

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE**

E.C., a Minor Student,)
By and Through His Parent B.C. and)
B.C., Individually,)
Plaintiffs,)
)
v.)
)
KNOX COUNTY BOARD OF EDUCATION)
and KNOX COUNTY,)
)
)
)
Defendants.)

Case No. _____

COMPLAINT

Plaintiffs E.C., and B.C., in her own capacity and as the parent of E.C., by and through their attorney, hereby submit this Complaint against Knox County and the Knox County Board of Education. In support thereof, Plaintiffs allege the following:

INTRODUCTION

1. This is an action under the Individuals with Disabilities Education Act ("IDEA") to timely appeal part of the decision of an administrative law judge ("ALJ") issued December 9, 2019. The Final Order from the hearing is attached as Exhibit A.
2. This is also an action for attorney fees in accordance with IDEA. Per the Final Order from the due process hearing, Plaintiffs are the prevailing parties and are entitled to their reasonable attorney fees and costs under 20 U.S.C. §1415.

PARTIES, JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over the federal law claims pursuant to 28 U.S.C. §1331 and 20 U.S.C. §1400 et. seq. and specifically pursuant to 20 U.S.C. §1415(i)(2) and (i)(3).

4. Venue is properly situated in this Court as authorized by 28 U.S.C. §1391 and 1392.

5. E.C. is a minor child who, at times relevant hereto, attended Knox County's schools. E.C.'s initials are used to protect his privacy. E.C. is an 8th grade student who has been diagnosed with attention deficit hyperactive disorder ("ADHD"). Because of his disability E.C. qualifies for special education and related services as a student with an Other Health Impairment ("OHI") and a Language Impairment as defined by the IDEA.

6. B.C. is the mother of E.C. and was, at all relevant times, a resident of Knox County, Tennessee.

7. Knox County and Knox County Board of Education (collectively "KCS") are the local education authorities ("LEA"), a school system charged with ensuring the federal Individuals with Disabilities Education Act (IDEA) is adhered to. In exchange for the receipt of federal money, KCS has agreed to comply with IDEA, and pursuant to IDEA, KCS has the obligation to assure the provision of a free, appropriate public education in the least restrictive environment, as well as certain due process procedures relative to students, including E.C., who are eligible for services under IDEA.

STATEMENT OF FACTS

8. Plaintiffs reallege and incorporate by reference paragraphs 1-7 above with the same force and effect as if fully set out in specific detail herein below.

I. Background

9. E.C. began the 2019-2020 school year at West Valley Middle School, a school within the KCS district.

10. His Individualized Educational Program (“IEP”) in effect at the time included the following direct services: 300 minutes/week of special education services in a co-taught English Language Arts (“ELA”) and 300 minutes/week of special education services for pre-vocational and math support.

11. On September 19, 2019, E.C. went to his locker between classes and noticed what he thought was marijuana. E.C. did not know the marijuana was there prior to finding it. The marijuana was placed in a locker that did not have a lock on it without E.C.'s knowledge or consent. E.C. told his teacher at the end of class what he saw in his locker.

12. E.C. was subsequently suspended pending the outcome of a manifestation hearing.

13. The manifestation determination review was held on September 20, 2019. Without thoroughly considering relevant factors, including E.C.'s disabilities and the impact they have on his social interactions, executive functioning skills, and impulsivity, the school members of the IEP team determined that E.C.'s behavior was not a manifestation of his disability. E.C.'s parents disagreed with the team's decision.

14. On September 25, 2019, the school held a Disciplinary Hearing with Assistant Principal Rachel Harmon. Ryan Milani, the assistant principal from Farragut High School, served as the hearing officer. E.C. and both of his parents also attended. After a short hearing, the hearing officer determined that E.C. would be suspended for 180 days under the zero-tolerance policy for S17, Level 5 behavior.

15. On September 27, another IEP team meeting was held to change E.C.'s placement to the Ridgedale Alternative School. In addition to changing the school placement, KCS stripped all 600 minutes/week of E.C.'s direct special education services and replaced them with 75 minutes/week of 'consultative service' with a special education teacher.

16. B.C. did not realize that the direct service hours had been removed until she received the Prior Written Notice ("PWN") on October 2, 2019. The PWN states that "[d]ue to smaller student/teacher ratios at the Alternative school, the IEP team agreed that the General Education setting with consult support would be the best support for E.C." B.C. disagrees that a general education classroom with a small class size taught by a general education teacher is comparable to a general education classroom that includes both a general education teacher and a special education teacher.

17. The reduction in services for the purposes of administrative convenience is harmful to E.C. and fails to provide him with the free and appropriate public education he is entitled to under federal law.

II. The Due Process Hearing

18. The IDEA provides procedural safeguards for children with disabilities and their parents with respect to the provision of a free, appropriate public education. 20 U.S.C. § 1415(a). One such procedural safeguard is the opportunity for any party to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" or set forth any alleged violation. 20 U.S.C. §1415(b)(6)(A)-(B).

