

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Newport News Division

STEFAN JAYNES, a minor,)	
by and through his parents,)	
BRIAN D. JAYNES,)	
and)	
JULIANA F. JAYNES and on their own behalf,)	
Plaintiffs,)	Case No. _____
)	
v.)	COMPLAINT
)	
NEWPORT NEWS SCHOOL BOARD,)	
Defendant.)	

PRELIMINARY STATEMENT

1. Stefan Jaynes is a nine year old child with autism. On or about January 17, 1995, Stefan’s parents removed him from the Newport News Public Schools and have provided him with an education at considerable personal expense. On January 14, 1997, not quite two years later, his parents requested a special education due process hearing against Newport News Public Schools pursuant to 20 U.S.C. § 1415. They sought reimbursement for their child’s special education expenses. After hearing two days of testimony (Transcript of the Special Education Due Process Hearing is referred to a “Testimony, Vol. 1 and Vol. 2”), and receiving an extensive number of exhibits from the parents and school board (Referred to as Due Process Hearing Parent’s and Sch. Bd.’s Exh. #), on June 11, 1999 the Administrative Hearing Officer awarded the Plaintiffs the sum of \$117,979.78 to reimburse them for their expenses. (See Decision of special education due process Administrative Hearing Officer, attached as Exhibit A.) The Hearing Officer found ongoing and egregious violations of law by the Newport News Public Schools. The school system appealed to a State Level Reviewing

Officer who, on September 14, 1999 upheld the findings of the Hearing Officer except that he reduced the award to \$56,090.84. (See Decision of special education due process Administrative Review Officer, attached as Exhibit B.) The Review Officer's rationale for reducing the award was that the statute of limitations barred all claims that existed prior to the date of filing, i.e., January 14, 1997 rather than from the date of the claim, i.e., January 17, 1995. A Motion and Memorandum to Reconsider was filed, (See plaintiff's September 24, 1999 Motion and Memorandum to Reconsider Statute of Limitations Ruling, attached as Exhibit C). The State Level Review Officer stated that he did not have "the authority to reconsider a decision once made." (See Review Officer's October 4, 1999 letter opinion, attached as Exhibit D).

2. This action is a request for an award of attorney's fees and costs and is an appeal of the Decision of the State Level Review Officer, pursuant to the Individuals with Disabilities Education Act. The appeal is limited to an issue of law, i.e., whether a statute of limitations bars claims within the limitations period and prior to the date of filing.

JURISDICTION AND VENUE

3. Jurisdiction is conferred upon this Court by the Individuals with Disabilities Education Act (IDEA), (20 U.S.C. § 1400 et. seq.).

4. Venue is properly laid in the United States District Court of Virginia, Eastern District, Newport News Division, as authorized by 28 U.S.C. § 1391 and 1392.

PARTIES

5. Stefan Jaynes is a minor, born on November 24, 1990. Stefan resides with his parents, Brian Jaynes and Juliana Jaynes. They are responsible for his care, custody and control. Stefan and his parents, at all times relating to this matter, have resided in the City of

Newport News, located in the Commonwealth of Virginia. Stefan is a child with a disability who is eligible for services under the Individual with Disabilities Education Act.

6. Defendant Newport News School Board is responsible for providing Stefan with a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act.

7. The Newport News School Board and Newport News Public Schools are governed by the laws of the Commonwealth of Virginia, the laws of the United States, and the Constitution of the United States in carrying out these duties and responsibilities. The Newport News School Board is a Local Education Agency that is a recipient of federal financial assistance for purposes of the Individuals with Disabilities Education Act.

STATEMENT OF FACTS

8. Stefan Jaynes was born on November 24, 1990 to Brian and Julianna Jaynes. He and his parents reside in the City of Newport News, Virginia.

