UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

E.M. and D.M. on their behalf and on behalf of their son R.M.,	:	**Case No. 1:07-cv-976**
	:	**Judge Susan J. Dlott**
Plaintiffs,	:	
	:	**Magistrate Judge Timothy Hogan**
vs.	:	
	:	
SYCAMORE COMMUNITY SCHOOLS,	:	**FIRST AMENDED COMPLAINT**
Defendant.	:	

I. PRELIMINARY STATEMENT

1. E.M. and D.M. are the parents of R.M., who is a disabled senior at Sycamore High School. Mr. and Mrs. M. filed a due process complaint against the Sycamore Community Schools alleging they had denied R.M. a free an appropriate education because they could not teach him to read or to learn math. The impartial hearing officer ruled in the parents' favor and ordered Sycamore to reimburse the parents for the cost of R.M.'s reading and math classes at a private school called the Langsford Center. The hearing officer also ordered that Sycamore continue to pay for R.M.'s education at the private school until or unless Sycamore could teach R.M. at Sycamore High School. Plaintiffs seek damages for discrimination and failure to accommodate their son's disability. Plaintiffs also seek reimbursement for the private schooling they have had to pay for since Sycamore has been unable to provide R.M. with a free appropriate public education. As the prevailing parties, plaintiffs also seek an award of reasonable attorney fees and expenses. Plaintiffs bring this claim under the Individuals with Disabilities Education Improvement Act ("IDEA") 20 U.S.C. § 1412 and 1415 et

seq.;[1] 42 U.S.C. § 1983; Section 504 of the Rehabilitation Act; O.R.C. § 3323.01, et seq.; and O.A.C. § 3301-51-08 (I) (3).

2. This complaint was amended to add the § 1983 and the Rehabilitation Act claims for parental reimbursement and the Section 504 claim for discrimination.

II. JURISDICTION

3. This court has jurisdiction pursuant to 20 U.S.C. § 1415(i)(3)(I) and 28 U.S.C. § 1331. Jurisdiction over the state law claims is conferred by 28 U.S.C. § 1367(a). Venue is proper in this all claims arise and all parties reside within the Southern District of Ohio.

III. PARTIES

4. Plaintiffs E.M. and D.M. are married and reside with their 3 children in Cincinnati, Ohio, within the Sycamore School District. Mr. and Mrs. M. filed a due process complaint April 20, 2007 on behalf of their son, R.M, who is a child with a disability, as defined by IDEA and Ohio law.

5. At the time the due process complaint was filed, R.M. was 19 years old and was about to complete his junior year at Sycamore High School. R.M. has Down Syndrome and has been provided special education and related services through an Individualized Education Plan ("IEP") pursuant to IDEA and Ohio law. At the time of this filing R.M. is scheduled to graduate from Sycamore High School in June 1, 2008.

6. Defendant Sycamore Community Schools Board of Education ("Sycamore") is a political subdivision capable of suing and being sued under Ohio laws. Sycamore has administrative control over all educational programs conducted within its

[1] This 2004 Act amended the previous Individuals with Disabilities Education Act.

jurisdiction and is therefore a "local" school district as that term is defined in IDEA, including special education and related services. Sycamore receives federal funds pursuant to part B of the IDEA and is thus required to provide R.M. with a free appropriate public education ("FAPE") and is required to comply with the provisions of the Rehabilitation Act. At all times relevant to this actions, Sycamore's actions were taken under color of state law.

III. STATEMENT OF FACTS

7. Plaintiffs filed a due process complaint dated April 20, 2007 alleging that Sycamore Community Schools denied their son R.M. a FAPE stating that "multiple experts who have worked with and evaluated R.M. have concluded that based on uncontroverted data, he needs to receive continued, intensive Lindamood Bell instruction at the Langsford Center for reading, comprehension, and math in order to receive FAPE. The District cannot meet his needs within Sycamore High School, and historically has failed to do so, leading R.M. [to receive] his research based methodology for the past year at the Langsford Center."

8. Plaintiffs claimed that because of R.M.'s unique learning needs as a person with Down Syndrome he needs to be taught reading and math using the Lindamood Bell method of teaching. Plaintiffs claimed Sycamore High School tried to teach R.M. reading using the Lindamood Bell method in 10th grade, but failed because he regressed in reading during the 10th grade. R.M. succeeded in reading after 10th grade only after he began taking reading and math classes in the Lindamood Bell methodology at the Langsford Center, a private school in Blue Ash, Ohio.

9. The Ohio Department of Education's impartial hearing officer, Linda Warner, commenced the evidentiary hearing starting on June 15, 2007 and concluding on August 9, 2007. Seventeen witnesses were examined over 11 days of testimony, plaintiffs called several expert witnesses and introduced over 70 exhibits. Hundreds of pages of post trial briefing were submitted and IHO Warner issued her decision October 12, 2007.

