

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WILLIAM SAMMONS and JANIE SAMMONS,
as legal guardians of A.S., an incapacitated adult,

Plaintiffs,

Case No. 8:04-CV-02657-
SCB-EAJ

vs.

POLK COUNTY SCHOOL BOARD

Defendant

POLK COUNTY SCHOOL BOARD'S ANSWER TO COMPLAINT FOR
INJUNCTIVE AND EQUITABLE RELIEF

Defendant POLK COUNTY SCHOOL BOARD (hereinafter "School Board" or "Defendant"), answers the Complaint ("Complaint") of Plaintiffs WILLIAM SAMMONS and JANIE SAMMONS, as legal guardians of A.S., an incapacitated adult ("Sammons"), filed on or about December 9, 2004, as follows:

JURISDICTION AND VENUE

1. The School Board denies the allegations contained in paragraph 1 of the complaint.
2. The School Board denies that this court has jurisdiction as alleged in paragraph 2 of the complaint.
3. The School Board admits that venue is proper as alleged in paragraph 3 of the complaint.

4. The School Board admits that Plaintiffs are the legal guardians of A.S., but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 4 of the complaint, and accordingly, denies them.

5. The School Board admits that A.S. is a nineteen-year-old male with Asperger's syndrome, and that A.S. is for the most part non-verbal. The School Board denies the remaining allegations in paragraph 5 of the complaint.

6. The School Board admits that A.S. received exceptional student educational (ESE) services from the Polk County School District from kindergarten through graduation with a regular high school diploma. The School Board denies the remaining allegations in paragraph 6 of the complaint.

7. The School Board admits that it is a body politic elected by the voters of Polk County to operate and control public K-12 education within the county as part of the State system of public education and that its responsibility includes providing educational services for exceptional students. The School Board denies that there is any constitutional duty to provide educational services for exceptional students that is greater than its Florida Constitutional duty to provide educational services to non-exceptional students. The School Board denies the remaining allegations in paragraph 7 of the complaint.

8. The School Board admits the allegations contained in paragraph 8.

SUMMARY OF THE ISSUES

9. The School Board denies the allegations contained in paragraph 9.

10. The School Board denies the allegations contained in paragraph 10.

11. The ALJ's opinion is attached to the complaint as Exhibit A and speaks for itself. To the extent Plaintiffs' allegations contained in this paragraph 11 are not set forth in the opinion of the ALJ, Defendant denies them.

12. To the extent that this paragraph 12 contains any allegations, the School Board denies them.

13. The School Board denies the allegations contained in paragraph 13.

14. The School Board denies the allegations contained in paragraph 14.

FACTS AND PROCEDURAL HISTORY

15. The School Board admits the allegations contained in paragraph 15.

16. The School Board denies the allegations contained in paragraph 16.

17. The School Board denies the allegations contained in paragraph 17.

18. The School Board lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the complaint, and accordingly, denies them.

19. The School Board denies the allegations contained in paragraph 19.

20. The School Board denies the allegations contained in paragraph 20.

21. The School Board admits that A.S. earned a regular high school diploma and met the same standards as his non-disabled peers.

22. The School Board admits that Plaintiffs' were informed on February 23, 2004 that A.S. would in all likelihood graduate in May of 2004 when Plaintiffs attended an annual IEP meeting. The School Board denies the remaining allegations contained in paragraph 22.

23. The School Board admits that it issued to Plaintiffs an Informed Notice of Refusal dated February 23, 2004 and that Plaintiffs refused to sign the IEP. To the extent that this paragraph contains any other allegations, the School Board denies them.

24. The School Board admits that Plaintiff wrote a letter dated April 20, 2004. The letter speaks for itself. Plaintiff denies the remaining allegations in this paragraph 24.

25. The School Board admits that it did not provide a written Informed Notice of Refusal in response to Plaintiffs' April 20, 2004 letter. The School Board denies that any such response was required. To the extent that this paragraph contains any other allegations, the School Board denies them.

26. The School Board admits that it responded by letter of May 7, 2004. The letter speaks for itself. To the extent that this paragraph contains any other allegations, the School Board denies them.

27. The School board admits the allegation contained in paragraph 27.

28. The School Board denies the allegations contained in paragraph 28.

29. The School Board lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the complaint, and accordingly, denies them.

30. The School Board lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the complaint, and accordingly, denies them.

31. The School Board admits that Plaintiffs' counsel wrote a letter that was received by The School District on Friday May 14, 2004 by facsimile. The letter speaks for itself. To the extent that there are other allegations contained in this paragraph 31, the

School Board lacks knowledge or information sufficient to form a belief as to the truth of the allegations and accordingly, denies them.

32. The School Board lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the complaint, and accordingly, denies them.

33. The School Board admits the allegations contained in paragraph 33.

34. The School Board admits the allegations contained in paragraph 34.

35. The School Board admits the allegations contained in paragraph 35.

36. The School Board admits the allegations contained in paragraph 36.

37. The School Board admits the allegations contained in paragraph 37.

38. The orders of the ALJ speak for themselves. To the extent that Plaintiffs are alleging facts not set forth in the orders, the School Board lacks knowledge or information sufficient to form a belief as to the truth of those allegations and accordingly, denies them.