9. Stefan's acquisition of "language initially seemed to be normal . . ." Pediatric Neurologist J. Matthew Frank reported that

By 9 months he was saying "dada," "baba" and by 10 months he was picking up the telephone and saying "hi." By 11 months he was saying "no," "apple," "hot" and by 12 months was expressing food preferences. By 2 years of age he had an extensive vocabulary . . . When asked to provide some sentences or phrases that he used to say his parents easily listed a number such as "I fell on my top," "I fall and get hurt," "James (Jaynes) is my name," "daddy is Brian" and other phrases with vocabulary of well over 100 words. He could recognize a number of colors. (Parent's Due Process Hearing Exh. 2)

10. Stefan's speech development was apparently normal.

Other parents or grandparents thought it was normal speech development. He had probably 250 words before he started losing them. I fall on my toys. These pancakes are good. He knew his address. He knew his grandfather's name, his father's name. I call the police. I live at 722 Prescott Circle, Newport News, Virginia. My father's name is Brian, that kind of thing. He knew colors. He

knew a lot of flowers, what a flower was. He knew quite a few words, might have even been more than 250 words. (Due Process Hearing Testimony of Juliana Jaynes, Vol. 1, page 60)

11. Stefan's "thinking and reasoning skills were good" Ms. Jaynes also reported that:

He knew -- like if we turned down a certain road, he knew we might be on the way to grandfather's house and if I bypassed it we were in trouble. He knew enough to know his directions. If you took halfway there a right and then you happened to take a left, he would start crying. We're not going to grandpa's? He had reasoning skills that far. I know some people who can't make it down the road even at my age. As far as reasoning, he was up there, I would think. ((Due Process Hearing Testimony of Juliana Jaynes , Vol. 1, page 60)

12. In February, 1993, after Stefan's second birthday, he began to lose speech and language skills. Ms. Jaynes testified that:

He had started losing his words. I noticed he started pushing me towards things he wanted. For example, I would give him M&M's I knew he wanted. He wouldn't say please and we had a big fight in the kitchen. I wouldn't give them to him and he wouldn't say please. I didn't realize it wasn't because he wouldn't say please. It was because he couldn't say please. (Due Process Hearing Testimony of Juliana Jaynes, Vol. 1, page 60-61)

13. It was determined that Stefan had autism.

Autism is a severe disability that-- typically the characteristics are difficulties with social interaction, difficulty making relationships with people, including parents. There can be delays in all areas ranging from profound delays to some mild delays in some areas, but the most significant impairment usually is in speech and language, in the area of speech and language. They can sometimes be nonverbal and it can affect their receptive and expressive language skills profoundly. One thing that sets them apart from other children with speech and language delays is that they typically have a disorder to their language rather than a delay, meaning all skills are about the same. They typically have a disorder in their language development. They also have a disorder in an area of language that we call pragmatic language development. This is a child's understanding or a person's understanding of the underlying rules of communication. In other words, understanding that you can say something or use a symbol and it gets something for you and you can go back and forth. (Due Process Hearing Testimony of Speech Language Therapist Melonie Melton, T. Vol. 1, page 23-24)

14. On September 29, 1993, Pediatric Neurologist Frank recommended that the family “investigate the PACES program in Newport News.” (Parent’s Due Process Hearing Exh. 2) Dr. Frank noted that:

We are at a point in Stefan’s illness that intensive input may turn things around. Whether this process can be completely reversed is very much up in the air. Given our past experience and the literature would suggest that intensive early intervention offers the most hope for successful remediation. (Parent’s Due Process Hearing Exh. 2)

15. The parents contacted PACES and were advised that a referral to PACES had to be through the Newport News Public Schools.

16. PACES is a regional public school consortium special education program. When Newport News Public Schools places a child into PACES, Newport News Public Schools has to pay the child’s tuition to PACES.

17. Newport News special education administrator Dorothy Roseboro received the referral on October 8, 1993 and her notes reflected that Stefan was “maybe autistic.”

18. Stefan was not evaluated by Newport News Public Schools until December 15, 1993, sixty-eight days after the referral. (Parent’s Due Process Hearing Exhibits. 13, 14, 15)

19. At that time, Ms. Jaynes signed a “rights” form that was related to permission to evaluate their son. The form explained rights related to an evaluation and the right to refuse consent to evaluate. This form was not a “written procedural safeguards” form. (Due Process Hearing Testimony of Juliana Jaynes, Vol. 1, page 68)

20. On February 18, 1994, one hundred and thirty-two days after the referral, Stefan was found eligible for special education services and speech services. (Parent’s Exh. 19),

21. Unknown to the parents, an Individual Education Plan (IEP) was completed and signed by six public school staff on February 18, 1994. (Due Process Hearing Parent's Exh. 24)

22. The February 18, 1994 IEP stated that Stefan would not be educated at PACES, but would be placed in a public school day program, known as "Special Ed - PEEP" for 3 days per week for four and a half hours, and speech therapy once a week for thirty minutes.

