

April 23, 2007

Office for Civil Rights – Region IV
Department of Health and Human Services
61 Forsyth Street, SW – Suite 3B70
Atlanta, GA 30323

Re: Class Discrimination Complaint - Collier County School Board (CCSB)

Affixed hereto is an executed Class Discrimination Complaint, submitted under Title II of the American with Disabilities Act (hereinafter "ADA"), Title 6 of the Civil Rights Act, and under Title 34, Section 504 of The Rehabilitation Act of 1973 (hereinafter "Section 504").

As Representative of the Class Complaint, I, William Hughes, hereby submit this Class Discrimination Complaint against Collier County School Board (hereinafter referred to as "CCSB") for continuing and widespread discrimination violations against resident Exceptional Student Education (hereinafter referred to as "ESE") students, as set forth herein.

This Class Discrimination Complaint represents inter-related and continuing violations of ESE Student's (1) civil rights under the ADA and relevant state and federal law, (2) educational and privacy rights under the Family Educational Rights and Privacy Act (hereinafter referred to as "FERPA"), and (3) violations of Free and Appropriate Education (hereinafter referred to as "FAPE") rights under both the Individuals with Disabilities Education Act (hereinafter referred to as "IDEA") and Section 504.

Not only has CCSB continued a practice of widespread discrimination against ESE Students, in violation of their civil and legal rights under the applicable sections of these laws, but they have utilized coercion, intimidation and delay tactics to interfere with, delay, and deny ESE Student's rights to Due Process on the state level, under both the IDEA and Section 504, in attempts to pressure Parent Advocates to abandon all Due Process and related legal rights.

Given CCSB's persistence in utilizing these tactics in retaliation for the filing of state Due Process complaints, Parent Advocates have been forced to withdraw their students from the public school system, relocating outside Collier County, FL for services, provide home schooling, and/or place their children in alternative private schools. Those that seek protection under IDEA, Section 504, and ADA have been forced, at considerable personal expense, to hire legal counsel to protect ESE Student's rights. Rather than respect and uphold those student's rights to Due Process, CCSB instead delays and denies the ESE Student's rights, utilizing coercion and retaliation tactics to force Parent Advocates to abandon all rights. Those tactics include the denial of educational and medical services to the child during Due Process proceedings, continuous delays in Due

Process proceedings, while simultaneously threatening Parent Advocates with the violation of Compulsory Education laws.

Notably, CCSB, in conjunction with the Administrative Law Judges (ALJs) for the IDEA Due Process Hearings, refuse to simultaneously hear educational, medical, and/or legal issues relative to the student's rights under ADA and Section 504. In doing so, they are effectively "delaying and denying these qualified disabled person's legal rights under ADA and Section 504, in violation of the disabled student's civil rights, for the duration of the IDEA Due Process Proceedings." This is a systematic course of action to delay and deny any consideration to these critical civil rights, while forcing upon the qualified disabled person a clear and costly duplication of time and monies, in having to separately pursue these rights on a Federal level, only after exhausting the Administrative Pre-conditions of those filings under IDEA.

As 28 CFR Part 35, Section 35.134 Retaliation and Coercion provides protection to not only individuals who allege a violation of the Act or this part, but also any individuals who support or assist them, we ask that you consider this filing on behalf of Parent Advocates of the ESE Students, as well as the ESE Students.

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 ask that you consider, in your investigation of this complaint, 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 services. Remedial action on behalf of the Assistant Secretary of OCR is specifically requested for both the public entity, CCSB, and those persons acting in an individual capacity. Specific and repeated requests for voluntary action by CCSB under the provisions of this Act have been totally disregarded by CCSB.

Finally, request is made that this Class Discrimination Complaint be designated a "High Profile / High Impact" case, and as such, be directed to the Office for Special Education and Rehabilitation Services for processing and investigation.

In reviewing this complaint, we ask simply that a "Standard of Reasonableness" be employed, in evaluating and investigating the actions on behalf of CCSB, in the two specific cases herein sited, as clear evidence of a pattern of widespread discrimination.