10. IHO Warner concluded that plaintiffs met the burden that R.M. "has clearly demonstrated, through his educational history, that in order for him to receive a meaningful educational benefit the School needs to have his education administered by educators who are highly qualified and specifically Lindamood Bell method trained and mentored." Decision p. 28.

11. IHO Warner also concluded that ". . . it is essential, as the Parents insist, that the Lindamood Bell Methods of teaching continue for to do otherwise would be a denial of Student's FAPE." Decision p. 30. "It is specifically concluded herein that the Plaintiff has established the Student is specifically entitled to the Lindamood Bell method of instruction, because the outcome between the Lindamood Bell method and the previously utilized method of instruction for this Student was so great that use of the lesser program by Student would amount to a denial of a FAPE." Decision p. 31.

12. IHO Warner also concluded that "until or unless the assigned [Sycamore] school personnel has completed such training and established such mentoring programs, the school must continue to pay for the Student to be educated at the Langsford Center for reading and math. . . . It should be noted that Student should not be forced back into Sycamore High School for the subjects he takes at Langsford Center until Sycamore has

the program completely ready for implementation, not merely agreeing they will have the system in place at some later date." Decision p. 31-32.

13. IHO Warner ordered Sycamore Community Schools to pay plaintiffs "retroactive reimbursement for the cost of the Langsford Center from June 2007 until Sycamore High School has the fully qualified and thoroughly trained staff for Lindamood Bell instruction assigned to Student, as set forth herein." Decision p. 36.

14. The IHO's decision may be appealed within 45 days to the Ohio Department of Education for a State Level Review, however no party appealed the IHO's decision. Therefore, the hearing officer's decision is final. 20 U.S.C. § 1415 (i)(1)(a); O.A.C. § 3301-51-08 (H)(1). This complaint for fees is timely since it was filed within the 45 day appeal time. This complaint for violations of IDEA and § 1983 is timely since it was filed within 90 days of the decision.

Parental Reimbursement

15. As of the date of this Complaint Sycamore Community Schools has not provided R.M. with a FAPE in reading or math because it has not complied with the IHO's order to have school personnel complete the required Lindamood Bell training. Nor has Sycamore Community Schools complied with the IHO's order to establish appropriate Lindamood Bell mentoring for its teachers. Upon information and belief Sycamore Community Schools has no plans to comply with the IHO's order before R.M. graduates from the High School.

16. R.M.'s placement at the Langsford Center was proper because, unlike the education at Sycamore Community Schools, R.M.'s education at the Langsford Center has been and is reasonably calculated to enable R.M. to receive educational benefits.

17. On October 23, 2007 and on December 3, 2007 Mr. and Mrs. M. demanded that Sycamore Community Schools reimburse them for the tuition they have paid to the Langsford Center from classes from June 11, 2007 through the present. The costs of the Langsford Center are reasonable. Sycamore Community Schools have not responded to Plaintiffs' demands.

18. Plaintiffs seek an order enforcing the IHO's decision that orders Sycamore Community Schools to pay for R.M. to be educated at the Langsford Center for reading and math from June 11, 2007 through June 2008.

Discrimination Claim

19. R.M. is a "handicapped person" who, with a reasonable accommodation, could participate in public education at Sycamore Community Schools.

20. Sycamore Community Schools has known that R.M. is a unique learner who is "at a point in Plaintiff's educational process where [Sycamore] now **know[s]** what methods work best for this Student in learning reading and math, and the school should apply those methods for his last year of traditional high school. . . .[T]he failure to use the Lindamood Bell instructional methodology would be a denial of FAPE. That is, specifically, for reading and math the Lindamood Bell methods should be used for Student." Decision p. 6 (emphasis in original). The Lindamood Bell methods are a reasonable accommodation for R.M.

21. Despite knowing that R.M. needs the Lindamood Bell method for reading and math as a reasonable accommodation, Sycamore has deliberately refused to provide R.M. with educators who are highly qualified and specifically Lindamood Bell method trained and mentored in reading and math.

22. Sycamore's denial of this reasonable accommodation has impeded R.M.'s ability to participate in and benefit from his public education at Sycamore High School.

23. Sycamore's denial is discriminatory because it has acted in bad faith and has used gross misjudgment. Furthermore, since the IHO's decision, Sycamore has refused to implement the decision: Sycamore has neither provided R.M. with a FAPE, nor reimbursed his parents for the private school. Nor has Sycamore offered any reason for not reimbursing the parents. These recalcitrant actions also constitute bad faith in violation of law.

Attorney fees and expenses

24. When a decision of an IHO is not appealed the prevailing party may apply to the federal court for an award of reasonable attorney fees. Plaintiffs are the prevailing parties because the IHO's decision markedly changed the legal relationship between the parties. Thus, plaintiffs are entitled to an award of reasonable attorney fees.