23. This IEP contained no "Present Levels of Performance."

24. The IEP contained no criteria or evaluation data to determine how the goals and objectives would be assessed and met.

25. The IEP purposefully omitted the specific date when services were to begin, stating that services would begin on "4/ /94."

26. An IEP shall be implemented within thirty days after the child is found eligible for services. The child's eligibility for special education should have been decided within 65 working days after the October 8, 1993 referral, which was no later than the week of Monday, January 10, 1994.

27. An IEP should have been in place no later than February 10, 1994.

28. School employee, Dr. Spratley, who authored the February 18, 1994 IEP, testified that she was not aware of any regulatory requirements in regard to when the child's IEP should be implemented. (Due Process Hearing Testimony of Joanne Spratley, Vol. 2, page 63 + 92)

29. The Administrative Hearing Officer questioned Dr. Spratley about her assertion that it was not necessary to implement the child's IEP right away. She changed her position:

Q That's what's supposed to happen on the next day? It's supposed to be implemented right away?

A Yes.

Q And yet you put down that this IEP wouldn't be implemented for at least six weeks after February 18, didn't you?

A That's correct. (Due Process Hearing Testimony, Vol. 2, page 77)

30. At the time of the eligibility and IEP meetings, Dr. Spratley had received Dr. Frank's letters, knew about his recommendation that Stefan be placed at PACES, and the urgent need for intense early intervention services for this child with autism.

31. Mr. and Ms. Jaynes were not present at the eligibility and IEP meetings held on February 18, 1994.

32. The February 18, 1994 IEP meeting was held one hundred and twenty-three (123) days after the October 8, 1993 referral.

33. Newport News Public Schools unilaterally predetermined the IEP and Stefan's placement into the PEEP program. (Due Process Hearing Testimony of School Psychologist Swenson, Vol. 2, pages 16-17, 20 and special education administrator Joanne Spratley, Vol. 2, page 74)

34. On March 4, 1994, two weeks after the IEP meeting, Dorothy Roseboro, the Newport News Public Schools supervisor of preschool programs, sent a letter to Ms. Jaynes advising that Stefan was found eligible for "preschool special education with speech as a related service. Before services can begin for your son, we will need to schedule a meeting

with you to develop the Individualized Educational Plan (IEP).” (Due Process Hearing Parent’s Exh. 21) The school district did not enclose a copy of their February 18, 1994 IEP that had already been signed by the school officials.

35. On March 31, 1994, 174 days after the October 8, 1993 referral, Ms. Jaynes met with Ms. Roseboro to sign the February 18, 1994 IEP. The IEP still listed the beginning date as “4/ /94.”

36. The IEP was not implemented on March 31, 1994, or in April, 1994.

37. On May 5, 1994, Ms. Jaynes wrote to Dr. Mehaffey, the Director of Special Education, and asked when her son would begin to receive services. “I was told that they will call me when they decide where and when they are going to place him. No one has called as of today.” (Due Process Hearing Parent’s Exh. 26)

38. On May 24 or May 25, 1994, Dr. Spratley met with the parents and offered to provide one and a half hours of home bound or home based services, once or twice a week. Dr. Spratley did not offer to implement the February 18, 1994 IEP that Ms. Jaynes signed on March 31, 1994. The parents rejected their proposal. Mr. Jaynes immediately drove to Ms. Roseboro’s office to complain about the school district’s failure to provide any special education services following the October, 1993 referral.

39. At this time, Ms. Roseboro wrote “5/26/94” over the “4/ /94” beginning date on the IEP. Stefan entered school at the end of May, 1994, 230 days after the October 8, 1993 referral.

40. Newport News did not provide Stefan with any speech or language services since the referral. The parents provided this service to Stefan at their own expense.

41. The parents repeatedly requested extended school year (ESY) services for Stefan. Their request was repeatedly denied by Newport News Public Schools. (T. Vol. 1, page 79)

42. Stefan attended public school and was placed in Ms. Paster's self-contained class in June, 1994 for a couple of weeks. Newport News Public Schools did not provide Stefan with any ESY or summer services. From the fall of 1993, Stefan's parents provided educational services for their son at their expense.

