

LAW OFFICE OF
WILLIAM B. REICHHARDT & ASSOCIATES
4020 UNIVERSITY DRIVE, SUITE 222
FAIRFAX, VIRGINIA 22030

WILLIAM B. REICHHARDT (VA)
COLLEEN C. SWEENEY (VA)
DEBORAH L. MCINTYRE-YURKOVICH (VA)
AMANDA P. DEFEDA (VA)
JOAN M. HEISHMAN (VA)

EMAIL: jh@wbrlaw.com

TELEPHONE (703) 359-6060
FACSIMILE (703) 359-6065

WRITER'S DIRECT DIAL
(703) 359-8288

April 21, 2009

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. Martin Cumberbun
Office of Monitoring and Compliance
Columbia County Public Schools
6548 Gateway Road, Suite 123
Falls Church, Virginia 22042

Mr. John Depp, Esquire
Depp & Todd
8008 College Road, Suite 400
Fairfax, Virginia 22030

Re: Carlos Santana

Dear Martin and John:

My firm has been retained to represent Mr. and Mrs. Santana with regard to the educational services of their son, Carlos Santana, ("Carlos.") Carlos is an 11th grade student at Lakeside High School in Columbia County Public Schools (CCPS.) Carlos is an extremely intelligent student, who also has special education needs. At this time, we assert that Carlos' rights are being violated under both the Americans with Disabilities Act and The Rehabilitation Act of 1973.

Carlos underwent extensive evaluations by Dr. Barry White, Clinical Neuropsychologist, in November and December 2003. Since that time, Carlos was reevaluated by Dr. White in July 2006 and by other private providers. Tests have revealed that Carlos has a verbal IQ of 148. At the same time, he has been diagnosed with a nonverbal learning disability, dysgraphia, visual dysfunctions, audio-processing dysfunctions, and anxiety. All of these reports have been provided to CCPS, and copies are in his files at Lakeside High School.

In the Spring of 2004, while Carlos was a student at Warren Middle School, he received a 504 Plan ("504"). Since 2004, Carlos' 504 has been reviewed annually and implemented each year. Prior to this year, Mr. and Mrs. Santana have been able to positively work with school staff at Warren Middle School, McAdams Middle School, and Lakeside High School, to ensure that

Mr. Cumberbun
Mr. Depp
December 10, 2007
Page Two

Carlos was receiving the accommodations he needed in order to succeed at school. There has never been a dispute about Carlos' special education diagnoses or needs.

On June 23, 2006, David Wright, Lakeside High School Guidance Counselor, wrote a letter to the College Board about Carlos stating, "These diagnoses cause him to need extended time on many homework assignments as well as tests and quizzes." Attached to the letter were teacher surveys completed by five teachers. Every teacher stated that Carlos needs extra time, sometimes 100% + in order to finish writing assignments. These teachers also noted that Carlos effectively uses his accommodations. Subsequently, Carlos was granted extended time on the PSAT. Please see the attached letter and surveys.

On November 1, 2007, Mr. and Mrs. Santana met with school staff for a review of Carlos' 504. This meeting was led by Mr. William Benson, the new Director of Student Services in the Guidance Department at Lakeside High School. Two of Carlos' teachers also attended this meeting. At this meeting, Mr. Benson made several disturbing statements about Carlos' special education services. Mr. Benson, in reference to the accommodations in Carlos' 504, stated, "This can't stand....This (504) will have to be redone.....We can't have the teachers accommodate one child at the expense of 150 other children." In response to a teacher's suggestion about how she could accommodate Carlos' special needs, Mr. Benson added, "What you do for him, you will have to do for every other student. He has to do the same amount of work as everybody else." Additionally, Mr. Benson admitted that he had not read Carlos' learning reports or any of Carlos' records prior to the meeting. He also admitted that he had not met Carlos. Further, he said that he did not think it was necessary to speak with Carlos' former teachers, even those who had taught him for more than one year. As his reason for not reviewing records or speaking to relevant personnel, Mr. Benson responded, "The past is the past....none of that is relevant."

As you both know, children's disabilities do not spontaneously disappear and the past records of a child, as well as the comments of current and former teachers, familiar with the child's disabilities, are highly relevant and probative of the needs of a child. Additionally, accommodations are designed to level the playing field of disabled children. The comments of Mr. Benson directly contradict the purpose behind disability laws. Mr. Benson's comments and actions are not only violative of the Americans with Disabilities Act and The Rehabilitation Act of 1973, they are dismissive, offensive, and inappropriate.

Subsequent to this meeting, Mr. and Mrs. Santana were presented with a new 504 Plan that eliminated most of the substantive accommodations that Carlos has had since 2004. It also ignores most of the recommendations made by his teachers and private evaluators. For example, prior to this year, there were several accommodations that reduced the amount of work that Carlos had to write and provided opportunities for oral or alternative responses. Mr. Benson, in this new 504, has eliminated all the accommodations that reduced the amount of writing imposed on Carlos. Likewise, the new 504 severely limits the time extensions provided to Carlos. These and other changes have essentially made the 504 useless. Please see attached the 504s for the 2005 and 2006 school years, as well as the proposed 504 for the 2007 school year.

Mr. Cumberbun
Mr. Depp
December 10, 2007
Page Three

Mr. and Mrs. Santana have not signed this 504. Mr. Benson has agreed that the last 504 is to remain in place until a new 504 can be written and signed.

Carlos has significant and serious conditions that require accommodations under his 504 in order for him to participate and succeed at school. Additionally, Carlos experiences severe anxiety surrounding his ability to keep up with his work in light of his disabilities. As his doctors have noted in their reports, Carlos will spend 6-8 hours a night on homework and stay up until 3 a.m. in order to complete it without accommodations. The draft 504 that has been presented to Mr. and Mrs. Santana does not include any of the accommodations needed for Carlos to participate effectively in school.

Mr. and Mrs. Santana have worked cooperatively with Carlos' teachers and counselors at several schools to develop an effective 504 for Carlos every year since 2004, and they have appreciated the efforts of CCPS staff on behalf of Carlos. The almost complete denial of useful accommodations this year for Carlos is unusual in light of the past efforts of CCPS staff. The motivation behind Mr. Benson's actions and comments is not clear. What is clear is that Carlos has been diagnosed with serious disabilities that interfere with his ability to effectively progress in high school without appropriate accommodations.

Based on our review of the documents and the sequence of events this year, we conclude that CCPS is violating Carlos' rights under the Americans with Disabilities Act and The Rehabilitation Act, as the proposed 504 does not include appropriate accommodations for Carlos. Mr. and Mrs. Santana would like to resolve this situation and keep in place an appropriate 504 for Carlos to address his educational needs. Therefore, we are going to delay filing claims under the ADA and the Rehabilitation Act at this time. We are requesting a resolution conference chaired by Mr. Cumberbun as soon as possible so that we that can begin to resolve this situation.

Thank you for your attention to this matter.

Sincerely,

Joan Heishman Proper, Esquire

Attachments

cc: Mr. and Mrs. Santana
Mr. Dan Banberry, Principal, Lakeside High School