

# COLLIER COUNTY PARENTS SEEKING REFORM

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NAPLES FL 34114

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March 18, 2008

The Honorable Edward M. Kennedy, Chairman  
U.S. Senate Health, Education, Labor and Pensions Committee  
317 Russell Senate Building  
Washington, DC 20510

Dear Senator Kennedy:

Can Congress continue to assert that the Individuals with Disabilities Education Act (IDEA) is being nationally embraced when the Department of Education (DOE), in its' most recent issued report to Congress dated June, 2007, reported only nine (9) of our fifty (50) states were found to be fully meeting the requirements for educating students with disabilities under IDEA? Why, despite a \$10.5 Billion budget allocation is it acceptable to Congress that 41 states remain non-compliant, almost thirty years after the introduction of Special Education laws?

Collier-ESE-Reform, a special education advocacy group, was originally formed to expose a pattern of Intentional Discrimination against special needs students in Collier County, Florida, in absolute defiance of not only the educational requirements under IDEA, but the civil and legal rights of Qualifying Disabled Persons under Section 504 of the Rehabilitation Act of 1973 (Section 504) and the American with Disabilities Act (ADA). Following months of research and investigation, however, we found the trail of coercion and complicity in this pattern of discrimination extended well beyond Collier County, Fl, to the state, regional, and national level. It goes to the very heart of the failure of IDEA, Section 504 and ADA in our nation's public school system. It warrants the intense scrutiny of Congress, as federal regulatory guidelines are being routinely impeded, denied and/or disregarded by those delegated responsibility for their implementation and compliance.

The enclosed package presents irrefutable proof of the pattern of Intentional Discrimination orchestrated by Collier County Public Schools (CCPS) in the delay, denial and disregard for the "federally-protected rights" of Exceptional Student Education (ESE) students, as summarized in our March 18, 2008 correspondence to the Superintendent of Schools (Exhibit 1). Therein, reference is made to two formal Discrimination Complaints filed with the Region IV Office of Civil Rights (OCR) in Atlanta, Ga. The first, dated April 23, 2007, is against CCPS (Exhibit 2); the second, dated May 12, 2007 (Exhibit 3), is against Florida Department of Education (FDOE) and the Department of Administrative Hearings (DOAH). The OCR Complaints outline discrimination complicity in inter-related violations of the civil and human rights of ESE students under ADA and relevant state law, and violations of FAPE, procedural rights, and due process rights under the IDEA and Section 504.

OCR ultimately determined both jurisdiction and the need to initiate an investigation of the Complaint allegations, with a focus on the Section 504/ADA issues within their acknowledged scope of authority. This investigation, still pending almost a year later, followed months of processing delays, as evidenced in the attached OCR correspondences (collec

tively, Exhibit 4). Our most recent correspondences directed to OCR investigation attorneys, dated January 29, 2008 (Exhibit 5), March 11, 2008 (Exhibit 6), and March 14, 2008 (Exhibit 7) summarize the documentary evidence submitted as "irrefutable proof" that:

1. Despite exhaustive and repeated demands, CCPS systematically impeded, denied and/or disregarded the ESE Student's Section 504 / ADA Due Process rights.
2. CCPS intentionally manipulated and disregarded federal mandates under IDEA as the very mechanism used to impede, deny and/or disregard the ESE Student's procedural rights under Section 504 / ADA.
3. CCPS implemented a legal strategy, with malice and forethought, to conspire and retaliate against the ESE Students and their families for exercising their rights under IDEA and Section 504 / ADA.
4. Despite attorney-filed Due Process Requests, Administrative Law Judge (ALJ) Motions to Compel, and ALJ Due Process Complaints, the assigned ALJ, DOAH, or FDOE did nothing in response to the legal demands for intervention and accountability under the applicable federal regulations.
5. DOAH and FDOE willfully refused to process the requested Due Process complaints at the state level, under federally-mandated time frames, as envisioned and set forth under the Federal regulatory guidelines and procedures.
6. DOAH and FDOE were, thereby, complicit in impeding, denying and/or disregarding the student's IDEA and Section 504 / ADA procedural rights, as neither exercised oversight, control or accountability in insuring the children's federal rights were protected.