43. When Stefan returned to school in the Fall of 1994, he was placed back into Ms. Paster's self-contained class. Stefan was the only child with autism in this class. (Due Process Hearing Testimony of Pamela Paster, Vol. 2, page 159) Other students included two children with hearing impairments, one with a chromosomal defect, one "classically developmentally-delayed child," one "a little more" classically developmentally-delayed, and another "as more like mentally retarded." (Due Process Hearing Testimony of Pamela Paster, Vol. 2, page 125)

44. On October 10, 1994 an IEP meeting was held by Ms. Paster. Several of the IEP objectives were identical to the IEP objectives on the February 28, 1994 IEP. Many of the February 28 and October 10 IEP objectives were marked as "NI", (i.e., never initiated). (Due Process Hearing Parent's Exh. 34) (Due Process Hearing Testimony of Pam Paster, Vol. 2, page 150-152)

45. Newport News Public Schools failed to implement Stefan's IEP.

46. Although Ms. Jaynes continued to request that Stefan be educated at PACES, her requests were ignored.

47. After Ms. Jaynes attended the IEP meeting on October 10, 1994 IEP, the IEP document was altered without her knowledge. The alteration is evident in a comparison of the last page of Parent's Exhibit 34 to the nearly identical next to last page of that exhibit.

48. The original IEP document did not contain any justification for denying PACES. The least restrictive environment section was blank. Mrs. Jaynes' signature is on this page. Later, this page was altered by inserting a "LRE Justification" of self-contained so it would appear that PACES was considered and rejected as an appropriate program for Stefan.

49. At the hearing, Ms. Paster admitted that she altered the IEP, but denied that she inserted the word "PACES" next to the alteration. (Due Process Hearing Testimony of Pamela Paster, Vol. 2, page 170-171)

50. The Administrative Hearing Officer found that her "testimony is vague and not credible." (Exh. A, Administrative Hearing Officer Decision, Finding of Fact 56.)

51. From September, 1994 through January, 1995, Stefan was placed in Ms. Paster's PEEP classroom. During these months, he was frequently crying, running, had a hard time sitting, and was "oblivious to the classroom activities." (Testimony, Vol. 2, page 117, 126, 166)

52. Ms. Paster told Ms. Jaynes that:

(S)he did not have time to implement (the IEP) that because she had so many varying children in the classroom, three with facilitated speech, two deaf with facilitated speech, Down's. She had such a variety of children that had so many different disabilities that the one-on-one -- you really have to bring the picture to the child. The child has to bring the picture to you. You have to take them to the potty when he asks you to. You don't have time for that if you've got eight children in there, six to eight children in there with all those different kinds of learning disabilities, especially autism. There's no place for that.

53. Ms. Paster told Ms. Jaynes that "she felt that Stefan's needs were not being met in her classroom and she was very upset and concerned about that and those

were her exact words to me.” She told Ms. Jaynes that she had talked with her administrators about Stefan’s situation and wanted Ms. Jaynes herself to observe Stefan’s classroom.

54. After the discussion with Ms. Paster, Ms. Jaynes went to school to observe her son in this classroom. He was “not comprehending language, was way out there just self-stimulating himself, hitting the table, hitting the walls.” (Due Process Hearing Testimony of Juliana Jaynes, Vol. 1, page 91-92) A couple of weeks later Mr. and Ms. Jaynes observed Stefan’s class. They concluded that the problems were worse.

55. After the parents observed Stefan in the PEEP program, they met with Stefan’s pediatric neurologist, Dr. Frank on January 18, 1995. Ms. Jaynes testified about her meeting with Dr. Frank.

He’s a pretty cool customer and he scared me. He said you’re losing your child. When he said that, I just -- I could just see the floor when he said that. He said you’re losing him. Get him out of there now or he’s going to go into an institution. He said you are losing your child. (Due Process Hearing Testimony of Juliana Jaynes, Vol. 1, page 100-101) (See also Due Process Hearing Parent’s Exh. 39, 46)

56. On February 1, 1995, the parents spoke to Ms. Paster and advised her that they were about to initiate an intensive educational program for their son at home. They advised the teacher that they would not be returning Stefan to her classroom.

