are aware from previous (written and verbal) communications, the IEP of February 17, 2006 was rejected by us for a number of reasons, primarily the fact that none of the physician-recommended testing or therapy had been provided to ██████████ by the time the initial Hospital/Homebound authorization was due to expire in February, and the fact that irrefutable evidence existed that ██████████ continued to suffer from his medical and psychological conditions as a result of his untreated

phobia. These medical/psychological issues were the absolute heart of the matter and the reason we ended up in *Duped* Process with CCSB.

The February 17, 2006 IEP at the heart of the controversy (Exhibit A), cites on Page One of the Staffing Form, under Procedures/Test/Reports, a **Psychiatric Report and Physician Letter**. The purpose of this IEP meeting was to discuss ██████'s then current **Hospital/Homebound** placement. The "Effects of Exceptionality" stated in this IEP acknowledge Brennan's **psychological and medical conditions**. Page 16 details Related Services pertaining to **Individual Counseling and Psychiatric Services**. The "Parent Explanation of Counseling Services" (Exhibit B) was provided to me at the IEP meeting, and commences with the sentence: "*Students with disabilities who have emotional and/or behavioral issues which impact their learning may need....*" The December 15, 2005 **Psychiatric Report** (Exhibit C), referenced in the Staffing Report, was by Dr. Frank Lehninger, the District supplied psychiatrist. His report provides, among other diagnoses, a diagnosis of **Anxiety Disorder**. The February 8, 2006 **Physician Letter** (Exhibit D), also provided by Dr. Frank Lehninger, states: "**Student's Medical Diagnosis: Anxiety Disorder...**" Additional supporting medical documents, generated prior to our second demand for a Due Process Hearing (April 21), are also enclosed (Exhibit E), including the October 17, 2005 psychiatric report from Dr. Diana Martinez, the physician who originally authorized Hospital/Homebound, the February 6, 2006 psychological reevaluation by CCSB/Candice Sanderson, the March 8, 2006 psychiatric report from Dr. Patrice Mack re-authorizing Hospital/Homebound for ██████, and the April 2006 psychological evaluation from Dr. Christopher McGinnis. The letter of February 21, 2006 to Karen Stelmacki, ESE Director (Exhibit F), further substantiates that the issues disputed in the IEP were solely medical/psychological issues.

The above medical records substantiate that from October of 2005 up until our second Due Process demand in April of 2006, serious, on-going and untreated medical and psychological issues were absolutely evident, the primary concern on our part, and the nature of the dispute. Concurrently, from October of 2005 through April of 2006, CCSB consistently mutated and utilized provisions of the IDEA to their benefit while to the detriment of ██████ in attempt to deny rights afforded to him under ADA/504, deny his rights to a 504 Hearing, resulting in additional psychological and educational harm to Brennan. This pattern of behavior and denial of his ADA/504 rights continued for another 8 months, up to the date of the actual hearing in January of 2007.

In the March 2, 2006 communication to Mr. Withers (Exhibit G), Mr. Liles expressly demanded “a due process hearing under IDEA, ADA, Section 504, § 1983, and relevant federal and state law.” In addition, on our behalf, Mr. Liles requested “notice of each and every requirement to file complaints in the appropriate forums for our claims under IDEA, ADA, Section 504, and 42U.S.C. § 1983, as established or recognized by the School District of Collier County, Florida (“District”)”. The facts related to the case were stated in this communication, including specifically, that [REDACTED] suffered from a psychiatric/psychological condition and had been placed on medical Hospital/Homebound.

The District’s March 2, 2006 response to our Due Process Hearing Request (Exhibit H) included a copy of the “Notice of Procedural Safeguards for Parents of Students with Disabilities”. Nowhere within this exhibit are [REDACTED]’s rights and/or remedies under ADA, Section 504, and 42U.S.C. § 1983 mentioned. The Notice of Procedural Safeguards fails to inform parents of any rights afforded to the student or parent beyond IDEA, nor does it detail the responsibility and obligation of the District (AND the ALJ for that matter) to honor any rights outside of IDEA. At no time did we ever receive the notice, as was requested by Mr. Liles, of each and every requirement to file complaints in the appropriate forums for any claims under ADA, Section 504 and 42U.S.C. § 1983. Due to our having no previous experience or knowledge of these laws, the District failing to provide the requested information to file the appropriate complaints in the appropriate forums, and failing to insure that the request for a 504 Due Process Hearing be honored, our rights to a 504 Hearing were seriously and totally impeded.