While OCR deferred the investigation of the IDEA aspects of these Complaints to the Office of Special Education Programs (OSEP), the enclosed OSEP correspondences (collectively, Exhibit 8) prove that OSEP totally abdicated its responsibility and accountability for processing and investigating the Complaints. Despite repeated written requests to OSEP demanding accountability, they deferred the very investigation of the FDOE / DOAH Complaint to FDOE, to "investigate itself". As evidenced in correspondences thereafter to FDOE (collectively, Exhibit 9), they continued OSEP's pattern of processing delays, while both totally defied federal regulatory guidelines for the Complaint processing under Part B of the Individuals Education Improvement Act at 34 CFR 300.151-300.153.

Most interesting is that OCR, in reviewing the same Complaints and supporting documents submitted to OSEP, determined the need to conduct a thorough investigation focused on the Complaint merits. OSEP, in collusion with FDOE, however, did not, even though sections of 504 and IDEA have identical language, and their Due Process procedures are similar in nature. While CCPS clearly employed a legal strategy to utilize IDEA Due Process proceedings (OSEP oversight) as the very mechanism to deny the student's equal rights to 504 Due Process proceedings (OCR oversight), we learned the two agencies operate autonomously and are prohibited from communication and information sharing in the process and investigation of these Complaints.

Appalled by the blatant disregard for federal regulatory compliance, and the systemic denial of accountability first on behalf of FDOE / DOAH, and then the oversight Federal agencies, OCR and OSEP, we next compelled accountability on behalf of the Department of Justice (DOJ) and Office of Inspector General (OIG). In a joint correspondence dated January 29, 2008 (Exhibit 10), we implored DOJ and OIG to conduct independent agency reviews of the continual and protracted Complaint processing delays, in relation to federal regulatory guidelines and procedures. Specifically, we challenged OCR, OSEP, and FDOE regulatory compliance in "discharging their supervisory responsibilities and performing their affirmative duties", in protecting the civil and procedural rights of the innocent ESE children that were the subject of the respective Complaints, and clearly within their jurisdiction. To date, we have not even received the courtesy of an acknowledgment of these Complaints, as the OCR and OSEP / FDOE Complaints languish.

We contend that these government agencies, in failing to enforce compliance with the federally-mandated regulations, procedures, and time frames under IDEA and Section 504 / ADA, facilitate those choosing to conspire to systematically deny services to these children, and to then systematically deny their legal rights to due process. This constitutes a pattern of Intentional Discrimination against our most vulnerable members of society, in the absence of accountability and compliance enforcement on any level of government.

In a February 1, 2008 correspondence to the General Accounting Office (GAO), attached as Exhibit 11, we next compelled GAO, based on DOE's June, 2007 report to Congress, to initiate an audit of the \$10.5 Billion budget for educating students with disabilities under IDEA, given the dismal compliance reporting. In support of this request, we cited the 2005 Supreme Court case of Schaeffer vs. Weast, wherein the court 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. In another cited educational case, James S. Vs. Milwaukee Public Schools (E.C.WI, Case #01=C-928) Judge Goodstein, in referencing this same 2005 Supreme Court decision, addressed 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."

These cases provide further evidence and credibility to our assertion that the federal and state agencies delegated responsibility for monitoring the effective implementation and regulatory compliance with IDEA and Section 504 / ADA, have abdicated their responsibility, forcing education litigation as the alternative. This includes DOE, OCR, OSEP, DOJ, OIG, and most state DOE's (all but nine, according to DOE's June, 2007 Congressional Report).

We feel this demonstrated lack of accountability on behalf of these agencies both necessitate a GAO audit and Congressional compliance review of IDEA and Section 504 / ADA. As an advocate for these children's rights to a Free and Appropriate Public Education under IDEA, we are seeking your support for such an initiative. Time has proven that regulatory compliance with Congress' directives will not, otherwise, become a reality.

In this endeavor to insure the ESE children of this country are provided ALL the rights available to them by law, and to demand accountability for those entities that have and continue to make a mockery of IDEA, Section 504 / ADA, we request your consideration to this case and the State of Florida as the starting point of the investigation and audit process. These laws have been in place since 1976, and the Bush family has prided itself on it's

involvement in education, culminating in No Child Left Behind. Yet under Jeb Bush's tenure as Governor, Florida has maintained its' position near the bottom in educational ranking, while horrendous violations of Federal law are taking place, yet going unchallenged by the State and Federal agencies delegated compliance enforcement by Congress.

We seek accountability and a strong educational advocate to seek it on every local, state and national level of the public education system, and government oversight and compliance authority. Please accept our national leadership challenge for this worthy cause, as we compel Florida's Congressional members to be accountable on a state level.

Respectfully Submitted,

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