

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

SEP 10 2004

JAMES W. McCORMACK, CLERK
By: *[Signature]* DEP CLERK

DAVID BRADLEY, et al.

PLAINTIFFS

VS.

**NO. 4:96-CV-1004 JMM
NO. 4:00-CV-00747 GTE**

**ARKANSAS DEPARTMENT
OF EDUCATION, et al.**

DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, Thomas and Diana Bradley, bring this action on behalf of their son, David, against Williford School District ("Williford") and the Arkansas Department of Education ("ADE"), Tom Courtway, Mike Crowley, and Marcia Harding. The latter are referred to collectively as the State Defendants.

The plaintiffs' claims against Williford are for not providing David Bradley with a "free appropriate public education" ("FAPE"); violation of § 504 of the Rehabilitation Act; violation of the Americans with Disabilities Act; and retaliation against plaintiffs for asserting their rights and creating a hostile environment. An additional claim for violation of David Bradley's privacy rights was dismissed at the close of plaintiffs' proof.

Plaintiffs asserted six claims against the State Defendants: (1) State Defendants failed to identify, adopt, acquire and disseminate promising educational practices to teach children like David; (2) State Defendants failed to provide an appropriate, integrated education to David which meets the state's own standards, including participation and progress in the general curriculum; (3) State Defendants violated the "45-day rule" with regard to the due process hearings; (4) State Defendants failed to afford families the right to compel and cross-examine

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witnesses at due process hearings; (5) State Defendants failed to correct a hostile environment within the school district which denied David FAPE; and (6) State Defendants disclosed private facts about David's individualized education program ("IEP") in violation of the Individuals with Disabilities Education Act ("IDEA"). All of the claims were dismissed except the class issues as to whether the State's comprehensive system of personnel development is in compliance with the IDEA and whether the State Defendants violated the 45-day rule and Plaintiff's individual claims that the state did not require the District to provide a FAPE and did not ensure David's teachers had the knowledge and skill necessary to provide David with an appropriate education.

The case was tried to the Court from February 23, 2004 through March 4, 2004 and all parties have submitted excellent post-trial briefs. After consideration of all of the evidence and the arguments of counsel, the Court finds in favor of the defendants. The complaint of the plaintiffs will be dismissed with prejudice.

The Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. David Bradley is a student with disabilities, specifically he is a high functioning student with autism, sometimes called Asperger's Syndrome. His intelligence and cognitive ability to learn is average or above.
2. Williford School District and the State of Arkansas Department of Education are recipients of federal funds for education and are covered by the IDEA and § 504.
3. In the fall of 1994, David was attending 7th grade in Williford. At that time, David was having trouble attending and participating in classes. He made verbal protests. His teachers did not know how to elicit his participation. David would not attend school without one

of his parents present. Williford suggested putting him in a self-contained classroom.

4. Williford agreed that:

David's current academic achievements in reading, math, written expression, science, social studies, and humanities is significantly lower than would be expected given his nonverbal intelligence quotient and grade placement.

David displays sensory processing difficulties with poor eye contact, atypical visual responses, auditory hypersensitivity, oral-motor hypersensitivity, and tactile defensiveness.

David experiences severe communication difficulties which include articulation errors and pragmatics characteristic of an autistic disorder.

Social behaviors such as waiting, turn taking, transitioning, negotiating, changing topics, finishing, initiating, flexibility, being quiet and modulating behavior in exciting situations are difficult activities for David.

5. Rita Lee, a Behavior Intervention Consultant observed David in class in January, 1995 and suggested steps for Williford to take.

6. Sidney Padgett, a consultant from the University Affiliated Program, attended IEP meetings in November, observed David at home, at school, and at an evaluation. She wrote a report detailing specific steps for Williford to take.

7. After the District placed David in a self-contained classroom at the IEP meetings in the Spring of 1995 for eighth grade, the Bradleys filed for a due process hearing in May.

8. Hearing Officer Robert Doyle held a prehearing conference on May 19, 1995 and July 14, 1995. At these conferences, the District Superintendent agreed to an IEP which had been prepared with the assistance of Sidney Padgett. David's IEP included "intensive" training for David's aide, training of all of David's teachers in his behavior modification plan,

occupational therapy, and assistive technology. The District agreed to use Ms. Padgett as a consultant to assist in implementing the IEP.

9. Exhibit A to the IEP, agreed to on July 14, 1995, states, right above the list of attendees:

The Educational Management Team will reconvene following the July 24, 1995 school board meeting to determine if the aide/aide scheduler proposed by the school district is appropriate to implement the IEP.

10. The School District hired Rhonda May for the aide position at the Board Meeting on July 24, 1995. Rhonda May was a recent graduate of Williford with no additional schooling or training. She had no experience with students with autism.

11. Rhonda May received pre-service training from Ms. Padgett prior to the beginning of school in August.

12. In March 1996 the District had an evaluation conducted by Lynn Stringfield of the Arkansas Special Education Resource Center. The report recommended using a Circle of Friends Support System and that Rita Lee be contacted for assistance in implementing this proposal.

