

COLLIER COUNTY PARENTS SEEKING REFORM

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October 14, 2008

School Board Members
Dr. Dennis Thompson, Superintendent
Collier County Public Schools
5775 Osceola Trail
Naples, FL 34109-0919

Re: Office of Civil Rights Complaint # 04-07-1264
Termination of School Board Attorney Richard Withers For Cause

Dear School Board Members and Dr. Thompson:

In anticipation of the October 16, 2008 School Board Meeting, in which the contract of School Board Attorney Richard Withers is to be addressed, we request your consideration to the enclosed.

In a Letter of Determination dated September 30, 2008 (copy enclosed), the Office of Civil Rights (OCR), having completed their investigation of our Class Discrimination Complaint # 04-07-1264, **“determined that the evidence is sufficient to support a finding that the District's Section 504 procedural safeguards, as written and as implemented, do not fully comply with 34 CFR.104.36.”** For reference, this federal regulatory violation requires:

CFR.104.36 Procedural Safeguards.

A recipient that operates a public elementary or secondary education program or activity shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

As a result of these investigation findings on behalf of OCR, a **Resolution Agreement, Collier County School District, Florida, Case No. 04-07-1264 (copy enclosed)**, was required by OCR, and executed by Superintendent Thompson.

Please accept this correspondence as formal written notice of our intent to now proceed with a formal Class Discrimination Complaint with the Department of Justice under the following federal regulations:

DEPARTMENT OF JUSTICE

Office of the Attorney General

1) 28 CFR PART 35

Nondiscrimination on the Basis of Disability in State and Local Government Services

SUMMARY: This rule implements subtitle A of Title II of the Americans with Disabilities Act, Pub. L. 101-336, which prohibits discrimination on the basis of disability by public entities. Subtitle A protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability from titles I, III, and V of the Americans with Disabilities Act. This rule, therefore, adopts the general prohibitions of discrimination established under section 504, as well as the requirements for making programs accessible to individuals with disabilities and for providing equally effective communications. It also sets forth standards for what constitutes discrimination on the basis of mental or physical disability, provides a definition of disability and qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

2) Subpart B 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

Because this section further 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.** Therefore, we will compel DOJ, in their investigation of this complaint, to evaluate the acts of all those individuals who are board members, administrators, employees, agents, independent contractors, and/or service providers for CCSB, in the delivery of ESE Student educational and medical/psychological related services. **Remedial action will be specifically requested for both the public entity, CCSB, and those persons acting in an individual capacity.**

This Department of Justice Complaint will further assert that the above violations of federal law, being executed under the color of state law, deprived Complainants of their rights under the 14th Amendment, and, therefore, created additional liabilities under the Civil Rights Act, 20 U.S.C. § 1983.

3) Title 34-Education, Part 33 Program Fraud Civil Remedies Act

This law (31 U.S.C. 3809) requires each Federal department [United States Department of Education] head to promulgate regulations necessary to implement the provisions of the statute, including establishing administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent statements to the Department or to its agents, with respect to remaining eligible for a grant or benefit from the Department or the State.

Specifically, the Department of Justice (DOJ) Class Discrimination Complaint will request a formal investigation of:

- 1) Under 28 CFR Part 35, 134, to ascertain if those individuals identified in the OCR Letter of Determination, as well as other School District board members, administrators, employees, agents, independent contractors, and/or service providers, in fact, intentionally discriminated against these ESE students and/or their parents/advocates, and/or exercised coercion, intimidation, interference, and/or retaliation, in the denial of their federally-guaranteed procedural rights under IDEA and ADA / Section 504, and, as a consequence, their 14th Amendment rights.
- 2) Under Title 34 Part 33-Program Fraud Civil Remedies Act, to ascertain if during the course of the OCR investigation, those individuals identified in the OCR Letter of Determination, as well as other administrators, employees or agents, made or caused to be made, false, fictitious or fraudulent statements or representations.

A copy of this DOJ Class Discrimination Complaint will simultaneously be filed with the Florida Bar Association, in a formal FI Bar Complaint against School Board Attorney Withers, as herein detailed.

Enclosed please find two key correspondences to OCR dated January 29, 2008 and March 11, 2008. Therein, the evidentiary documents submitted to OCR in support of their investigative findings under CFR 34.104.36, are identified. Complete copies of these evidentiary documents were provided to Superintendent Thompson, as enclosures to a correspondence dated March 18, 2008 (copy enclosed).

Your comprehensive review of these materials is encouraged. As you may note, therein we repeatedly assert that the evidentiary documents in this OCR Class Discrimination Complaint provide irrefutable proof that CCSB:

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 / Section 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 and ADA / Section 504.

We remain steadfast that the Letter of Determination on behalf of OCR attorneys (the Federal Government Agency with oversight responsibility for these very laws), was the direct result of an intentional and discriminatory legal strategy orchestrated by School Board Attorney Richard Withers, to not simply impede or delay, but to blatantly deny, the due process rights of two ESE Disabled Students, in violation of federal regulation. These two cases prove that this was not an isolated case, but an established and intentional "pattern of discrimination."

The School Board Attorney, as the District's in-house "Person of Knowledge", is clearly responsible to insure these ESE student due process proceedings under IDEA and ADA / Section 504 are conducted in accordance with long-standing federal regulatory guidelines, and to insure the children's procedural rights are respected and upheld throughout the process. As soon as a Request for Due Process is submitted to the School District, the legal burden shifts to the District to adhere to these established regulatory guidelines in scheduling and conducting the hearings under federal mandate. Clearly, School Board Attorney Richard Withers not only failed to do so, but in absolute defiance of federal law, refused to do so, even as repeatedly compelled by qualified IDEA and ADA attorneys representing the students.

Upon review of all of the above-referenced documentation, we strongly urge, based on the OCR Complaint Letter of Determination and the evidentiary documents supporting it, that you initiate the following immediate corrective measures:

1. The dismissal of School Board Attorney Richard Withers, for cause, as herein outlined, and as supported by the evidentiary documents submitted to OCR investigators, without regard to the findings in your own internal investigation of his legal department.
2. Proceed expeditiously with the requirements set forth in the Resolution Agreement entered into with OCR, to implement corrective measures to insure federal regulatory compliance and accountability, for the protection and benefit of the ESE children within your care, custody, and control.
3. Initiate the Hinshaw & Culbertson recommended ESE Department audit to ascertain federal compliance with the delivery of FAPE and Procedural Rights under IDEA, Section 504, and ADA., and identify those CCPS administrators, employees, contractors, and/or agents, who have been complicit in the established pattern of discrimination. While orchestrating the denial of these student's federally-protected rights, Attorney Withers was not acting alone in the systematic denial of FAPE and Procedural Rights. A pattern of intimidation, retaliation, and coercion will be identified and substantiated through this initiative, in support of which we can contribute substantial evidentiary documents. A comprehensive review of the two children's trial transcripts and exhibits contains much of this evidence.

Respectfully Submitted,

Ms. Patty Caldwell 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
OCR Attorney Roger Mills
CCPS Administrator Victoria Sartorio
CCPS Administrator Dee Winnery
CCPS Administrator Larry Ruble

Please direct written correspondence to:
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