

Collier County Parents Seeking Reform/www.collier-ese-reform.com

~Naples, Collier County, Florida~

March 18, 2008

Dr. Dennis Thompson, Superintendent
Collier County Public Schools
5775 Osceola Trail
Naples, Florida 34109-0919

Re: Intentional Discrimination of Collier ESE Students

Dear Dr. Thompson:

In April, 2007, Collier-ESE-Reform, a special education advocacy group, was formed to confront and challenge the long standing pattern of discriminatory Exceptional Student Education (ESE) practices within the Collier County Public Schools (CCPS). Our specific mission is to expose and halt the systemic and intentional denial of Free Appropriate Public Education (FAPE), Procedural Rights, Due Process Rights, and Civil Rights to Qualifying Disabled Persons under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504) and the American with Disabilities Act (ADA). It is our goal to arrest the abuse of power that has utilized coercion, intimidation and retaliatory acts as mechanisms to control and subvert parent advocates, and to inaugurate decency, fairness, civility and pride to the delivery of education and related services to special needs children in Collier County.

We direct you to the enclosed correspondence to the office of Senator Edward M. Kennedy, Chairman of the U.S. Senate Health, Education, Labor, and Pensions Committee, with copies to Florida's Congressional leaders and Governor Crist. Therein, our reform initiatives are detailed, compelling the scrutiny of Congress, as federal regulatory guidelines are being routinely impeded, denied and/or disregarded by those delegated responsibility for their implementation and compliance. This correspondence is being personally presented to Mr. Kennedy's Education Committee by an attorney advocate this week.

By way of introduction, Ms. Patty Portenier, Mr. William Hughes, and Ms. Catherine Cannivet are the founding principals of Collier-ESE-Reform. Ms. Portenier had the pleasure of meeting with you last October on a related ESE matter.

As you may well be aware through your administration's contact with Office of Civil Rights (OCR) investigators, Ms. Portenier is the Representative in a Class Discrimination Complaint filed with OCR against the Florida Department of Education (FDOE) and the Department of Administrative Hearings (DOAH). This Complaint details FDOE and DOAH discrimination complicity in cases originating with CCPS. Ms. Portenier served as a Due Process Hearing Officer for the Illinois State Board of Education, both as a Level I (Initial) and Level II (Appellate) Hearing Officer. Although she is not an attorney, she was accepted as a member of the Chicago Branch of the American Arbitration Association (AAA) on the basis of her knowledge and expertise in Special Education and Disability Rights issues. She was further trained as a 504 Consumer Specialist by the Disability Rights and Educational Defense Fund, which was under contract to the Office of Civil Rights (OCR). Additionally, she was personally the initiating party to a Federal complaint filed against the Illinois State Board of Education over 20 years ago regarding their state Due Process procedures. This Complaint resulted in a major revision of the Illinois appellate review process.

Mr. Hughes is a Parent Advocate of an ESE Student formerly enrolled in CCPS and now receiving educational and related services in another state due to CCPS constructively evicting his child from public education. As you may well be aware, Mr. Hughes is the Representative in a Class Discrimination Complaint filed with the OCR against CCPS. Ms. Cannivet is also a Parent Advocate of an ESE Student formerly enrolled in CCPS and now receiving educational and related services in another state due to CCPS constructively evicting her child from public education. She is a participant in both Class Discrimination Complaints against CCPS and state agencies.

We are enclosing, for your consideration, copies of the two above-referenced formal Discrimination Complaints filed with the Region IV Office of Civil Rights in Atlanta, Ga., on April 23, 2007 (against CCPS); the second, dated May 12, 2007, against FDOE and DOAH. Both complaints allege 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 IDEA and Section 504.