19. Another set of procedural safeguards applies when school personnel decide to order a change in placement for a child with a disability who violates a code of student conduct. See 20 U.S.C. § 1415(k). If school personnel seek to order a change in placement that would exceed ten school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, then relevant disciplinary procedures applicable to children without disabilities may be applied to the child with the disability in the same manner, and for the same duration, as they would be applied to the child without disabilities -- with some key statutory exceptions. 20 U.S.C. § 1415(k)(1)(C).

20. The IDEA provides for a "manifestation determination" within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct. 20 U.S.C. § 1415(k)(1)(E). As part of the manifestation determination, the local educational agency, the parents, and relevant members of the child's IEP team must "review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents" to determine if the conduct in question was (1) caused by, or had a direct and substantial relationship to, the child's disability, or (2) the direct result of the local educational agency's failure to implement the child's IEP. 20 U.S.C. § 1415(k)(1)(E)(i). If the parents of a child with a disability disagree with any decision regarding placement or with the manifestation determination, they may request a hearing. 20 U.S.C. § 1415(k)(3)(A).

21. B.C. requested a due process hearing on behalf of E.C., in accordance with IDEA and corresponding federal and state regulations, on October 11, 2019.

22. In their due process complaint, E.C. alleged that (1) the school personnel that participated in the manifestation review determination (“MDR”) failed to review all relevant information in E.C.’s file, which included his IEP, any teacher observations, information from his treating physician and information provided by his parents before making the determination that E.C.’s behavior was not a manifestation of his disability; (2) the IEP as amended on September 27, 2019 fails to provide E.C. with FAPE; and, (3) KCS violated Section 504, 29 U.S.C. § 794 and the Americans with Disabilities Act by discriminating against him on the basis of his disability.

23. As a proposed remedy for KCS’ IDEA violations, the Plaintiffs requested an order which would enjoin KCS from removing the direct special education services from E.C.’s IEP and order that the “Stay Put” provisions of the IDEA and its regulations apply in this case. B.C. also requested that KCS be ordered to (1) determine that the marijuana incident was a manifestation of his disability; (2) expunge the disciplinary action from E.C.’s educational record; (3) restore E.C.’s placement to West Valley Middle School and reinstate the special education services that were removed from his IEP; (4) pay her attorney a reasonable fee for their services at the rate of Two Hundred and Fifty Dollars (\$250) per hour, plus costs and other related fees within thirty (30) days of entering into an agreement; and (5) provide any other relief that the ALJ deems appropriate.

24. A due process hearing was held on November 18, 2019 and November 19, 2019. After both parties had presented evidence, the ALJ verbally communicated his preliminary conclusions. The administrative law judge issued a written opinion on December 9, 2019.

25. In his Final Order, the administrative law judge determined that: (1) the attendees at the MDR meeting correctly determined that E.C.’s conduct was not a manifestation of

his disability; (2) the September 27th IEP lacks specificity to show it has been providing E.C. with access to the general education curriculum and that it has been allowing E.C. to make progress on his goals in accordance with 34 C.F.R. 300.530(d)(1); (3) the September 27th IEP is a virtual carbon copy of the prior IEP with the only change being the related services section wherein E.C.'s hours and services were reduced on the face of the document; and (4) the September 27th IEP does not specify any reason or detail regarding the provision of services to E.C. that would show E.C. could make progress at Ridgedale Alternative School toward the IEP goals despite the reduction in services on the face of the document.

26. Based on his determinations, the ALJ ordered the following relief: (1) that upon entry of the order, KCS will enroll E.C. at West Valley Middle School and that the IEP in effect for E.C. prior to the September 27, 2019, amendment will be in effect upon E.C.'s return to West Valley Middle School; and (2) that the Petitioners shall be awarded reasonable attorney's fees in accordance with 34 CFR § 300.517.

27. Although the ALJ found that KCS violated E.C.'s rights by designing and implementing an IEP that did not provide FAPE, he did not order KCS to provide any compensatory education for the period of time that E.C. was deprived of the services that were in effect prior to the September 27th IEP.

CAUSES OF ACTION

I. Plaintiffs' Claims under IDEA—Appeal

28. Plaintiffs reallege and incorporate by reference paragraphs 1-27 above with the same force and affect as if fully set out in specific detail herein below.

29. E.C. is a student with disabilities as that term is defined by IDEA. He was, and is, eligible for a FAPE under 20 U.S.C. §1401, et. seq.

30. B.C. is the parent and legal guardian of E.C. who received special education services under IDEA pursuant to 20 U.S.C. §1401. The parent brings this action in her own right and on behalf of E.C.

31. Under the IDEA, Defendants were responsible for providing E.C. with a free, appropriate public education, as described herein. KCS failed to comply with the IDEA, thus requiring Plaintiffs to utilize IDEA's due process procedures. As a result of the Defendants' actions, E.C. has suffered extreme harm including, but not limited to, loss of educational opportunities and programs and denial of due process. E.C. has been denied meaningful and equitable educational opportunities and programs, as guaranteed by federal and state law.

32. The ALJ found that KCS violated E.C.'s rights to FAPE. However, he did not properly consider the available administrative remedies that could fully compensate E.C. for deficits in his educational programming.