13. In March 1996 the Bradleys filed an administrative complaint with the state ADE concerning Williford's failure to implement the July 1995 IEP.

14. The state investigation concluded that there was no requirement that input from the IEP team was necessary before the District employed the aide.

15. The state investigation concluded that the training of Rhonda May satisfied the requirement for "intensive" training.

16. In 1996 the Bradleys filed a complaint with the Federal Office of Civil Rights in the Department of Education that the Arkansas procedure of not counting time before prehearing conference by the Hearing Officer against the 45 day time limit violated IDEA.

17. The U.S. Department of Education wrote in October 1996 to the ADE confirming that prehearing conferences could not stop the clock from running.

18. In the Spring of 1996 Williford adopted an IEP for David's 9th grade (1996-97) school year which removed some of the specific detail of the 1995 IEP. As a consequence, the Bradleys filed another request for a due process hearing.

19. Hearing Officer Doyle held a prehearing conference and a due process hearing. Officer Doyle found no evidence to warrant a finding in favor of the Plaintiffs' on any justiciable issue.

20. At the time of the hearing, Arkansas law did not give hearing officers power of subpoena. Since the hearing, the Arkansas legislature has extended subpoena power to hearing officers and the subpoena issue is now moot.

21. For 1996-97 Williford hired Rita Goins, a relative of a school district employee, as a new aide for David.

22. In 1996-97 Alicia Starkey and Rita Lee conducted a training session.

23. In April 1997 the Bradleys filed a second administrative complaint, alleging that there had been no transition plan since the one developed in 1995 because the school said it was not allowed to develop a new plan while there was a due process hearing pending. It also alleged that the school had similarly refused to update David's 8th grade IEP to reflect the 9th grade classes he was taking.

24. The investigation team was headed by Marcia Harding.

25. The investigation was completed in June 1997. It was found that after the complaint was filed a transition plan was adopted in May 1997.

26. In the Spring of 1997 the Williford Superintendent gave a newspaper interview concerning Tom Bradley. The day after the interview was published, a pink toilet seat was placed in the area that Tom and Diane Bradley normally sat. During the year, students increased their teasing and harassment of David.

27. In the 1997-98 school year (10th grade) the hostile environment towards David increased. Several students threatened David and classmates started driving past his home making threats.

28. The Bradleys complained to the sheriff about the threats and two students were arrested. Both admitted in Court to the conduct, but the Court stated it was just a prank and both students returned to regular classes.

29. In December 1997 Mr. Bradley told the Superintendent that if David's education was not promptly improved he would sue him personally.

30. In retribution, Superintendent Evans filed criminal charges of terroristic threatening and disorderly conduct against Tom Bradley in December 1997 and obtained a restraining order prohibiting Mr. Bradley from being at the school.

31. In light of the hostile environment, David refused to go to school. The Bradleys requested home schooling based on a recommendation from Dr. Hartman. Williford refused to provide the requested schooling.

32. The Bradleys presented an evaluation from a psychologist, Dr. Zurkowski, that

David had school phobia and should not attend school. Williford continued to refuse to provide homebound instruction.

33. In February 1998 the Bradleys sought a due process hearing.

34. Williford charged Tom Bradley with truancy and had him arrested.

35. In March 1998 Tom Bradley was acquitted of the charges of terroristic threatening and disorderly conduct.

36. The Court found Tom Bradley guilty of truancy and threatened to jail him if David was not in school the next school day.

37. At the due process hearing, the hearing officer ordered Williford to provide off-site instructions to David. Because Williford continued to claim it needed a further evaluation before accepting that David had school phobia based on his autism, the officer ordered two hours of instruction twice a week at the Fire Department with the special education resource room teacher. The instruction at the Williford Fire Station began April 1, 1998.

38. The school's evaluation by Dr. Seiler agreed with the two previous evaluations that David should be provided home-based instruction. The hearing officer directed it be provided by a teacher "trained in teaching autistic students."

39. Williford designated Lee Anne Hutchins as the home-bound instructor for 11th grade, 1998-99, although she had no prior experience or training in teaching students with autism. She was qualified as an elementary grade teacher and was not certified or otherwise qualified to teach high school courses in Algebra I, American History or English.

40. Bradley filed another due process hearing in order to be reimbursed for speech therapy they had arranged and paid for David while he was out of school. Williford then agreed

to the reimbursements.

41. At the IEP meeting in August 2000 the Bradleys proposed that David be allowed to attend Black Rock Technical College until age 21 in order to complete his education. David completed classes at Black Rock Technical College in December 2000.

42. David Bradley graduated in December 2000.

43. Williford was the local education agency responsible for creating and implementing David's IEP under the IDEA.

44. Arkansas submitted a State Plan to the United States Department of Education ("USDOE") for fiscal years 1994-1996. USDOE approved this plan and issued funding for that period.