OCR has determined jurisdiction, and initiated an investigation of the Complaint allegations, with a focus on the ADA / Section 504 issues within their acknowledged scope of authority. CCPS Attorney Withers can provide you file copies of all referenced exhibits. Enclosed for your immediate consideration are copies of recent correspondences directed to OCR investigators, dated January 29 and March 11, 2008, in support of OCR investigation requests. Full copies of the referenced exhibits are attached to each. As you may note in reviewing, both OCR correspondences summarize the documentary evidence as "irrefutable proof" that CCPS:

1. Despite exhaustive and repeated demands, systematically impeded, denied and/or disregarded the ESE Student's ADA / Section 504 due process rights.
2. Despite attorney-filed Due Process Requests, Administrative Law Judge (ALJ) Motions to Compel, and ALJ Due Process Complaints, refused compliance with ADA/504 federal regulatory guidelines for Section 504 Due Process Grievances and Hearings.
3. Intentionally manipulated and disregarded federal mandates under IDEA as the very mechanism to impede and deny and/or disregard the ESE Student's procedural rights under ADA / Section 504.
4. 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, ADA, and Section 504.

Under Florida's one-tier system, parents of ESE Students (Qualifying Disabled Persons under ADA) are required to exhaust IDEA and Section 504 Due Process Proceedings, as Administrative Pre-conditions to pursuing their Federal legal and civil rights under ADA. As a former hearing officer, in Ms. Portenier's opinion, CCPS's legal department has manipulated and abused this system, denying access to the Federal Courts by DELAYING AND DENYING the student's procedural rights to IDEA Due Process on the State level, well beyond those envisioned and mandated by federal regulation. In both cited cases, not only were the requested Section 504 Due Process hearings delayed, but the ESE Student's rights were totally impeded, denied and/or disregarded.

Beyond the persistent legal delays orchestrated by CCPS, this intentional pattern of discrimination transpired prior to your contract with CCPS. These practices and legal strategies were developed and implemented under the direction of former Superintendent Ray Baker (previously dismissed for cause), and assisted and carried out by Attorney Richard Withers (recommended dismissal for cause).

As the newly hired Superintendent, we would like to meet with you to discuss specific and immediate strategies in addressing these issues. We feel two clear options are available:

1. Adopt a reactive posture, allowing the Federal agencies and court systems to impose corrective action, while allowing the acknowledged pattern of intentional discrimination within CCPS to continue. In doing so, you thereby become personally complicit in the discrimination, while abdicating your responsibility, as the new Superintendent, to the ESE Students within your care, custody and control.

2. Adopt a proactive and responsible posture by heeding the recommendation of Hinshaw & Culbertson in their report dated July 23, 2007, and initiate an independent audit of CCPS's ESE Department. This should entail compliance with IDEA, Section 504, and ADA, the delivery of FAPE to all qualifying ESE students, and CCPS' allocated funding to provide such educational and related services, in compliance with Federal law. The enclosed summary of Due Process filings in Collier vs. Lee County for the period January 1, 2005 – Present exemplifies this need. Note that Lee County has twice the number of students enrolled in public education compared to Collier County, yet Collier has a record of over three times the number of Due Process hearing requests filed, for a ratio of six to one.

Further, an independent legal review of the strategies and tactics employed by the office of Attorney Richard Withers is clearly justified, based on the evidentiary documents enclosed, in support of OCR's pending investigation. We are confident OCR's findings will likewise expose the need. The scope of this review should entail Attorney Withers' CCPS hiring controversy, past affiliation controversies, and past public comment controversies, as supported by the enclosed public articles relative to each. In reviewing, is this the legal representative you condone and support to represent your administration? Are these not clear indicators of the abhorrent philosophy behind the policies and legal strategies adopted and employed by Attorney Withers, since the date of his contract with CCPS?

Initiating the recommended audits outlined above would clearly demonstrate a responsible course of action in properly, objectively, and independently investigating these matters, when brought to your attention. When such investigation substantiates the concerns outlined in our filed OCR Discrimination Complaints, you will have demonstrated your character, leadership, and accountability in addressing and correcting it.

As to ESE funding concerns, we must reference the interview you recently provided Ms. Carrie Wise on Studio 55 Inside Story. Therein, you stated (ESE) "funds are combined into the overall budget". It is our expressed opinion, as supported by a legal interpretation, that these funds are NOT TO BE CO-MINGLED WITH GENERAL EDUCATION FUNDS. In two interview questions regarding state mandates, you appeared to avoid a direct and informed answer. We encourage your research on these questions and the related funding issues.

