

PRESS RELEASE

Hillsborough County, Florida

On May 2, 2000, the Hillsborough County School Board voted to approve the settlement of *Whitehead vs. HCSD*.

The case which has been in litigation since 1993, culminated in a 1998 jury verdict in favor of the parents who suffered retaliation at the hands of the school district for advocating for their son with disabilities. The case set a national precedent for an award of \$600,000.00 in compensatory damages due to retaliation by school district personnel.

The federal litigation included a two week jury trial in April of 1998 and a one week bench trial in September of 1998.

The Whiteheads will receive no monetary benefit from the years of retaliation and abuse their child suffered. The Court reduced the jury verdict to \$100,000.00. It will require all the jury verdict award including the entire costs and fees settlement of \$650,000.00 to reimburse the Whiteheads' attorneys for their years of tireless work in defending children with disabilities.

The litigation began when the family requested the district implement the one hour per week of speech language services the school district had agreed their child with disabilities needed.

Quote from the Jan. 25, 2000 release of the National Council on Disabilities Report to Congress:

“Advocacy and litigation have been essential to ending destructive patterns of recurring noncompliance. Litigation has resulted in important victories for the children involved and better outcomes for other students with disabilities by exposing and remedying systemic noncompliance with IDEA (Individuals with Disabilities Education Act).”

Partial History:

The Whiteheads were the first family in 23 years to win a due process proceeding involving a child with disabilities against the Hillsborough County School District. The hearing officer's order from the due process hearing found the Hillsborough County School District had violated the free and appropriate public education of their child, discriminated against him, and retaliated against the family.

The school district then sued the Whitehead family over the hearing officer's authority and treated the order as non-final and unenforceable. The result forced the Whiteheads into federal court to require enforcement and insure services for their son. There were seventeen (17) violations of federal law found in that order.

During the federal trial, it was revealed that the school district withheld the child's records for a period of two years – a violation of federal law. The Director of Exceptional Student Education, Ms. Liz Argott, kept the child's files in a locked file cabinet in her office. That file contained the only complete copy of falsified documents Ms. Argott had submitted to the Office for Civil Rights in an attempt to circumvent the investigation.

After the 1998 trial, a number of personnel changes were made, including the removal of Mrs. Argott from her position as ESE Director. In an order issued by U.S. Magistrate Judge Elizabeth

Jenkins, the Middle District court states that, “The delays in furnishing records was inexcusable. Parents should not have to resort to litigation to obtain records for their children which are clearly disclosable.”

Several parents of children with disabilities who attend school in Hillsborough County testified at the trials regarding the district’s systemic noncompliance. Judge Jenkins comments on the cumulative impact of the procedural violations were “These violations of the procedural rights of the Whiteheads cannot be dismissed as either technical or minor. They were not inadvertent or isolated instances of a violation of parents’ procedural rights under Section 504.”

The following changes were a result of the bench trial, negotiations, and the recent settlement agreement:

- The district, in collaboration with the Whiteheads, has created a notice of procedural safeguards to be provided to all parents informing them of their rights when their child has a disability identified under Section 504 of the Rehabilitation Act of 1973.
- The district has been required to establish a local grievance process whereby any person suspecting discriminatory practices against a child with a disability or a person advocating for such child may submit a grievance directly to the Assistant Superintendent without fear of retaliation or retribution.
- The district has established a Superintendent’s Advisory Council on the Education of Children with Disabilities to assist the district in monitoring and evaluating policies, programs, practices, administration, and procedures within the district. The Council is comprised of six parents, six interested organizations, and three district personnel. Mrs. Whitehead was elected to the position of President of the Advisory Council.
- The district must provide notice of any proposed intent to initiate or change services of a child with disabilities in advance of their educational planning meetings. This prior written notice requirement allows parents to be informed of potential changes to their child’s educational services and the reasons for the planned changes. The district was found in violation of federal law regarding this provision of prior written notice.
- The district is required to publish a statement that all services necessary to a child’s special education be specified on the educational planning document. The district’s previous unwritten policy not specifying all the services needed in a child’s educational plan was declared illegal in the 1993 Whitehead due process hearing.
- The district has indicated training programs on compliance with the federal laws governing the education of children with disabilities are necessary and will be ongoing.
- The Hillsborough County School Board will reimburse the Whiteheads for costs and attorneys fees due to the litigation. (The district has already paid over \$30,000.00 in attorney reimbursement and expenses as ordered by the court for the due process hearing in 1993)

Dr. and Mrs. Whitehead's personal statement:

We wish to thank God for His faithfulness throughout these difficult years. We are also grateful to our family, friends, attorneys, teachers, and parents of children with disabilities, some of whom we have never met, for the support so many have offered. We look forward to our son receiving the education he is entitled to under federal law. There is no question this is a victory for all children with disabilities in our county. We are grateful for the class action type remedy afforded in our case because it will allow for an improved system for all children with disabilities in this county.

Taxpayers in this county, however, should be outraged at a school system whose lack of procedural rights resulted in a disregard for the needs of so many children with disabilities. This lawsuit resulted in part from a School Board who ignored parents' pleas for help and took the attitude of litigate instead of investigate. The hundreds of thousands of dollars paid to school district attorneys would have been more prudently expended in the classroom on the educational needs of children with disabilities. In-house counsel for this district would decrease the incentive of employing an additional law firm, which litigates and charges by the hour, in addition to the attorney already retained by the Board.

It has been an expensive and shameful lesson for this district to learn, but we feel that with the changes secured by the long struggle, the system will improve for all children.

"Teachers ultimately bear the responsibility to implement interventions and accommodations for students with disabilities, often without adequate training, planning time or assistance." *National Council on Disabilities Report to the President and Congress*. This district must begin with a commitment to comply with federal laws and fulfill its obligation by educating and fully supporting their teachers. We support a more collaborative approach in working with families of children with disabilities. There is no place for retaliation in the education of any child.

Systemic noncompliance is a concern nationwide, not just in this county. We must be proactive in the education of children with disabilities, maximizing their abilities thereby guaranteeing opportunity, freedom and productive tax-paying citizens.

Dr. and Mrs. Whitehead have also been instrumental in establishing a nonprofit organization that assists families of children with disabilities in their educational planning. **Statewide Advocacy Network on Disabilities (STAND)** offers free information and assistance to families attempting to negotiate the special education maze. STAND believes that recognizing the educational needs of children with disabilities will make a lifetime of difference. For more information, contact STAND, PO Box 1836, Tampa, FL 33601-1836 or call (813) 258-5700. The President of STAND is Mr. Mark Kamleiter, Esq. (727) 824-8989.

Local Counsel for the Whitehead family:

Laura L. Whiteside, Esq.
Laura L. Whiteside, P.A.
318 S. Edison Avenue
Tampa, FL 33606-2112
813-251-0456

