

COLLIER COUNTY PARENTS SEEKING REFORM

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April 2, 2009

Dr. Eric J. Smith, Commissioner
Florida Department of Education
1514 Turlington Building
325 West Gaines Street
Tallahassee, FL 32399-0400

Ms. Bambi J. Lockman, Chief
Bureau of Exceptional Education and Student Services
614 Turlington Building
325 West Gaines Street
Tallahassee, FL 32399-0400

and

Chair, Education Committee
Governor's Commission on Disabilities

Re: School District & LEA Non-compliance with ADA/Section 504 Procedural Safeguards 34 C.F.R. 104.36; Deliberate Indifference = Intentional Discrimination

Dear Dr. Smith and Ms. Lockman:

Please specifically note that this correspondence is being directed to Ms. Bambi J. Lockman in her official capacity as both Chief, Bureau of Exceptional Education and Student Services for FDOE, and as Chair, Education Committee, for the Governor's Commission on Disabilities.

In a one (1) page e-mail response (March 23, 2009) to our eight (8) page March 13, 2009 FDOE correspondence (with enclosures), Ms. Lockman dismisses our entire request for accountability on behalf of FDOE, as "over and above the jurisdiction of FDOE". Therefore, within the jurisdictional authority clearly outlined and set forth in her correspondence, we hereby amend our request to FDOE, as follows:

1. In anticipation of our filing of sixty four (64) individual Section 504, 34 C.F.R. 104.36 - Procedural Safeguards Compliance Review Requests to the Office for Civil Rights (OCR), please "provide the guidance and technical assistance to the districts in order to comply" and "adopt Section 504 Due Process Procedures that incorporate due process standards and provide 'prompt and equitable resolution' of any complaints regarding pure discrimination." It would behoove FDOE to provide guidance and technical assistance that would facilitate not only full, but uniform compliance, by incorporating the following:
 - a) Effective Notice of Student/Parents Procedural Rights under Section 504, consistent with IDEA;
 - b) Procedures for "prompt and equitable resolution" of any grievances, complaints, and/or due process requests

- c) Designation of DOAH as the Contracted Agent to hear Section 504 due process complaints, as with IDEA d) Adopting Chapter 120 of the Administrative Procedures Act with respect to any Section 504 Due Process Hearings, and
- d) Determine the Appeal Process relative to any 504 Recommended Order filed by the Administrative Law Judge (ALJ) at the conclusion of a Due Process Hearing.

Having just completed the investigation, negotiation, and refinement of Collier County's ADA/Section 504 Policy and Procedural Safeguards/Manual over a 1.5 year period (developed under the guidance of OCR and in full compliance with C.F.R. 104.36), *why would FDOE not direct each district to adopt Collier County's ADA/Section 504 Policies and Procedures, so that state-wide uniformity is obtained?* To not do so will surely result in conflict and confusion between the individual districts, in addition to the burden to DOAH to have to review and possibly adopt up to 67 distinct sets of policies and procedures relative to Section 504 Due Process Hearing Requests within the 67 various jurisdictions. Why would you irresponsibly and unreasonably impose, through your present posture of defiance, such a burden on the DOAH, the individual districts, and the OCR?

Clearly the OCR, as the Federal Agency with direct oversight authority to monitor public school compliance with Section 504 Procedural Rights to Due Process, is the ultimate authority on 34 C.F.R. 104.36. Who better to assist FDOE in establishing the guidance and technical assistance provided the districts on a state-wide basis? What more evidence is necessary to establish and prove the need than that outlined in the OCR Class Discrimination Complaint No. 04-07-1264, as submitted to FDOE on March 13, 2009, with supporting documentary evidence? Why unreasonably subject the Office of Civil Rights resources to the processing of as many as sixty four (64) individual OCR Compliance Review Requests for the remaining counties in Florida who have yet to develop a system of procedural safeguards consistent with Section 504? Having just completed the investigation, negotiation, and refinement of Collier County's Policies and Procedures Manuals over a 1.5 year period, developed in full compliance with C.F.R. 104.36, why irresponsibly require the duplication of this effort state-wide?