Specifically note that the dates of our filings and requests for [REDACTED] closely follow those in the Hughes case. As substantiated and documented in Mr. Hughes’ January 29, 2008 correspondence to you, the Hughes’ and/or their ADA attorneys filed:

- 1. A February 16, 2006 Due Process Complaint with their assigned Due Process Hearing ALJ, for CCSB’s repeated violations of D.H.’s procedural rights under IDEA and Section 504; specifically, Page 5, Section 3, VIOLATION OF SECTION 504 PROCEDURAL RIGHTS. (our written demand was submitted March 2nd)**
- 2. A March 31, 2006 MOTION TO COMPEL with their assigned Due Process Hearing ALJ; specifically, Page 2, Paragraphs 5-9, whereby**

their ADA attorney is compelling the ALJ to make CCSB comply with Section 504.

3. 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.
4. 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.
5. 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. (*Our 2nd written demand was submitted April 21st*)

These documents go to proof that Attorney Withers, with malice and forethought, was intentionally following an established pattern of discrimination in the denial of these ESE student's civil rights under ADA and procedural due process rights under Section 504, even when being challenged by legal notices and motions by opposing counsel and parental advocates.

This was clearly not just District policy and procedural deficiencies, but rather an intentional legal strategy employed to delay and deny both student's legal rights to due process under IDEA, while simultaneously impeding and denying and/or disregarding their due process rights under Section 504.

The following Exhibits, all of which reference the medical/psychological issues at the core of the dispute, are offered in support of the fact that despite innumerable communications and legal documents having been generated during this same time we were awaiting the proper and requested IDEA and 504 Due Process Hearings, at no time did the District attempt to address or honor ██████'s rights under ADA/504.

Exhibit I – March 6, 2006 Email communication from Mr. Withers to Paul Liles, requesting any available psychiatric or psychological workups on ██████, and commenting that "we need to secure a good psychiatric evaluation on him. The behavior described in the email is certainly suggestive of ██████."

Exhibit J – March 11, 2006 Letter from Mr. Liles to Mr. Withers in regards to enclosure of new Hospital/Homebound authorization from Dr. Patrice Mack. (Note: our request for an IEP meeting to consider this new physician authorization was then denied by the District, and the authorization was rejected without an IEP meeting ever taking place)

Exhibit K – March 27, 2006 Email discussion between Mr. Liles and Mr. Withers regarding previous and pending physician evaluations and diagnoses and the disputed H/H placement.

Exhibit L– April 6, 2006 Letter from Mr. Liles to Mr. Withers regarding District’s breach of agreement to continue Hospital/Homebound pending medical evaluations and attempt to resolve matters.

Exhibit M – April 11, 2006 Letter from Mr. Withers to Mr. Liles expecting ██████ to return to school based on (outdated) medical report of Dec. 15, 2005 from Dr. Lehninger, and ignoring current medical report and recommendation from Dr. Mack (March 8th evaluation recommending continuation of H/H).

Exhibit N – April 12, 2006 Letter from Mr. Liles to Mr. Withers citing the controversy over the Feb. 17th IEP, H/H placement and Stay Put, and detailing the reasons the due process demand was sent. Further reference is made to pending and necessary educational and psychological evaluations and the health and safety consequences to ██████ if placement is changed prior to completion of medical and educational evaluations.

Exhibit O – April 21, 2006 Letters from Mr. Liles to Mr. Withers, including 2nd demand for Due Process Hearing, asserting rights under all federal and state laws including ADA and Section 504, and 2nd demand for notice of each and every requirement to file complaints in the appropriate forums for claims under IDEA, ADA, Section 504, and 42 U.S.C. § 1983. Again, this was ONE DAY following the Hughes’ filed April 20, 2006 Motion For Clarification with their assigned ALJ, demanding their case 504 issues be incorporated and heard, as necessary to the delivery of FAPE and protection of Procedural Rights.

Exhibit P – May 2, 2006 Order by ALJ Bram Canter Placing Case In Abeyance pending completion of psychological and psychiatric tests.

