

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

MAR 01 2006
LUTHER D. THOMAS, Clerk
Deputy Clerk

JARRON DRAPER,)
)
 Plaintiff,)
)
 v.)
)
 ATLANTA PUBLIC SCHOOL)
 DISTRICT,)
)
 Defendant.)
)
)

Case No.

1 06 - CV - 0487

COMPLAINT

Plaintiff Jarron Draper files this Complaint against Defendant Atlanta Public Schools District ("APS") and shows as follows:

INTRODUCTORY STATEMENT

1.

Mr. Draper is African-American and a student in APS, enrolled in the 11th grade. He is eligible to receive, and APS is obligated to provide him with, special education services under the Individuals with Disabilities Education Act (IDEA) as amended, 20 U.S.C. § 1400 *et seq.* ("IDEA").

DATE RECORDED
Clerk's Office
Federal Instructions
FILED
LUTHER D. THOMAS

2.

APS has failed Mr. Draper and violated its obligations under IDEA through a persistent pattern of profound incompetence and willful neglect. APS failed for three years to assess Mr. Draper, even as his academic progress fell further and further behind his peers. After a belated and deficient evaluation, APS misdiagnosed Mr. Draper, labeling him as mentally retarded when in fact he was not, but instead had dyslexia, a specific learning disability. As a result, APS placed Mr. Draper in the most restrictive environment possible in the school building - - a self-contained special education classroom for children with intellectual disabilities.

3.

APS compounded its errors by neglecting to re-evaluate Mr. Draper for five years - - while Mr. Draper fell yet further behind in his academic progress - - ignoring several requests from Mr. Draper's mother and teachers for a reevaluation and violating IDEA, which requires, at a minimum, a reevaluation every three years.

4.

In 2003, after APS's belated reevaluation - - consisting of essentially a single, inappropriate test - - APS again misdiagnosed Mr. Draper as mentally retarded and continued his placement in the most restrictive environment. At this

point, Mr. Draper, then a 9th grader, was reading at only the 3rd grade level - - threatening his dreams of going to college and earning a degree in computer technology. Unwilling to acquiesce in APS's labeling of him, Mr. Draper's family enrolled Mr. Draper in the Sylvan Learning Center for after-school tutoring and began demanding an independent evaluation.

5.

By August, 2003, the Sylvan Learning Center had raised Mr. Draper's reading level by two grade levels in five months - - using techniques often helpful to those challenged by dyslexia. This progress was not surprising given the results of a comprehensive evaluation performed by an independent psychologist - - who for the first time correctly diagnosed Mr. Draper as having a specific learning disability consistent with dyslexia and who dismissed the false diagnosis of mental retardation based on an array of testing data.

6.

Mr. Draper is now 19 and in the 11th grade. He has lost forever the opportunity to acquire certain reading and academic skills, while facing a daunting challenge to overcome over 10 years of APS' abject neglect. IDEA entitles Mr. Draper to receive, and obligates APS to provide, at a minimum: (a) compensatory services to help Mr. Draper overcome APS' past neglect, (b) reimbursement for

money spent to acquire privately the education services APS was duty-bound to provide but did not, and (c) all litigation costs and attorneys fees. Yet, APS continues to neglect its duties by failing to provide that to which Mr. Draper is entitled.

7.

Mr. Draper filed an administrative appeal seeking the foregoing relief. The administrative law judge (“ALJ”) found that: (a) APS had conducted “spectacularly deficient” assessments, (b) APS had violated IDEA, (c) APS had displayed an “air of disdain and tone of contempt” towards Mr. Draper’s “efforts to acquire a program of reading instruction that will give him a fighting chance to read . . . that a lesser spirit would have been crushed long ago,” and (d) APS, by its persistent and unlawful pattern of neglect, “has forfeited its right to continue to ‘educate’” Mr. Draper.

8.

Notwithstanding the ALJ’s findings in Mr. Draper’s favor, Mr. Draper appeals from the ALJ’s final order because, among other grounds, (a) Mr. Draper needs - - and under IDEA is entitled to receive - - remedies beyond those ordered by the ALJ if Mr. Draper is to have the “fighting chance” to learn how to read at

grade level to which the ALJ found Mr. Draper was entitled, and (b) the ALJ wrongly applied a two year limitations period to Mr. Draper's claims.

THE PARTIES

9.