57. On February 15, 1995, Ms. Jaynes wrote to Dr. Spratley to request extended school year services. Dr. Spratley did not answer this request.

58. On June 12, 1995, Mr. and Mrs. Jaynes provided Newport News Public Schools with a detailed letter about their concerns. Once again, Newport News Public Schools failed to respond to their letter.

59. Beginning since February, 1995, Stefan had been receiving intense educational services at home forty hours a week. This has cost the parents in excess of \$120,000.00.

60. Stefan benefited from the educational program provided by his parents.

61. Later, the parents learned that they may be entitled to reimbursement for their son's educational expenses.

62. On January 14, 1997, the plaintiffs, through an attorney, requested a special education due process hearing against the defendant, seeking reimbursement of their expenses and prospectively, seeking an appropriate educational program for their child.

63. A hearing officer was appointed who later passed away. A new Hearing Officer was appointed. The parents retained new counsel. A partial temporary settlement occurred in which Newport News Public Schools developed an IEP and Stefan began attending public school, at New Horizons, formerly known as PACES. The due process issues were bifurcated into two cases, one seeking retroactive relief and the other seeking an appropriate program. The first issue was litigated and the Hearing Officer entered an award of \$117,979.78. (Exhibit A)

64. Newport News Public Schools appealed the adverse decision to a State Level Review Officer. They argued that the statute of limitations was one year and "that the Jaynes had removed their son from his Newport News educational program on January 17, 1995." The parents initiated the special education due process hearing on January 14, 1997, within two years.

65. The Review Officer's September 14, 1999 ruling held that the statute of limitations was two years and that the claim was timely filed on January 14, 1997.

Erroneously, the Review Officer found that all claims for reimbursement prior to January 14, 1997 were barred by the statute of limitations. (Exhibit B)

66. The two year statute of limitations that is timely filed on January 14, 1997 bars claims prior to January 14, 1995, not January 14, 1997.

67. On behalf of the plaintiff, a Motion to Reconsider (Exhibit C) was filed with the State Level Review Officer asserting that the Review Officer committed an error, i.e., that a two year statute of limitations bars claims that are two years prior to the date of filing. By way of analogy, it was argued:

Assume that one of Stefan's parents was in an automobile accident on January 17, 1995 and suffered personal injuries. Assume that (almost two years later) on January 14, 1997 the parent files a Motion for Judgment seeking reimbursement for medical bills, pain and suffering, etc. from the date of injury and for permanent injury and for future estimated medical bills. Query: Is the plaintiff entitled to reimbursement from the date of the accident or from the date of filing? The plaintiff is entitled to reimbursement from the date of the accident.

68. The State Level Review Officer refused to correct his error and replied by an October 4, 1999 letter opinion (Exhibit D) stated that:

It is my opinion, and one that is shared by the Virginia Department of Education, that I do not have the authority to reconsider a decision once made. 34 C.F.R § 300.510 (d) is specific in declaring that once made, a decision by a reviewing official is final unless a party brings a civil action under Section 300.511.

I, therefore, must decline to entertain your motion.

69. The Code of Federal Regulations and the Individuals with Disabilities Education Act do not prevent an Administrative Review Officer from reconsidering and correcting an obvious error.

70. The award and decision rendered by the Administrative Hearing Officer should be reinstated.

PRAYER FOR RELIEF

A. The plaintiffs request that this Court enter an Order requiring that the Administrative Record, i.e., the Briefs, Due Process Exhibits, Transcripts, and the Due Process and Review Decisions, be filed with the Court.

B. The plaintiffs request that this Court, upon a review of the administrative record, find that the decision of the state level reviewing officer should be reversed, and that the decision of the Administrative Hearing Officer should be reinstated, that the parents are awarded \$117,979.78, plus interest, and that the parents, as prevailing parties, shall be awarded their court costs, witness fees, expenditures and reasonable attorney's fees, pursuant to 20 U. S. C. 1415.

STEFAN JAYNES, a minor,
by and through his parents,
BRIAN D. JAYNES,
and
JULIANA F. JAYNES, and on their
own behalf
By Counsel

Dated: December 6, 1999

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