

OREGON PARENTS UNITED
A Parent Education and Advocacy Organization
Serving the Needs of Children with Hidden Disabilities

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Carla French, Attorney at Law
PO Box 843
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Dear Ms. French:

We are writing you today with deep concern over the charges brought against Kevin Burns by the Salem/Keizer School District. We are co-founders of Oregon Parents United (OPU). OPU is a statewide organization that has led the way for parent education, advocacy and special needs student support for children with hidden disabilities. We maintain a website at

<http://www.oregonparentsunited.org>.

Susana was an early member of OPU. She moved swiftly to establish her political leadership presence in Salem and statewide through her membership on the State Advisory Council on Special Education on behalf of their children and all children in special education. She was chosen for training and community leadership by the US Department of Education funded Partners in Policy Making program. Susana serves her community and the state in her capacity as a special education and student/parents' right advocate. An attack of this kind on her is an attack on all such advocates and community leaders.

Developments in this case are being watched nationally. With the present ugly "no tolerance" mood in Washington, echoed in LRP publications (primary legal guidance materials relied upon by school attorneys), what happens in Kevin's case will have national ramifications. It's hard for us to believe that the district attorney wishes to build her reputation and stake her political future on the back of such cases. If the district is permitted to conduct other of its special education behavioral issues affairs through the local courts, such may be the case.

Susana Ramirez's condition appears no different than any other parent against whom a school district--in collusion with law enforcement--retaliates because of the parent's exercise of fundamental rights guaranteed by federal special education statutes and regulations. What has shocked us both is that this blatant act of intimidation is being perpetrated against such a visible community and state leader.

It is clear to us that the school district, knowing of Susana's personal vulnerability, has suddenly moved to make an example of her in a carefully orchestrated zero-tolerance play against parent and citizen involvement in special education advocacy. Her son's behavioral challenges have been known and unaddressed by an appropriate Behavioral Intervention Plan for over two years. It is the duty of the school system to develop such plans when student behavior has become a

disciplinary issue. This the district has failed to do. Without warning, the district has chosen to foist the results of its incompetence on the criminal justice system. The complaints do not belong there.

The child is not a criminal. He is autistic.

All of the acts charged are direct manifestations of his autism, behaviors that should have been addressed through positive behavioral intervention as mandated by IDEA (PL 105-17). Instead of disciplinary actions culminating in special education administrative proceedings such as specially called IEP Team meetings and a Manifestation Determination Hearing preceded by a federally mandated Functional Behavioral Assessment, the district has engaged in multiple acts of non-compliance with federal and state special education law by failing to provide this child FAPE (free appropriate public education) through its bypass of federally guaranteed student/parent due process rights. It has instead turned its failure to act appropriately regarding disabled student behavior over to a system unprepared to deal sensitively with these issues. In its initial passage and continued re-authorization of special education law due process protections, Congress did not anticipate such a wholesale flouting of the law.

The district is engaged in an unmistakable political power play that threatens the regional and statewide Hispanic community and the Salem regional concerned parent special needs movement. Kevin Burns has already become a symbol to the autism community in Oregon. Should Oregon's response be knee-jerk school district complaints to the justice system for relief, it will scare and intimate other parents watching this case from coming forward to seek help from school systems receiving federal and State monies promising to serve children on the autism spectrum.

The recently passed federal education acts, now in conference in Congress, wipe out virtually all protections for special education students for whom behavioral intervention plans are neither in place nor working. They elevate the Manifestation Determination Hearing to a high-stakes event of even greater significance than the other administrative legal proceedings governed by special education law. No such hearing has taken place. No legally defensible, competent Functional Behavioral Assessment has been conducted. That the district chose not to follow the clear intent of Congress regarding challenging behaviors and discipline in IDEA is very evident.

If the bills in Congressional conference committee pass in their present form, it may be necessary for parents to send notice through attorneys to their school district citing Gebser v. Lago Vista Independent School District, 524 US 274, and Davis and Monroe County Board of Education, 119 S.Ct. 1661, both of which establish the standard of positive duty of school districts to proactively prevent harassment, intimidation, and official malfeasance while addressing challenging behavior through appropriate educational and administrative intervention. Whether the behaviors in question are those of the student acting on his own or in response to student bullying or teacher and administrator incompetence in developing an effective positive behavioral intervention plan, this matter should never have been referred to law enforcement authorities. Even with the likely passage of this "educational reform," schools are not exempt from being sued for official acts of retaliation and intimidation if an Office of Civil Rights complaint is filed. It may well be that because of the joining of forces between school districts and the justice system, that both the public schools and local law enforcement might find themselves in federal court to answer for their actions which violate fundamental civil rights protections. We understand that Section 504 of the Vocational Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990--as they apply to IDEA and official acts of intimidation and retaliation as responses to student/parent invocation of due process protections--are still in force in the Ninth USCCA.

For discussion of official retaliation in instances where parents invoke their procedural civil rights, see OCR DOCKET NUMBER: 03961038.RES, LOF ISSUE DATE: 02/25/99, NAME OF SIGNER: Robert A. Ford, In Re Prince George's County School District, found at

<http://www.ed.gov/offices/OCR/letters/princegcpsres.html>

Of special note is the following language:

Please be advised that 34 C.F.R. Section 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), which is incorporated by reference in the Section 504 regulation, at 34 C.F.R. Section 104.61, prohibits the harassment or intimidation of individuals who file complaints with OCR and those who cooperate with our investigation. Such acts of retaliation are also prohibited under the ADA regulation at 28 C.F.R. Section 35.134(a).

This federal anti-intimidation/anti-retaliation policy still applies to all cases in which parents exercise their due process rights.

It has been our experience that Region X OCR is a toothless tiger. Nevertheless, it might be necessary to file a complaint with this so-called enforcement arm of the US Department of Education to protect Susana Ramirez's rights. I am sure you would encounter no shortage of attorneys willing to assist you in this matter. In that regard, we urge you to contact the Executive Director of the Council of Parent Attorneys and Advocates, Mr. James Rosenfeld, for assistance in contacting other parent attorneys familiar with these issues. Mr. Rosenfeld can be contacted at his Email address: <jim@copaa.net>. He is a classic "workaholic" and is available at his phone number: 954-966-4489, FAX: 954-966-8561.

We urge you to join with others to educate law enforcement authorities that such school special education behavioral plan and student discipline cases do not belong in the criminal justice system. They are a waste and abuse of public resources. They represent law enforcement endorsement of the acts of school district authorities with warped priorities and twisted motives on a warpath against all parents who invoke and exercise their due process rights under special education law.

Sincerely,

Linda Newland
Roger N. Meyer
Co-Founders, Oregon Parents United

cc: Susana Ramirez