



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

Mr. William Hughes
491 31st Street, N.W.
Naples, Florida 34120

AUG 08 11

Ms. Catherine D. Cannivet
3651 Dauphine Avenue
Northbrook, Illinois 60062

Dear Mr. Hughes and Ms. Cannivet:

Re: Complaint No. 04-07-1264

On April 26 and May 9, 2007, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received your complaint against the Collier County School District (District), alleging discrimination on the basis of disability. You allege the District delayed due process hearings for your children, one for eight months and the other for fifteen months, denied requests for meetings made by you to discuss services in the interim, and also denied all educational services to your children while the hearings were pending. You additionally alleged that the District has failed to establish and implement a system of procedural safeguards that includes a Section 504 hearing process.

As a recipient of Federal financial assistance from the Department, the District is subject to the provisions of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. As a public entity, it is also subject to the provisions of Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Sections 12131-12165, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

When you asked that your complaint be considered a class complaint, we requested examples of additional students with disabilities experiencing discrimination. You were unable to identify any other students in support of the class complaint. Accordingly, OCR will not proceed with a class investigation.

With respect to the first three allegations, OCR notes that you have made these same allegations in *Hughes v. District School Board of Collier County*, (M.D. Fla. November 16, 2006) and in *Cannivet v. District School Board of Collier County*, (M.D. Fla. July 2, 2007). Where the issues in an administrative complaint filed with OCR are similar to those raised in a civil action and they involve the same parties, OCR does not proceed

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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

Mr. Hughes and Ms. Cannivet

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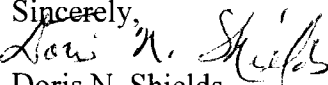
with its investigation to avoid both duplication and inconsistent decisions. You may, however, re-file your complaint with OCR within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint issues.

You also allege that the District retaliated against your son because of your advocacy by delaying the due process hearing proceedings, denying services for him while the hearing was pending, and declining to respond to requests for meetings to discuss services while the hearing was pending. We also cannot proceed with your retaliation claim. The court, in deciding whether a free appropriate education were denied, could find that the delays in the hearing were reasonable. OCR, if it proceeded, could find that the delays were adverse retaliatory actions. In order to avert inconsistency, OCR must await the outcome of your civil action against the District.

With respect to your allegation that the District has not established and implemented a system of procedural safeguards that includes a due process hearing procedure for Section 504, we will proceed with the investigation of this issue.

If you have further questions about OCR's actions with respect to your case, you should direct those inquiries to one of the staff members named below. If, after discussing your case with OCR staff, you continue to have factual or legal concerns about your case, you can file a formal request for reconsideration with the Office Director within 60 days of the date of this letter. However, general dissatisfaction with OCR's decision is not sufficient to request reconsideration of your case. Your request for reconsideration should be as specific as possible, and must focus on factual or legal concerns that could change the disposition of the case. We also want to advise you that consulting one of the OCR staff persons neither tolls the 60-day timeline nor is it a pre-requisite to filing a request for reconsideration.

We will communicate with you periodically regarding the status of your complaint. If you have any questions, please contact Roger Mills, a member of my staff, at (404) 562-6362 or by email at roger.mills@ed.gov.

Sincerely,

Doris N. Shields
Team Leader