

Due Process Hearing

Closing Statement

by

Josh Koch

This case is not clear cut. It goes into a part of the law that has been debated amongst many. This is simply a matter of eligibility. Unfortunately these decisions never tend to be simple. When we are reading through the law and focusing on the text, we lose sight of what we should be focusing on, the child. And because this is not a clear cut decision, it is important to think outside the box and look at the big picture. Most of all, it is important to remember the *purpose* of the law: To ensure that all children with disabilities have available to them a free appropriate education that emphasizes special education and related services designed to meet their *unique needs* and prepare them for *further education* and independent living.

The school district argues that they do not feel I am a child *in need of special education and related services*. Also they argue that under OHI, my disability is not *adversely affecting my educational performance*. It is important to note, that IDEA defines special education as specially designed instruction which is defined as *adapting, as appropriate to the needs of an eligible child under this part, the content, methodology or delivery of instruction*. The district has provided “provisions” for myself, listed in School District 31. These provisions *are* specially designed instruction as defined by IDEA. The instruction process not only involves the actual teaching, but also includes practice with the material and assessment of the material. If students were simply “taught” and not given practice or assessment, they would not learn and therefore it would not be instruction. Also by providing these accommodations, the district must believe that my disability is having an impact on my educational performance. If they did not believe that, it would be unfair to provide these provisions. For whatever reason the school district simply does not wish to find me eligible under Section 504 or IDEA.

The district raised a point during the hearing process, that the courses I selected were challenging. They inferred that by taking lower courses the trouble I am experiencing would not be as evident. All of the teachers who were presented as witnesses from both parties agreed that I was in the right courses. In fact, Miss Shopp (Director of Pupil Services), also agreed that I was in the right courses. The impact of the disability does not and will not stop due to a different course selection. Students with disabilities should not be forced to “dumb down” their education to accommodate where the schools will not. Further education facilities like to see students take demanding courses. Since part of the purpose of IDEA is to prepare students for further education it is important to appropriately accommodate these students with disabilities.

The district fails to see that the outcome of my good grades comes from me accommodating myself. I have sacrificed things that I enjoy in life, things that I used to do, to make sure my grades are okay. This is wrong. Students are not suppose to be the ones accommodating, the schools are. I spend eight hours of homework every night, from four in the evening until midnight. The impact the disability has is that it slows me down. It is not that I can't get or can't understand the material. It simply that it takes me longer to process everything. This is harming my health, my social life and my happiness. Furthermore, these sacrifices have driven into a state of major depression. I no longer find the enjoyment out of the things I used to, and that is frightening. I am not an attorney, I am not an adult, I am child. And for a school district to put a child through is wrong. And I believe I have to stand up for what I feel is wrong.

Testing aside, Miss Shopp and Miss Ravert say my disability is not impacting my education and I say it is. I have lived and will have to live with this disability for the rest of my life. I know myself and I know my disability. Miss Shopp and Miss Ravert are not Josh Koch. They cannot say how this disability is impacting me because they can't know. They are not the ones with disability. In cases of students who are young or students with mental retardation, they might not be able to speak for themselves. I am 17 year old student, and I am *telling* you, that this disability is impacting me. In this case, we have to give the child's input due weight. I know what the average student goes through and I know what I go through and there is a world of difference. No one can know what a person with disability is going through unless they themselves have that disability. How can the school tell me that my disability tell me that my disability is not impacting my education?!

Most importantly, a year ago I might not have been found eligible under IDEA. However, this past year there have major changes because of cases like these. The first change, is the listing of Tourette Syndrome under OHI. This was not put in the law by convenience, but was put there because students with TS were being misclassified and not getting the services they needed. Secretary Spelling recognized this in August of 2006. The next major change in IDEA is the clarification that *a child can advance steadily from grade to grade, without failing grades, and still be classified as a child with a disability*. This change indicates that students can still have good grades and at the same time be impacted by their disability. Thirdly, the new language in the regulations talks about the functional and developmental needs of the child. My health has been worse, my social life has been corrupted and my happiness is gone. Are these not functional and developmental needs? All of these major changes encompass this case. These happened to prevent what I am going through right now. Please don't let this continue happen.