

October 14, 2006

Superintendent
Chief Executive Officer
Public School System

VIA Hand Delivery and Facsimile

Re: Amir's Attendance at Public Academy

Dear Superintendent,

We represent a mother and her minor son, Amir, a fourth-grade student with diabetes who attends Public Academy. According to a letter from the Principal at Public Academy, (see attached letter received by Amir's mother), Amir will be transferred against his parent's wishes to Alternate Public School on Monday, October 19, 2006. We strongly request that Amir not be transferred pending an opportunity for us to discuss with Public School System the appropriateness of his current placement and the factual and legal implications of the attempt to transfer him under the present circumstances. More specifically, we believe that the proposed transfer violates Amir's rights under §504 of the Rehabilitation Act, the anti-retaliation provisions of the Americans with Disabilities Act (ADA), and the County Human Rights Ordinance.

First, and most importantly, contrary to the principal's assertion, it is no way in Amir's best interest for him to be transferred to a different school. He has attended Public Academy since 2004, is an honor roll student and has three siblings who also presently attend Public Academy. Amir suffers from Type 1 Diabetes and, as a consequence, is insulin-dependant and must monitor his blood glucose levels throughout the day. He travels to and from school by public transportation with his older siblings, and his 14 year old sister, in particular, helps monitor Amir's health issues arising from his diabetes.

In order to ensure that his disability does not adversely affect his right to a free and appropriate public education or jeopardize his health and safety, we have been working with Public Academy since August 2006 when the first §504 plan was put into place. In fact, on October 5, 2006, we attended a very productive §504 meeting with his home room teacher, representatives from Public Academy, a representative from the Office of Due-Process & Mediation, and other Public School System personnel. This meeting was necessary because no representative from Public Academy had attended the August meeting and school personnel were confused about how to effectuate the plan. The result of the most recent meeting is a §504 plan (see attached) which—according to everyone who attended the meeting—will adequately provide for Amir's health and safety while at Public Academy.

Despite this §504 meeting and appropriate placement, the Principal, without consulting Amir's mother, or her legal representatives, issued a letter that Amir would be transferred as of Monday, October 19, 2006. In her letter, the Principal states that a transfer is in his best interests “due to his medical condition and considering his absences and tardies as well as the distance

that he has to travel....” The assertion that Amir has trouble with absences and tardies is demonstrably false. He travels to and from school with his siblings and his punctuality and attendance (like that of his siblings) has never been raised as a major issue of concern. Furthermore, to the extent that Amir has occasional absences or tardies, it is almost always directly a consequence of his diabetes-related treatment issues and hospitalizations—and has nothing to do with the distance he travels to school.

In support of the transfer, the Principal cites Public School System Policy 702.1 on “Enrollment and Transfer of Students.” However, rather than lend support to a transfer of Amir mid-school year, this policy emphasizes that children “should not be unilaterally transferred or withdrawn by the school principal” from their “home” school—that is the school in which they are enrolled. Furthermore, to the extent such a transfer is warranted (which we strongly believe is not the case here), such a transfer in general “shall be made at the end of the school year.”

In short, we are extremely troubled by the proposed transfer of Amir. It is our firm opinion that under the current circumstances, the school’s actions just days after the most recent §504 meeting where the school’s responsibilities were reiterated and clarified, undermine Amir’s §504 plan and constitute discrimination to the extent that the transfer is being pursued specifically because of Amir’s disability and in retaliation for the family’s assertion of Amir’s rights under §504. Accordingly, the school’s actions violate the ADA, Section 504 of the Rehabilitation Act and the County Human Rights Ordinance.

We are requesting that you direct the Principal to immediately rescind the transfer and that no transfer action take place at the present time. Given Amir’s mother’s opposition to the transfer and the legal implications of carrying through with such a transfer under the present circumstances, it makes sense—and is arguably required under the law—for Amir to remain in his present placement at Public Academy at least until the parties have had an opportunity to discuss the appropriateness of any placement options. Furthermore, if Public School System’s genuine concern is to do what is in the best interest of Amir, surely holding off on any such transfer to explore his parent’s and representatives’ concerns is the appropriate course of action.

Because of the short notice the Principal has provided in her letter, if we do not hear back from you or your designee by 3p.m. on Friday, October 16, 2006, we will have little choice but to proceed with the filing of a Temporary Restraining Order in federal court to protect our clients’ rights. Therefore, we ask that you please contact either one of us as soon as possible.