

SARASOTA

Legal maneuvering extends disabilities case

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SARASOTA — A judge has granted additional time for the family of a Sarasota County boy to argue that their son was wrongfully denied an education by the school district, adding four days to an already unusually long administrative hearing.

The judge, Dianne Cleavinger, extended the case last week. The administrative hearing will reconvene in August, but the legal team representing the student alleges the school district is using "legal harassment" to extend the case's time, cost and complexity.

The student's mother argues that the district wrongfully placed her son DJ into Access Points, a program for students with the most severe learning disabilities. DJ stayed in the program from third grade through the end of eighth grade, when the district abruptly moved him into regular level curriculum. After five years in the program designed for children with extremely low IQs, DJ was functioning on a fourth-grade level as a high school freshman.

Stephanie Langer, the attorney representing the boy, said school district attorneys are using tactics she hasn't seen in roughly 130 cases over her career. The district took months to file a "504 complaint" with the Department of Administrative Hearings and is insisting that the case's two chief complaints be heard in separate hearings.

"In my 13 years of practicing education law I've never seen a district behave this way," Langer said.

Keith Dubose, the school district's general counsel, declined to answer questions about the case, but he said the district is following standard practice for this type of complaint.

"We have a process," Dubose said.

Two complaints

The district received an Individuals with Disabilities Education Act (IDEA) and 504 due

process complaint related to DJ's case on the same day in January.

The two complaints relate to different elements of protection under law – IDEA addresses whether a student was denied a “Free and Appropriate Public Education” (FAPE), while 504 complaints are focused on whether a student was discriminated against based on their disability.

Attorneys often file 504 and IDEA complaints in conjunction because petitioners must exhaust all administrative options before appealing a decision.

Although the district followed legal requirements and moved forward with the IDEA complaint, referring it to a Department of Administrative Hearing judge on Feb. 2, nothing happened with the 504 complaint until June 5.

Sarasota School Board policy requires 504 complaints to be referred to the state's administrative hearings office, but there is no legal timeframe for that to happen. School Board general counsel Art Hardy said the complaint wasn't “gathering dust somewhere” from January to June and that attorneys were in conversation with the administrative law judge and Langer about the case.

Strange timing

The district eventually referred the 504 complaint to a judge on June 5 — a date that is suspicious to advocates working on the case.

The day before it was filed, at a June 4 School Board workshop, the board discussed an equity complaint that had been filed against Superintendent Todd Bowden over his handling of an administrator's sexual harassment allegation. Board member Bridget Ziegler asked Chairwoman Jane Goodwin if there had been any other complaints or notices of pre-litigation filed against the district.

Goodwin and Bowden had both received legal notice that the district was facing a lawsuit in the disability case in February, after settlement talks had fallen through, according to registered mail receipts. However, on June 4 Goodwin indicated she had not received any other notices of pending litigation.

“There's never been anything that's been sent?” Ziegler asked, and Goodwin affirmed that there had not been. “No? Thank you.”

The next day the district filed the 504 complaint with the state hearings office. The timing

raised questions over whether the district made its move because board members were looking into whether any other complaints existed.

“It is becoming clear is that there is a pattern and practice by this district to delay, ignore and simply not investigate these types of complaints,” said Sue Memminger, one of the advocates working on the case. “It is shocking the School Board chair is able to lie to other board members without consequence.”

On Thursday Goodwin said she couldn’t remember receiving the notice, but said she believes she had passed it along to Hardy. Regardless, she said she would not have shared it with the board because it falls outside of their purview as a board.

“I wouldn’t give it to every school board member,” she said. “Good gracious, who knows what we would have going on?”

Hardy said nothing in the board’s policy dictates what Goodwin must share with the board. When a formal policy is absent, board chairs can choose what they share, Florida School Board Association Executive Director Andrea Messina said.

“Unless boards define what the chair’s role is and what it is not, a chair can take as much authority as the board is willing to give them,” Messina said.

Hardy said standard procedure would be for the board chair to pass it along to legal counsel, which Goodwin said she did. Former Manatee County School Board chairman Scott Hopes agreed, saying board chairs typically give notice of pending litigation to the board attorney, who should then brief board members.

Claims of harassing strategy

Langer said she is frustrated by the district’s insistence on hearing the 504 and IDEA complaints in separate hearings, contending that the circumstances, witnesses and proposed remedy are identical in both complaints. Separate hearings on each could double the time and cost of the proceedings and creates the possibility of differing outcomes.

Langer said she has only once among her 130 cases had a district demand that the 504 and IDEA cases be split in separate hearings. She compared it to a defendant on trial for murder in criminal circuit court also having to stand trial for assault in a county court. The first portion of the IDEA complaint lasted several days, with School District employees spending hours testifying or waiting for their turn to testify outside the hearing. Langer

said a separate 504 hearing would mean those same witnesses and attorneys would have to repeat that process, but this time with a different judge and potentially different outcome.

“These are legal litigation harassing strategies,” Langer said. “It makes it a deterrent for other parents to sue the school district.”

However, not all legal experts agree with Langer that IDEA and 504 complaints should automatically be heard together if the circumstances are the same.

Ned Julian, a longtime Seminole School District attorney and one of the state’s leading experts on special education law, said he always split IDEA and 504 complaints because the two are “different animals” – IDEA complaints are all about whether a student was denied an education, and 504 complaints focus more on whether it was because they are a protected class.

“The facts may be the same, but the issues are different,” Julian said.

Terry Harmon, a frequent opponent of Langer who represents school districts in special education cases, said there are legal justifications for requiring an IDEA and 504 complaints to be heard separately, but he said it is not very common.

“They are usually brought together by plaintiffs,” Harmon said. “In my experience they are usually together, but to me it wouldn’t be earth-shattering if a school board came in and said we want to split these up.”

The judge extended the deadline for a decision last week as well, pushing the deadline to October. The family has pulled their student from the school district and has enrolled him in a specialized program. The family is hoping for compensation for the intensive academic program DJ is now enrolled from the district upwards of \$200,000.