45. Beginning in 1997, states were allowed to submit assurances rather than a State Plan. The assurances submitted by Arkansas since 1997 have been approved by USDOE as well and funding has continued for the State of Arkansas.

46. ADE was monitored by USDOE in November 1999 and January 2000 and found to be in compliance with the requirements of the IDEA.

47. A comprehensive system of personnel development ("CSPD") is addressed in the State Plan, approved by USDOE. The Plan sets forth the policy of the State for the adoption and dissemination of promising educational practices for teaching disabled children and explains how the policy is carried out in Arkansas.

48. In compliance with the policies set forth in the approved State Plan, the State offers training statewide, including child specific training within a specific school district, and maintains a collection of current resources on a variety of teaching methods and disabilities.

49. ADE ensures that local education agencies throughout the State meet their responsibilities through monitoring procedures, complaint investigations and due process hearings.

50. ADE monitored Williford three times from 1994 to 2000. In 1994, Williford was found in substantial compliance in eleven out of thirteen issue areas. In 1997 and 2000, Williford was found in substantial compliance in thirteen of thirteen issue areas.

51. Plaintiffs filed numerous due process hearing requests against Williford to address David's IEP.

52. A hearing officer properly addressed each of the due process requests pursued by plaintiffs in a hearing.

53. Hearing officers have the authority and discretion to grant continuances at the request of a party and ADE cannot overrule the decision.

54. State Defendants were not responsible for the delays of any due process hearing decisions.

55. The hearing officer properly extended the 45-day timelines in plaintiffs' due process hearings.

56. Delays in the due process hearing decisions did not deny David FAPE.

57. State Defendants strive to ensure that 45-day timelines are met by training hearing officers on the 45-day requirement, assisting in scheduling hearings, if necessary, and reinforcing requirements through written correspondence.

58. The system utilized by ADE for providing impartial due process hearing systems, including impartial hearing officers, is set forth in the USDOE approved State Plan.

59. ADE does not employ full-time hearing officers, but rather contracts with individuals outside of the ADE and local education agencies (i.e., school districts) who meet specified professional qualifications (e.g., Juris Doctorate degree, experience in education sector, etc.).

60. Hearing officers are assigned to hearings on a rotational basis.

61. ADE regulations provide that a challenge may be made to the impartiality of the hearing officer in writing prior to the hearing.

62. No such challenge to a hearing officer was raised prior to any hearing involving plaintiffs and the education of their son and no objection to a hearing officer was raised during a due process hearing.

63. The right to compel and cross-examine witnesses is listed in the USDOE approved State Plan.

64. ADE has always maintained the right to compel witnesses within its control, which includes ADE employees, school district employees, cooperative employees and employees of a grantee or sub-grantee.

65. Plaintiffs never requested that the ADE or the hearing officer compel the attendance of a witness to a due process hearing.

66. None of the alleged incidents set forth in paragraphs 44 and 49 of the complaint filed in Case No. 4:00-CV-00747 GTE occurring within the community of Williford were ever brought to the attention of State Defendants in any of the administrative complaints or due process hearing requests filed by plaintiffs.

67. State Defendants have no authority to control the actions of a community as

described in paragraphs 44 and 49 of the complaint filed in Case No. 4:00-CV-00747 GTE.

68. Arkansas' comprehensive system of personnel development complies with the IDEA.

69. The State of Arkansas has proper procedures for the due process hearings in place.

70. State Defendants have provided impartial hearing officers for due process hearings.

71. State Defendants did not contribute to the maintenance of a hostile environment for the Bradley family in Williford and State Defendants had no authority to remedy the perceived hostile environment in Williford for the Bradley family.

72. The Williford School District developed and adopted individual education plans reasonably calculated to enable David to receive educational benefits.

73. The Court credits the testimony of Dr. Howard Knoff wherein following a review of David's test scores he opined that David made educational progress.

74. Williford provided appropriate training for its personnel in the implementation of the IEP's.

75. Williford provided David personalized instruction with sufficient support services to permit him to benefit educationally.

76. Williford provided David with a FAPE.

77. Plaintiff's failed to prove an objectively hostile education environment. Although the actions of the Williford superintendent were at times less than supportive, when examining the totality of the circumstances, the Court finds that Plaintiffs have failed to prove a hostile environment.

Conclusions of Law

1. State Defendants did not violate the IDEA.
2. State Defendants did not violate 42 U.S.C. § 1983.
3. Williford School District did not violate the IDEA by failing to provide a free appropriate education in the least restrictive environment for David.
4. Williford School District did not violate the IDEA.
5. Williford School District did not discriminate against David on account of his disability.
6. Williford School District did not violate §504 of the Rehabilitation Act or the Americans with Disabilities Act.

Conclusion

For these reasons, Judgment will be entered in favor of Defendants. Plaintiffs' complaint is dismissed with prejudice.

IS SO ORDERED this 9 day of September, 2004.


James M. Moody
United States District Judge

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UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
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September 13, 2004

* * MAILING CERTIFICATE OF CLERK * *

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