25. On October 23, 2007 plaintiffs requested Sycamore Community Schools, through its counsel, to pay the plaintiffs' reasonable attorney fees and costs through the date of the decision in the amount of $146,579.25 and documented the hours, rates and expenses. To date, Defendants have not responded to the request.

26. Plaintiffs' attorneys' rates are based on rates prevailing in the Cincinnati community, wherein this proceeding arose, for similar services by attorneys of reasonably comparable skill, reputation, and experience. The time spent and legal services furnished were reasonable and not excessive considering the contentious nature of the proceedings.

27. The fees sought include time spent on the case preparing for the administrative hearing; prosecuting the hearing; briefing during and after the hearing; research; implementing the decision; preparation for and attendance at IEP meeting(s) convened as a result of the hearing officer's decision; and enforcement of the hearing officer's decision. Plaintiffs also seek fees for work done in preparing for and prosecuting this action.

IV. FIRST CLAIM -- IDEA CLAIM FOR DENIAL OF FAPE 20 U.S.C. § 1412 et seq.

28. Defendant Sycamore Community Schools failed to provide plaintiffs and their son a FAPE in violation of the IDEA, therefore they are liable to the parents for reimbursement of the cost of private school.

V. SECOND CLAIM -- 42 U.S.C. § 1983 CLAIM FOR DENIAL OF FAPE

29. Defendant Sycamore Community Schools, acting under color of state law, has denied plaintiffs and their son the rights and privileges under the IDEA and has failed to provide plaintiffs and their son a FAPE in violation of the IDEA, therefore they are liable to the parents for reimbursement of the cost of private school.

VI. THIRD CLAIM -- DISCRIMINATION CLAIM SECTION 504 OF THE REHABILITATION ACT OF 1973 29 U.S.C. § 791 et seq.

30. Defendant Sycamore Community Schools discriminated against plaintiffs and R.M. and have denied R.M. a reasonable accommodation in violation of section 504 of the Rehabilitation Act. Plaintiffs and their son have been denied a free appropriate public education and have suffered damages. Plaintiffs seek compensatory damages and reasonable attorney fees for the discrimination they have suffered.

VII. FOURTH CLAIM --IDEA CLAIM FOR REASONABLE ATTORNEY FEES 20 U.S.C. § 1415(i)

31. The IDEA and its implementing regulations at 34 C.F.R. § 300.517 provide for the recovery of reasonable attorney fees and costs to parents who prevail in any administrative or judicial proceeding brought under the IDEA, by a court having competent jurisdiction, including a federal district court. 20 U.S.C. § 1415(i). Plaintiffs are the prevailing party in the action brought against Sycamore Community Schools, pursuant to the IHO's decision. Plaintiffs therefore seek payment from Defendant Sycamore Community Schools for all reasonable attorney fees and expenses in an amount to be determined.

VIII. FIFTH CLAIM -- STATE CLAIM FOR REASONABLE ATTORNEY FEES O.R.C. § 3323.05

32. O.R.C. § 3323.05 and its implementing regulations O.A.C. § 3301-51-08(I)(3) also provide for the payment of attorney fees and costs to parents who prevail in any administrative or judicial action. Plaintiffs are the prevailing party in the action brought against Sycamore Community Schools, pursuant to the IHO's decision. Plaintiffs therefore seek payment from Defendant Sycamore Community Schools for all reasonable attorney fees and expenses in an amount to be determined.

IX. PRAYER FOR RELIEF

A. Declare that Defendant has denied plaintiffs and their son a FAPE and have discriminated against them;

B. Declare that plaintiffs are the prevailing parties in the administrative proceeding held pursuant to 20 U.S.C. § 1415 and its implementing

regulations are 34 C.F.R. § 300.517 and O.R.C. § 3323.05 and its implementing regulations at O.A.C. § 3301-51-08;

C. Order injunctive relief by ordering Defendant to reimburse the parents for the cost of private education including private school tuition and transportation;

D. Award Plaintiffs compensatory damages for the discrimination claim in an amount to be determined at trial;

E. Award plaintiffs pre and post judgment interest;

F. Award plaintiffs fees and costs for work done through October 12, 2007;

G. Award plaintiffs fees and costs in implementing the decision, preparation for and attendance at IEP meeting(s) convened as a result of the hearing officer's decision; and enforcement of the hearing officer's decision; and

H. Award plaintiffs fees and costs for work done in preparing for and prosecuting this action; and

I. Award plaintiffs such other and further relief, as the Court deems appropriate.

Respectfully submitted,

/s/ Jennifer L. Branch
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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2007, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

/s/ Jennifer L. Branch
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