

Boy with disabilities, parents file federal suit against schools

By KATHERINE ALBERS

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Derek Hughes can get his epilepsy medication from the school nurse five days a week.

His service dog, Bo, sits next to him in his classroom, as does his qualified sign-interpreter. Derek does not speak.

His father, Bill Hughes, said Derek has everything he wanted.

"We accomplished everything we set out to get," he said. "It just didn't happen in Collier County."

After almost a year of fighting to get Derek's "basic needs" taken care of, the Hughes' family has enrolled their son in The Child and Career Development Center, a public school in Chester County, Pa.

"The Collier County Public Schools had a total disregard of Derek's needs," said Bill Hughes. "To think that we could get everything we asked for in another state."

Derek's enrollment in the new school comes as a state administrative judge dismissed the Hughes' due process complaint against the Collier County School District.

In his Oct. 18 ruling, administrative law judge Daniel Manry wrote that the complaint was moot since the Hughes family enrolled Derek in another school.

"The due process complaint against the challenged IEP (individual education program) is rendered moot when Petitioner enrolls in a different school district after filing a due process complaint against Respondent," Manry wrote.

"The alleged denial of FAPE (Free and Appropriate Education) by Respondent cannot be redressed by a decision against the former school district because the student is enrolled in a different school district and is being educated pursuant to a new IEP.

"In order for the due process complaint in this proceeding to be justiciable, a live case or controversy must exist through the proceeding, not simply on the date the action was initiated."

Hughes said Derek has not had his day in court.

"Because we, as parents, had to move our son outside the district to ensure he got an education, the judge said Derek gave up his rights to his claim," Hughes said.

Hughes said while the administrative judge has determined there is no case because Derek is no longer enrolled in the public schools, the family believes they have a case. Attorneys on behalf of the family filed a federal lawsuit against the Collier County School District last month.

The suit asks a federal judge to review the due process determination under the Individuals with Disabilities Act, for delays in the hearing regarding Derek's needs for a service dog, a full-time nurse and a sign language interpreter. The suit also alleges that the district violated the Americans with Disabilities Act and the Florida Civil Rights Act in denying Derek's right to a free and appropriate education and his right to have a service animal.

Collier County School Board Attorney Richard Withers would not comment on the suit, saying only that the administrative judge had made a ruling, and there was an appeal to that ruling filed in district court.

"The district remains convinced it has offered the student a free and appropriate education," he said. "We would expect to present that petition in the federal district court."

The Hughes family alleges the Collier County School District was negligent by not amending the Pine Ridge Middle School student's individual education program (IEP) to allow Derek to bring Bo to school and to recognize that he has epilepsy.

Bill and Brenda Hughes further allege the district was negligent for not providing a full-time school nurse to administer Derek's epilepsy medication, Diastat. Emergency personnel sometimes give the medicine, which works to stop a cluster of repeated or prolonged seizures, by injection, according to epilepsy.com.

The Hughes family made attempts to meet with school officials about Derek's educational needs after he had two seizures, including one at school, and had been diagnosed as epileptic by his physician. The family scheduled an emergency IEP meeting with Derek's team for Jan. 17.

During the meeting, the district denied the request to amend Derek's IEP, which is the student's learning and behavior plan, to include acknowledgment of his medical diagnosis of epilepsy or to provide him access to his service dog, Bill Hughes said.

Hughes said if the district denied Bo's access, that would be one thing. But putting Derek in school without a full-time nurse was unacceptable and unsafe for Derek.

Adding to the problem, Derek's sign language aide resigned her position with the district. Although the district planned to get Derek, who is nonverbal, another interpreter, that person was not in place by the time Derek was to return to school, he said.

Following the denial to amend Derek's IEP, Bill and Brenda Hughes asked for a due-process hearing under The Individuals with Disabilities Education Act (IDEA). They have pulled Derek from school and have elected to have him home-schooled until the issue is resolved.

That is when the frustration began, Hughes said. They asked for the hearing on Jan. 17. Under the IDEA law, a hearing must be conducted within 45 days from filing the request.

The hearing was scheduled to begin Feb. 20, but the district requested a delay to May 1. Hughes said it was delayed four times after that, finally concluding June 22. It was six months and five days after the initial filing.

Hughes said both sides were told by the judge a decision would not be made on the issue until after the start of the 2006-07 school year.

Since this issue is not resolved, the district also denied Derek's access to an extended school-year program, which is not being held at Pine Ridge Middle School and is therefore acceptable to the Hughes family. As a result, the family has filed another IDEA complaint.

Hughes said the family tried to meet with district officials about Derek's IEP to enroll him back in school this August, but said the family was only allowed to have meetings with Withers and not Derek's service providers.

"Derek has to be educated," he said. "What I don't understand is why a public school system in Pennsylvania would see the need for a service dog, a full-time nurse and a qualified sign-interpreter, and why the Collier County School District doesn't see the value."

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