Plaintiff JARRON DRAPER ("Student") was born on February 2, 1987. Student resides within the boundaries of the educational jurisdiction of the Atlanta Public School District, and is currently enrolled in 11th Grade at Benjamin E. Mays High School. Student has been, and continues to be, eligible to receive special education and related services pursuant to the IDEA.

10.

Defendant ATLANTA PUBLIC SCHOOL DISTRICT ("APS") is a public entity organized and existing under the laws of the State of Georgia, with the capacity to be sued. APS receives federal funds from the United States Department of Education pursuant to the IDEA, and is required to provide a free and appropriate public education ("FAPE") in the least restrictive environment to all children with disabilities residing within its educational boundaries.

JURISDICTION AND VENUE

11.

This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331 in that it arises under the Individuals with Disabilities Education Act (IDEA) as amended, 20 U.S.C. § 1400 *et seq.* (“IDEA”). Jurisdiction is expressly vested in this Court pursuant to 20 U.S.C. § 1415(i)(3)(A) and 28 U.S.C. § 1331. This Court has jurisdiction to hear pendent state claims under the doctrine of supplemental jurisdiction set forth at 28 U.S.C. § 1367.

12.

Venue in this Court is proper under 20 U.S.C. § 1391(b) because the defendant, APS, is located within Fulton County, which is within the jurisdiction of this judicial district, and all of the events or omissions that are the subject of this complaint occurred within the jurisdiction of this judicial district.

STATUTORY SCHEME UNDER THE IDEA

13.

The IDEA (formerly known as the Education for All Handicapped Children Act, P.L. 94-142) was adopted in 1975 to ensure that all children with qualifying disabilities receive a public school education. In adopting the IDEA, Congress found that over one million disabled children were not receiving an appropriate

education, and the “more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity . . . 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers...there were many children with disabilities throughout the United States participating in the regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected ...because of the lack of adequate services within the public school system, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.” 20 U.S.C. § 1400 (c)(2)(B-E). Therefore, Congress adopted the IDEA “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” 20 U.S.C. § 1400 (d).

14.

Educational programs for children with disabilities are designed and implemented through an Individualized Education Program (“IEP”), that contains,

among other things, statements of the following: the child's present levels of educational performances; annual goals and short term objectives; the specific educational services to be provided to the child; and the extent to which the child will be educated in regular education programs. 20 U.S.C. § 1414(d). In addition, Congress required that educational services be provided to children with disabilities, to the maximum extent appropriate, in the regular educational environment and that no child with a disability be removed to special classes or separate schools, unless, with the use of supplementary aids and services, the child cannot be educated satisfactorily in the regular education environment. 20 U.S.C. § 1412(a)(5). In other words, the services must be provided in the least restrictive environment.

15.

Pursuant to 20 U.S.C. §§ 1415(b)(6) and 1415(f)(1), whenever there is a disagreement between the parents and a school district regarding the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child, either party may present a complaint to be heard in an impartial administrative proceeding known as a "due process hearing," conducted by the state educational agency.

16.

As required by the IDEA, Georgia established an impartial due process hearing procedure under a contract with the Office of State Administrative Hearings for the State of Georgia.

PROCEDURAL HISTORY

17.

In November 2004, Student filed a complaint requesting a due process hearing. The complaint alleged that APS had denied Student his procedural and substantive rights to a FAPE under the IDEA. Among other things, Student requested the following relief: compensatory education, reimbursement for the cost of private educational services incurred to remediate Student's academic deficits, and reimbursement for reasonable attorneys' fees incurred by Student in connection with the due process hearing.

18.

APS filed its response essentially denying Student's allegations and contending that Student was not entitled to any relief.

19.

A due process hearing was held before the Office of State Administrative Hearings for the State of Georgia. On January 30, 2006, Steven D. Caley, Special

Assistant Administrative Law Judge issued a Final Order (“Due Process Order”). A copy of the Due Process Order was served on Student’s representative on January 30, 2006 via e-mail. A true and correct copy of the Due Process Order is attached hereto as Exhibit A, and by this reference incorporated herein.

20.

The Due Process Order held that APS had denied Student a FAPE in violation of the IDEA during the 2002-2003, 2003-2004 and 2004-2005 school years.

21.

The Due Process Order identified numerous violations of the IDEA that had occurred prior to the 2002-2003 school year, as a result of APS’ noncompliance with the IDEA. However, the Due Process Order held that any claims for violations of the IDEA that occurred before November 2002 were barred by the applicable two year statute of limitations.