It is imperative to note that this is not a request for an evaluation or investigation on behalf of OCR of the underlying educational and medical issues outlined in these two cases, for the benefit of the student or parents. Rather, it is a class complaint, for an investigation of the pattern of widespread discrimination that is established and clearly

documented in a comparison of the two unrelated cases, and which will become apparent in other cases investigated under this complaint. In each of the two selected cases, you will find the following irrefutable facts and patterns of discrimination:

1. Each child is a child with a disability under Section 504 and ADA, and all relevant statutes defining "disability".
2. Each child was enrolled and acknowledged as a classified ESE Student by CCSB, with a written IEP, as required by IDEA and 504.
3. CCSB, thereby, had a relationship with each child which required them to provide each child FAPE in the Least Restrictive Environment, and to continually monitor their placement to ensure that they were being provided with FAPE, and that their health, safety, and welfare were at no time endangered in their existing placement.
4. Pursuant to their relationship with each child, CCSB placed each child in the District's school and failed, ignored, or refused to prevent the disability discrimination, even when they became aware that each child was not making educational progress, but also put their very lives and safety in danger.
5. As a result of CCSB's actions and inactions, each child was subjected to a state-created danger that jeopardized and compromised their health and well-being, in violation of their rights under the United States, and had to be withheld from attending CCSB as a result.
6. CCSB failed to meet the individualized needs of each child as adequately as the needs of non-handicapped students are met, and failed to provide each child FAPE in the Least Restrictive Environment.
7. CCSB unreasonably rejected the qualified medical diagnosis, prescriptions, medical treatment plans, and/or independent evaluation recommendations by qualified medical providers for each child.
8. CCSB unreasonably refused changes in each child's IEP, and the denial of both educational services and Related Services, resulting in the filing of IDEA Due Process Hearing requests and Section 504 Hearing Requests for each child.
9. CCSB unreasonably delayed and denied parental requests for IEP Meetings before, during, and after due process proceedings, thereby denying Parent Participation in the decision-making process.
10. CCSB unilaterally restricted the content and scope of requested IEP Meetings, refusing to add Agenda Items requested by parents, in violation of the requirements for Consolidation of IEP Meetings, and to further deny Parent Participation.

11. Related Services for the medical needs and therapies of each child were denied, thereby creating an unsafe educational environment for each child.
- 12. Despite IDEA guidelines that the Due Process Hearing be scheduled, conducted, and the assigned Administrative Law Judge render a decision with 45 days of the filing, CCSB filed repeated Motions for Continuance, and employed other delay tactics, to delay and deny the rights to Due Process for months beyond the limited 45 day time frame envisioned under IDEA.**
13. While creating continuous and unnecessary delays in the Due Process Proceedings, CCSB utilized the "Stay Put" provision of IDEA as a sword vs. a shield. Rather than responsibly insuring the ESE Student continue to receive FAPE in a proper and safe educational environment during the Due Process Proceedings, each child was denied basic medical and educational services, preventing each child from returning to school during the protracted due process proceedings.
14. Simultaneously, CCSB repeatedly and deliberately ignored parental requests for suitable and reasonable accommodations, and effectively excluded each child from participation in CCSB's programs and services under color of law.
15. CCSB, thereby, constructively evicted and excluded each child from FAPE for extensive periods during and following the due process proceedings, by virtue of their disabilities, and the foregoing.
16. By virtue of the foregoing, CCSB subjected each child to the intentional deprivation of education, medical services, while subjecting them to personal harm and danger, by reason of their disabilities.
17. CCSB's policies, practices and procedures, particularly the actions and omissions described above, violated each child's rights under Section 504 and ADA, by discriminating on the basis of disability.
18. CCSB acted either intentionally or in deliberate disregard to the federally protected rights of each child.
19. By their actions and omissions as stated above, CCSB denied each child equal access to the programs, benefits, and services of the District, as those for non-disabled peers, thus discriminating on the basis of disability.
20. CCSB employed such tactics in a concerted effort to deny each child with severe disabilities FAPE, and to foster an environment in which alternative education sources have to be chosen and the child moved from the District.

Case One Background and Summary of Fact – D. H.

(Click Here to Review Case One)

Case Two Background and Summary of Fact – B.C.

(Click Here to Review Case Two)

Section 504, Subpart D Discrimination Complaints

A. Section 104.32 - Location and Identification

CCSB has a history of denying ESE Students a free and appropriate public education. There are multiple “Qualified Handicapped Persons” within CCSB’s jurisdiction who are currently not receiving a Free and Appropriate Public Education. CCSB has not taken appropriate steps to notify the handicapped persons and their parents or guardians annually of the CCSB’s duty under this subpart. In fact, due to CCSB’s persistent discriminatory practices against this specific group of persons, and their refusal to provide the educational and medical services necessary to meet their individualized needs, based upon developed Individual Education Plans (IEPs), as required under IDEA and Section 504, their parents or guardians have been forced by CCSB’s denial of appropriate and necessary services to remove their children from CCSB’s public school system. These disabled persons are currently being either home schooled, or relegated to alternative placements, exclusively at the parent or guardian’s expense, in the absence of any educational participation or cost sharing by CCSB.