As you have deferred jurisdiction for the requested formal independent investigation of Collier County's Exceptional Student Education and Legal Departments for the egregious civil rights violations outlined in our March 13, 2009 correspondence, we have referred this matter to OCR, specifically requesting a *formal referral* to the U.S. Department of Education, Department of Justice for both jurisdictional determination and investigation. Attached hereto is a copy of the OCR Referral Request file.

In reviewing Executive Order Number 07-148 for the Governor's Commission on Disabilities, which Ms. Lockman currently serves as Chair of the Education Committee, we note that the Commission was created specifically to (a) advance public policy for the disabilities community, (b) to provide a forum for advocates representing various groups within the disabilities community to develop and voice unified concerns and recommendations, (c) to partner with the Statewide Advocacy Council to provide proper guidance and education to state agencies in the implementation of the ADA, and (d) to ensure that Florida's citizens with disabilities have equal access to education, information regarding resources and services, and opportunities to participate in all aspects of life in Florida to the fullest extent possible.

The responsibilities of the Commission include, but are not be limited to (a) identifying and recommending methods to remove barriers to the delivery of, and access to, services for people with disabilities, (b) identifying and recommending methods to maximize the freedom and independence of Floridians with disabilities, with a focus on employment, transportation, education, and independent living; (c) providing a forum for communication between individuals with disabilities throughout the State of Florida and the various arms of state government, particularly the Governor and the Legislature, and (d) partnering with other agencies and organizations serving the disabilities community to facilitate collaborative efforts consistent with the purposes of the Commission.

The Commission is charged with providing a written report to the Governor outlining the accomplishments during the previous 12 months. The report is to address issues including, but not limited to, (a) recommendations regarding changes to Florida statutes, administrative rules, policies, and/or procedures of the State¹ in reference to all duties outlined above, (b) accomplishments in obtaining legislative or administrative change, and (c) progress related to collaborative efforts with other agencies and organizations. *The Commission may also provide interim reports as deemed necessary by the Commission or as requested by the Governor.*

Given the acknowledged limitations within FDOE's jurisdiction in these critical issues impacting Florida's disabled student population, we further implore Ms. Lockman as Chair of the Education Committee, to forward this matter with all documentary evidence, to the Governor's Task Force on Autism Spectrum Disorders. Specifically, please:

1. Direct a full copy of (a) this correspondence, (b) the attached OCR Referral Request of even date, (c) FDOE's March 23, 2009 E-Mail, and (d) the March 13, 2009 correspondence to FDOE, with all enclosed evidentiary documentation, to the Executive Director, the Chair of the Civil Rights Committee, and all members of both the Education and Civil Rights Committees.
2. Request their expeditious review, and schedule as an Agenda item for the April 7th and April 8th Telephone Conferences for the Civil Rights Committee and Education Committee, respectively.
3. Insure the materials provided to the Commissioners for review are available in alternative formats in advance of dispersal to the Commissioners. For assistance in converting files to alternative formats, please forward them to commission@dms.myflorida.com, per the instructions provided.
4. Advise of a scheduled phone conference time. We will, otherwise, phone at the appointed opening of each Telephone Conference.
5. Exercise the Executive Order responsibilities of the Governor's Commission on Disabilities, as herein outlined, forwarding your Findings and Recommendations in an Interim Report to the Governor, with copies of all documentation, upon completion.

¹ i.e.: Recommending specific inclusion of ADA/Section 504 Procedural Safeguards and Due Process Rights under current Rule 6A-6.03311, Florida Administrative Code, Procedural Safeguards for Students with Disabilities.

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Collier-ESE-Reform shall simultaneously proceed with any and all alternative remedies including but not limited to the filing of a civil action under Section 203 of the ADA and Title 42 U.S.C. 1983.

Respectfully submitted,

Ms. Patty Caldwell Portenier, Co-founder
Collier-ESE-Reform
Parent Advocate and Class Representative
OCR Complaint vs. FDOE and DOAH

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

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

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CC:

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Via Email to:

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