22.

The Due Process Order found that APS’ unlawful conduct was so egregious that it “has forfeited its right to continue to ‘educate’” Student.

23.

In explaining the legal standard for awarding compensatory education and services, the Due Process Order cited *Reid v. District of Columbia*, 401 F.3d 516, 518, 524-525 (D.C. Cir. 2005), as authority for the proposition that because compensatory education and services must be designed to meet the unique needs of the child under the IDEA, “a mechanical quantitative remedy is not appropriate; rather, the focus should be a qualitative one so that the ultimate award is reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.”

24.

In addition to ordering APS to reimburse Student for private educational costs incurred in 2003 and all litigation costs, including expert witness fees and attorneys’ fees incurred in connection with the due process proceedings, the Due Process Order fashioned two alternative remedies from which Student may choose:

(a) In general, if Student elects to remain enrolled in the APS, he will be entitled to receive 60-minutes per day, 5-days per week, of multi-sensory reading services to be provided either by Sylvan Learning Center or Lindamood-Bell Learning Processes at Student’s election. APS must pay for such reading services, including

roundtrip transportation, until Student has graduated from high school with a regular high school diploma or until June 2009, whichever is earlier; or,

(b) In general, if Student desires placement outside the APS, Student shall provide APS with a list of the names of three proposed private schools located in Georgia to provide regular education and special education services. APS must pay for Student to attend the private school chosen by APS from such list, including roundtrip transportation, until Student has graduated from high school with a regular high school diploma or until June 2009, whichever is earlier. The tuition for such private school shall not exceed \$15,000 per year.

FACTUAL ALLEGATIONS

25.

Commencing February 1995, when Student was in 2nd Grade (i.e., 1994-1995 school year), Student's teachers recommended that Student be assessed by APS personnel for eligibility for special education and related services because Student's academic skills and proficiencies were insufficient for him to access or master grade level, academic curriculum.

26.

In June 1998, APS finally assessed Student.

- (a) At that time, Student was completing 4th Grade. Based on his chronological age, Student should have been completing 5th Grade in June 1998; however, Student was retained in either 2nd Grade or 3rd Grade
- (b) APS did not conduct a comprehensive assessment in June 1998. APS did not measure Student's phonological processing skills (which are essential to reading). APS did not review Student's receptive and expressive language skills.
- (c) Based upon Student's recorded performance on a standardized I.Q. test, the APS psychologist who conducted the limited evaluation concluded that Student was mentally retarded.

27.

On January 25, 1999, when Student was enrolled in 5th Grade (i.e., 1998-1999 school year), a meeting was held to review the assessments conducted in June 1998 and to determine the services which Student needed to make educational progress. APS placed Student in the most restrictive educational environment available, a self-contained special education classroom for children with mild intellectual disabilities ("M.I.D.").

28.

On April 19, 2000, when Student was enrolled in 6th Grade (i.e., 1999-2000 school year), an IEP team meeting was convened. The IEP team determined that Student was functioning at the 3rd Grade level in reading comprehension and word recognition, at the 1st Grade level in spelling, and at the 4.7 Grade level in math.

29.

Student continued in the M.I.D. self-contained classroom at Usher Middle School during 6th Grade, 7th Grade and 8th Grade (i.e., the 1999-2000, 2000-2001 and 2001-2002 school years, respectively), and continued to function at the 2nd to 3rd Grade level in reading.

30.

Student was not provided with access to the general education curriculum while placed in the self-contained M.I.D. classroom; instead, he was only provided with access to a functional curriculum.

31.

APS did not reevaluate Student until April 3, 2003, when Student was enrolled in 9th Grade (i.e., the 2002-2003 school year) at Benjamin E. Mays High School. The school psychologist who conducted the assessment reported that Student's teachers had determined that Student was performing at the 2nd to 3rd

Grade level in most academic subjects. The school psychologist also reported that Student's performance on an I.Q. test might not be an accurate reflection of Student's true cognitive ability. Accordingly, the school psychologist recommended that APS conduct further assessments.

32.

On April 17, 2003, when Student was still enrolled in 9th Grade, the IEP team declined to conduct any further assessments as recommended by the school psychologist and continued to classify Student as mentally retarded.

33.

In April 2003, Student's family disagreed with APS' determination that Student was mentally retarded and requested additional assessments.

34.