33. This Court has the authority to supplement the ALJ's Order and fashion appropriate relief. For IDEA violations, the district court may award "appropriate" compensatory relief. 20 U.S.C. §1415(i)(2)(C)(iii); *Todd D. ex rel. Robert D. v. Andrews*, 933 F.2d 1576,

1584 (11th Cir. 1991). “Compensatory awards should place children in the position they would have been in but for the violation of the Act.” *Id.*

34. The ALJ also erred in determining that KCS was correct in finding that the underlying behavior that led to his expulsion was not a manifestation of his disabilities.

35. Plaintiffs hereby appeal all issues raised in the underlying due process complaint on which they did not prevail or obtain relief for, pursuant to the Administrative Law Judge’s decision, and they seek complete relief under 20 U.S.C. §1415.

II. Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 19173.

36. E.C. is a person with a disability, a history of a disability, and is perceived as disabled pursuant to 42 U.S.C. §12102, and 29 U.S.C. §706. B.C. has a relationship and association with E.C. of which Defendants are aware, in that B.C. is the parent of E.C. KCS is a public entity in accordance with 42 U.S.C. §12131(1). It receives federal financial assistance pursuant to §504.

37. Plaintiffs are otherwise “qualified”. 29 U.S.C. §794; 34 C.F.R. 104.3; 42 U.S.C. §12132; 34 C.F.R. 35.104.

38. KCS is both a recipient of federal financial assistance and a “public entity” and thus subject to compliance with Section 504 and the ADA. 42 U.S.C. §12131(1)(B).

39. Defendants have intentionally, and with willful and malicious disregard of Plaintiffs’ federally protected rights, discriminated against Plaintiffs based on E.C.’s disabilities and/or B.C.’s association with a person with a disability. Defendants have acted in bad faith and exercised gross misjudgment.

III. IDEA 20 U.S.C. 1415—Attorney Fees

40. 20 U.S.C. 1415 assures an award of reasonable attorney fees as part of the costs for a “prevailing party” in an impartial due process hearing conducted under IDEA.

41. E.C. (and his parent) meet the definition of “prevailing party” under IDEA.

42. As a result of Plaintiffs’ pursuit of their rights through an impartial due process hearing under IDEA, KCS was ordered to provide E.C. with substantial relief which constituted a change in the legal relationship of the parties.

43. Since Plaintiffs obtained relief based on the merits of their substantive claims, they meet the definition of “prevailing party” under IDEA.

44. E.C.’s counsel has expended a great amount of time pursuing E.C.’s rights, and counsel continues to be required to spend additional time pursuing fees and assuring the implementation of the hearing officer’s decision.

45. The hourly rate and time and labor required in this action was reasonable and is further based upon the skill and experience of the attorneys. The hourly rate is also commensurate with a range of rates charged by attorneys in civil rights actions with comparable skill and responsibility in discrimination and education litigation. The costs were necessary to successfully complete the hearing.

RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court assume jurisdiction of this action and:

1. After reviewing all relevant evidence, conduct a modified de novo review of this matter and find in favor of Plaintiffs on all issues.
2. Enter an Order requiring KCS to make Plaintiffs whole by awarding E.C. compensatory education and/or the educational services he would have received in the absence of KCS' unlawful conduct.
3. Enter an Order requiring KCS to expunge the disciplinary action from E.C.'s record.
4. Issue a declaratory judgment that KCS' substantive educational practices, policies, procedures and conditions are violative of Plaintiffs' rights as secured by IDEA.
5. Issue a declaratory judgment that KCS' actions and inactions in failing to ensure that the its educational program provided full and equal services in compliance with federal nondiscrimination standards are violative of Plaintiffs rights as secured by the Title II of the Americans with Disabilities Act, 42 U.S.C. §12101, et. seq. and the Rehabilitation Act of 1973, §504, 29 U.S.C. §794.
6. Enter an Order requiring Defendant to be responsible for payment of Plaintiffs' damages including compensatory damages and reimbursement for their out-of-pocket expenses.
7. Award B.C.'s attorneys' fees and costs associated with the underlying due process litigation.
8. Award B.C.'s attorneys' fees and costs as reimbursement for both the time spent pursuing the instant litigation, which was necessary to defend the administrative law court judgment and secure the aforementioned attorneys' fees and costs, as well for the

reasonable attorneys' fees and costs necessary to assure implementation of the administrative law judge's decision and Order.

9. Award Plaintiffs such relief as the Court deems appropriate. 20 U.S.C. §1415.
10. Grant such other relief and benefits as the cause of justice may require.

RESPECTFULLY SUBMITTED, this the 3rd day of January 2020.

Attorneys for the Plaintiffs:

/s/ Michael F. Braun
MICHAEL F. BRAUN (BPR 032669)
5016 Centennial Boulevard, Ste.200
Nashville, Tennessee 37209
(615) 378-8942
Fax: (629) 255-4445
Email: mfb@braun-law.com

/s/ Cheryl Cheffins
CHERYL CHEFFINS (BPR 032032)
PRO HAC PENDING
5016 Centennial Boulevard, Ste.200
Nashville, Tennessee 37209
(615) 495-0780
Fax: (615) 250-3497
Email: cheryl.cheffins@gmail.com