Exhibit Q – May 15, 2006 Letter from Mr. Liles to Mr. Withers regarding the denial by the District to convene an IEP meeting to discuss recently completed evaluations, and demanding that such meeting take place. (Note: despite this demand by our attorney, an IEP meeting was still not granted to discuss recently completed evaluations)

Exhibit R – July 12, 2006 Petitioner’s Status Report affirming the completion of educational and psychological evaluations, Collier County School Board’s refusal to convene an IEP meeting to consider said evaluations, Board’s failure to schedule resolution conference or provide other alternatives, Board’s failure to communicate with petitioners or petitioners’ attorney, Board’s failure to honor request for IEP meeting to discuss/arrange for Extended School Year (ESY), Board’s failure to offer mediation, Board’s failure to convene resolution session within 15 days after petitioner filed request for a due process hearing.

Exhibit S – July 26, 2006 Petitioner’s Prehearing Statement. Note page 4, paragraph Q:

“The Parent also sought notice of all procedural safeguards for the following:

Pursuant to all federal and state law relating to children with disabilities, including, but not limited to:

- (1) Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (“IDEA”),*
- (2) American with Disabilities Act, 42 U.S.C.A. § 12101 et seq. (“ADA”);*
- (3) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”),*
- (4) Civil Rights Act, 20 U.S.C. § 1983 (“§ 1983”)*
- (5) 34 C.F.R. § 300.001 et seq.;*
- (6) 45 C.F.R. §§ 84.31-.37*
- (7) § 1003.57, Fla. Stat. (2003); and*
- (8) Fla. Admin. Code R. 6A-6 et seq.*

This letter serves as our clients’ demand for a due process hearing under IDEA, ADA, Section 504, § 1983, and relevant federal and state law. Please provide us with notice of each and every requirement to file complaints in the appropriate forums for our claims under: IDEA, ADA, Section 504, and 42 U.S.C. § 1983, as established or recognized by the

School District of Collier County, Florida (“District”).”

Note page 22, paragraph 3: “B.C.’s phobias currently interfere with his abilities to receive any educational benefit in a school setting.”

Exhibit T – August 17, 2006 Petitioner’s demand to end matter. Note that the claimed monetary amounts, aside from attorney fees, are all derived from medical expenses incurred by us in order to evaluate and document ██████’s medical and psychological conditions; again, 504 issues.

The due process hearing, (on IDEA issues only) finally commenced in late January, 2007, almost 10 months after the initial demand. **At no time throughout the entire time we were trapped in IDEA Due Process, and despite the mountain of evidence supporting the fact that the disputes with the District involved Brennan’s medical and psychological conditions, did the District (or the ALJ) ever honor ██████’s rights to a Due Process Hearing under ADA/504.** Even on the IDEA issues, the final decision from the ALJ was not rendered until June 1, 2006, approximately 4 months after the commencement of the hearing.

SUMMARY

Despite the exhaustive and repeated demands on CCSB, the document exhibits identified and summarized above, as well as those submitted in the Hughes case, prove the alleged pattern of “Intentional and Discriminatory” actions on behalf of CCSB, in systematically impeding, denying and/or disregarding these two student’s procedural rights under ADA / 504.

Even attorney-filed Due Process Requests, ALJ Motions to Compel, and Due Process Complaints with the assigned ALJs, could not compel CCSB’s compliance with ADA / Section 504 federal regulatory guidelines. Again, these were not policy and procedure deficiencies, but rather an intentional legal strategy employed to delay and deny both student’s legal rights to due process under IDEA, while simultaneously impeding and denying and/or disregarding their due process rights under Section 504.

This documentary evidence, combined with the evidence submitted in the original complaint of April 23rd, provides “irrefutable proof” that not only was CCSB conspiring and retaliating against the two students and their

families for exercising their legal rights under IDEA, ADA, and Section 504, they were very intentionally manipulating the IDEA due process proceedings as the VERY MECHANISM to impede and deny the student's legal rights under ADA and Section 504! It is this practice that extends OCR the right to investigate and hold CCSB accountable under the District's IDEA policies and procedures.

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 very specifically requested for both the public entity, CCSB, and those persons acting in an individual capacity.

Respectfully submitted,

Catherine Cannivet