In July 2003, when Student was enrolled in 10th Grade (i.e., 2003-2004 school year), APS conducted another assessment and concluded that Student was not mentally retarded, and instead was eligible for special education and related services based upon a "specific learning disability." That assessment showed that Student was functioning at a 3rd Grade level in reading, at a 2nd Grade level in spelling, and at a 3rd Grade level in math.

35.

Student was a minor until his 18th birthday on February 2, 2005. In 2003, Student learned for the first time that: (a) APS had made Student eligible for special education and related services based on an erroneous classification of Student as mentally retarded; and, (b) APS had placed Student in self-contained M.I.D. classrooms based on APS' erroneous misclassification of Student as mentally retarded.

FIRST CLAIM FOR RELIEF
(APPEAL OF DUE PROCESS ORDER)

36.

Student is a party aggrieved by the Due Process Order with the meaning of 20 U.S.C. § 1415(i)(2)(A).

37.

The Due Process Order erred in holding that claims for violations of the IDEA that occurred before November 2002 were barred by the applicable two year statute of limitations.

38.

The Due Process Order erred in ordering compensatory education and services based upon a quantitative, rather than qualitative, approach which

terminates the compensatory education and services as of June 2009, without regard to whether Student will have achieved the educational benefits (i.e., proficiency in reading, spelling and math, and/or graduation with a high school diploma) that he would have otherwise obtained had APS provided him with a FAPE.

39.

The Due Process Order erred insofar as the stated alternative remedies require Student to choose between receiving the compensatory education and services from independent third parties (as described in Paragraph 24(a) above), and prospective, appropriate educational instruction and services to which Student is entitled (as described in Paragraph 24(b) above).

40.

The Due Process Order erred in granting APS the right to select a private school from a list provided by Student as described in Paragraph 24(b) above.

41.

The Due Process Order erred in limiting APS's financial obligation, as described in Paragraph 24(b) above, for private school tuition to \$15,000 per year.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment as follows:

(1) Except to the extent that the relief requested below is inconsistent with the Due Process Order, affirm the Due Process Order.

(2) Declare that the Due Process Order erred in holding that claims for violations of the IDEA that occurred before November 2002 were barred by the statute of limitations.

(3) Declare that APS denied Student a FAPE commencing with the 1994-1995 school year through and including the 2004-2005 school year.

(4) Declare that the Due Process Order erred in ordering compensatory education and services based upon a quantitative, rather than qualitative, approach which terminates the compensatory education and services as of June 2009, without regard to whether Student will have achieved the educational benefits (i.e., mastery of reading, spelling and math, and/or graduation with a high school diploma) that he would have otherwise obtained had APS provided him with a FAPE.

(5) Declare that the Due Process Order erred insofar as the stated alternative remedies require Student to choose between receiving the compensatory

education and services from independent third parties (as described in Paragraph 24(a) above), and prospective, appropriate educational instruction and services to which Student is entitled (as described in Paragraph 24(b) above).

(6) Declare that the Due Process Order erred in granting APS the right to select a private school from a list provided by Student as described in Paragraph 24(b) above.

(7) Declare that the Due Process Order erred in limiting APS's financial obligation, as described in Paragraph 24(b) above, for private school tuition to \$15,000 per year.

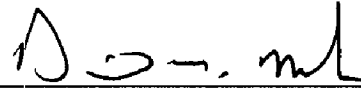
(8) Order APS to pay for Student to receive compensatory education and services from private schools, agencies, and/or individuals of Student's choice until his level of proficiency in reading, spelling and math is the equivalent of a 12th Grade Student, as determined by unbiased standardized testing, administered by persons and/or entities completely independent of APS at APS' expense.

(9) Award reimbursement for reasonable attorneys' fees and costs incurred in connection with the due process proceeding and with this federal court action in an amount as determined in the discretion of this Court as authorized by 20 U.S.C. § 1415(i)(3)(B).

(10) For such other and further relief as the Court deems just and proper.

Dated: March 1, 2006

Respectfully submitted,



David M. Monde
Ga. Bar No. 515710
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309-3053
Telephone: (404) 521-3939
Facsimile: (404) 581-8330

Wyner & Tiffany
Steven Wyner (SBN 77295)
(Pro Hac Vice Application Pending)
Marcy J.K. Tiffany (SBN 78421)
(Pro Hac Vice Application Pending)
970 W. 190th Street, Suite 400
Torrance, California 90502
Phone: (310) 792-8999
Fax: (310) 792-8988

Attorneys for Plaintiff Jarron Draper