39. The record of the hearing speaks for itself. To the extent that Plaintiffs are alleging facts not set forth in the record, the School Board lacks knowledge or information sufficient to form a belief as to the truth of those allegations and accordingly, denies them.

40. The School Board admits the allegations contained in paragraph 40.

41. The final order attached to the complaint speaks for itself. To the extent that Plaintiffs are alleging facts not set forth in the final order, the School Board denies those allegations.

42. The School Board admits the allegations contained in paragraph 42.

43. The School Board admits that the attorneys signing the complaint have been retained by the Plaintiffs. The School Board lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 43 and accordingly, denies them.

44. The School Board lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 and accordingly, denies them.

45. The School Board denies the allegations contained in paragraph 45.

COUNT I- REVIEW OF ADMINISTRATIVE DETERMINATIONS UNDER IDEA

46. The School Board incorporates its admissions and denials by reference herein to paragraphs 1-45 above.

47. The School Board admits the allegations contained in paragraph 47.

48. The School Board denies the allegations contained in paragraph 48, including subparagraphs a through f, inclusive.

49. The School Board denies the allegations contained in paragraph 49.

50. The School Board denies the allegations contained in paragraph 50.

COUNT II- INJUNCTIVE RELIEF UNDER IDEA

51. The School Board incorporates its admissions and denials by reference herein to paragraphs 1-45 above.

52. The School Board admits the allegations contained in paragraph 52.

53. The School Board admits that Plaintiffs wanted A.S.'s pre-graduation placement to be continued post graduation. The School Board denies all other allegations contained in paragraph 53.

54. The School Board admits that it did not agree to maintain A.S.'s pre-graduation placement post graduation. The School Board denies all other allegations contained in paragraph 54.

55. The School Board denies the allegations contained in paragraph 55.

COUNT III – THE CIVIL RIGHTS ACT

56. The School Board incorporates its admissions and denials by reference herein to paragraphs 1-45 above.

57. The School Board denies the allegations contained in paragraph 57 of the complaint.

58. The School Board denies the allegations contained in paragraph 58 of the complaint.

COUNT IV – REVIEW OF ADMINISTRATIVE DETERMINATIONS UNDER STATE LAW

59. The School Board incorporates its admissions and denials by reference herein to paragraphs 1-50 above.

60. The School Board denies the allegations contained in paragraph 60.

61. The School Board lacks knowledge or information sufficient to form a belief as to the truth of any allegations contained in paragraph 61 and accordingly, denies them.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have not exhausted their administrative remedies.

SECOND AFFIRMATIVE DEFENSE

The Complaint and each and every claim set forth therein fail to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

No cognizable cause of action exists under the Civil Rights Act as pled in Count III.

FOURTH AFFIRMATIVE DEFENSE

No cognizable cause of action exists under Count IV as pled.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and or causes of action are barred, in whole or part, under the doctrines of laches, estoppel, waiver and/or unclean hands.

SIXTH AFFIRMATIVE DEFENSE

After A.S. graduated from high school with a regular diploma, the court is without jurisdiction to conduct an after-the-fact review of whether A.S. received a FAPE.

SEVENTH AFFIRMATIVE DEFENSE

After A.S. graduated from high school with a regular diploma the court is without jurisdiction to conduct an after-the- fact review of whether A.S. met the requirements for a high school diploma.

EIGHTH AFFIRMATIVE DEFENSE

Defendant reserves all affirmative defenses under rule 8 (c) of the Federal Rules of Civil Procedure, and any other defenses, at law or in equity that may now exist or in the future be available based on discovery and further factual investigation in this case.

NINTH AFFIRMATIVE DEFENSE

As A.S graduated from the public school system with a regular diploma, the school district is not obligated to provide any additional educational opportunities and thus A.S.'s claims should be dismissed.

TENTH AFFIRMATIVE DEFENSE

The Federal courts do not have jurisdiction to determine whether a student's receipt of a high school diploma is valid.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the equitable doctrine of laches.

TWELTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by waiver on the part of Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs waived any claim against Defendant by not discharging their own duties owed to Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations.

WHEREFORE, Defendant prays:

1. That the complaint filed by Plaintiffs be dismissed in its entirety with prejudice;
2. That judgment be entered in favor of Defendant and against Plaintiffs, and that Plaintiffs be denied all relief requested in their complaint;
3. That the Court award Defendant its costs and expenses in this action; and

4. That the Court grant Defendant such other and further relief as it may deem just and proper.

Dated: January 14, 2005

By: s/ G. Russell Petersen
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CERTIFICATE OF SERVICE

I certify that on January 14, 2005, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: POLK COUNTY SCHOOL BOARD'S ANSWER TO COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF. I further certify that I mailed the foregoing document, First Class, U.S. Mail, postage prepaid to:

Timothy W. Weber, Esquire
Battaglia, Ross, Dicus & Wein, P.A.
980 Tyrone Boulevard
Post Office Box 41100
St. Petersburg, Florida 33743

s/ G. Russell Petersen