Enclosed is a copy of a letter dated February 8, 2007 from Dr. Kimball Thomas, Director, Federal and State Grants advising that CCPS...”did not meet all of the criteria of the No Child Left Behind Act”... and that “The Florida Department of Education is requiring that we move some of our funds from administration to the classroom to help specific groups of students to improve.” Is this indicative of the prior CCPS administration’s practice of skirting the propriety of their accounting procedures with Federal funds, passed through to the State, to the District?

You are certainly aware, Dr. Thompson, that the Naples community continues to demand LEADERSHIP and ACCOUNTABILITY from CCPS. Please accept this outcry, combined with the disturbing nature of the enclosed documents, as the catalyst for your demonstration of commitment and accountability to the educational needs of our most vulnerable students, as well as their legal rights to due process, when parents disagree with those needs. Independent audits and legal reviews will support our filed OCR Discrimination Complaints, and provide cause for the dismissal of CCPS staff who have not only been complicit in the intentional discrimination of ESE students, but who have actively participated to conspire, harass, intimidate, and retaliate against parents who have had the “audacity” to advocate for their ESE children’s educational and legal rights.

The kind of accountability presently being offered by CCPS was demonstrated as recently as Wednesday, February 20, 2008 by Board member Cathy Curatolo, at a speaking engagement at Naples Lakes Country Club on behalf of Big Brothers-Big Sisters. When one of the attendees challenged Ms. Curatolo regarding the continued delays in the Derek Hughes vs. CCPS case (now 2 years old), Mrs. Curatolo dismissed the entire IDEA case as a “simple dog issue”, asserting the dog in question was a “pet”. IN FACT, the case involved many complex educational and medical issues (as a former hearing officer, Ms. Portenier personally attended the entire 13 day Due Process Hearing). The dog in question was a CERTIFIED SERVICE ANIMAL, trained to service a Qualifying Disabled Person....a 12 year old child with Autism and Epilepsy, whose needs and rights were trampled on to preserve a CCPS discriminatory policy.

In addition to Ms. Curatolo's comment about the dog in question being a “pet”, she volunteered that the parents had sued the school and lost. IN FACT, the assigned ALJ never issued a ruling on the facts of the case (delayed by Attorney Withers for months, forcing the family’s out-of-state relocation to educate their son) and the lawsuit is still very active in Federal court. Not only is it INAPPROPRIATE FOR A BOARD MEMBER TO DISCLOSE ANYTHING REGARDING A PENDING LAWSUIT, it is reprehensible that the information was absolutely false and misleading. Accountability?

Perhaps the best explanation is that this exchange demonstrates just how uniformed or misinformed the School Board Members have been about ESE student discrimination, under the leadership and direction of former Superintendent Baker and Attorney Withers.

Attorney Withers has repeatedly assured the School Board members that they, like their administrators and employees, are legally protected from liability under the Sunshine statutes. However, 28 CFR Part 35, Section 35.134 prohibits acts of retaliation and coercion in response to an individual's effort to exercise their legal rights, and applies not only to public entities subject to this part, but also persons acting in an individual capacity. Acts of Intentional Discrimination expose everyone to punitive damages in a court of law.

It is our expressed hope that you will break this cycle of Intentional Discrimination against ESE students, in bringing CCPS into compliance not only with IDEA, but Section 504 and ADA. Such accountability and leadership could well lead the way for the state of Florida (and the other 41 states that remain non-compliant, almost thirty years after the initiation of Special Education laws), to become true Educators, willing to meet the challenges of the federal laws created for the benefit and protection of children with Special needs. That Dr. Thompson would set the bar for education, accountability and leadership!

Sincerely,

Ms. Patty Portenier, as Representative for OCR Discrimination Complaints against FDOE and DOAH and Co-founder of Collier-ESE-Reform

Mr. William Hughes, as Parent Advocate, Representative for OCR Discrimination Complaint against CCSB and Co-founder of Collier-ESE-Reform

Ms. Catherine Cannivet, as Parent Advocate and Co-founder of Collier-ESE-Reform

Cc by Email: CCSB Chair Linda Abbott
CCSB Vice Chair Patricia Carroll
CCSB Member Kathleen Curatolo
CCSB Member Steven Donovan
CCSB Member Richard Calabrese

Please direct written correspondence to:
Ms. Patty Caldwell Portenier
7334 Donatello Court
Naples, FL 34114