For the very reasons outlined in this OCR Class Discrimination Complaint, parents or guardians of such Qualified Handicapped Persons have been both discouraged from pursuing FAPE services from CCSB, and from pursuing their legal rights to Due Process proceedings when CCSB fails to deliver such services. The allegations set forth in this OCR Class Discrimination Complaint do not represent isolated cases of discriminatory practice; CCSB has developed an internal system for the denial of civil rights to these Qualified Handicapped Persons.

While receiving Federal financial assistance, CCSB has been simultaneously abdicating its expressed obligation to identify and locate each of these Qualified Handicapped Persons, and provide necessary educational and related medical services to them. Time has proven that the pursuit of the civil rights of these children through the established Department of Education guidelines is both non-productive and cost-prohibitive for most parents or guardians of the Qualified Handicapped Persons, given CCSB’s practices. Therefore, we are hereby requesting that OCR intervene to correct these persistent discriminatory practices for the benefit of all impacted children with disabilities.

Conclusion

In summary, CCSB clearly, as evidenced in these two sited cases, by any “Standard of Reasonableness”, and under color of law, deprived each parent and child of federal

statutory rights guaranteed them by IDEA, Section 504, and ADA, in violation of 42 U.S.C. 1983. In doing so, CCSB demonstrated and documented an established and widespread discrimination of these ESE Students, the pattern and extent of which will become evident in the OCR investigation.

Please note that our Class Discrimination Complaint is being processed and supported by a developed website at www.Collier-ESE-Reform.com. Therein, a summary of this effort is offered, with a full copy of our Complaint. The OCR Contact and Consent Forms are accessible to each and every parent, or parent advocate, of an ESE Student within Collier County. We will continue to compile this information, in anticipation of your preliminary review and agreement to initiate an investigation on behalf of our children.

We are specifically requesting the assistance of the Office of Civil Rights to:

1. Designate this Class Discrimination Complaint a "High Profile / High Impact" case, and as such, direct it to the Office for Special Education and Rehabilitation Services for processing and investigation.
2. In reviewing this complaint, we ask simply that a "Standard of Reasonableness" be employed, in evaluating and investigating the actions on behalf of CCSB, in the two specific cases herein cited, as clear evidence of a "pattern of widespread discrimination."
3. As 28 CFR Part 35, Section 35.134 Retaliation and Coercion provides protection to not only individuals who allege a violation of the Act or this part, but also any individuals who support or assist them, we ask that you consider this filing on behalf of Parent Advocates of the ESE Students, as well as the ESE Students.
4. Because the above 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 ask that you consider, in your investigation of this complaint, 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 services.
5. Remedial action on behalf of the Assistant Secretary of OCR is specifically requested for both the public entity, CCSB, and those persons acting in an individual capacity. Specific and repeated requests for voluntary action by CCSB under the provisions of this Act have been totally disregarded by CCSB.
6. Establish an oversight committee, for all future IDEA, ADA, and Section 504 Complaints filed with CCSB for ESE Students with disabilities, to insure CCSB's future compliance with all applicable laws regarding the educational and

medical needs of the students, as well as their legal rights to due process proceedings on the State level.

7. Establish an oversight committee to review the Individualized Education Plans (IEPs) and Quarterly Progress Reports of every ESE Student within CCSB jurisdiction, to insure total compliance with IDEA and Section 504.
8. Conduct an audit of the Federal funding received by CCSB for all ESE Special Needs Students to insure proper appropriation of all monies.
9. Review the Florida Department of Education and Department of Administrative Hearings policies and procedures for systematically denying consideration to any and all ADA and Section 504 rights during State IDEA Due Process Proceedings.
10. Insure, at the very earliest date, that the discrimination immediately ceases, and that the civil and legal rights of all ESE Students with disabilities, within CCSB's jurisdiction, be respected and protected.

Respectfully submitted this 23rd day of April, 2007.

_____/signature/_____

William Hughes
Representative for Class Discrimination Complaint