

"Federation Corner" column  
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## **BOE behavior in court room worse than in board room**

by Wayne Goldstein

"S.G. began to wet her pants and had to wear diapers, made violent and hyper-sexual writings, told her mother that she was hearing voices instructing her to harm herself, and struggled with memory and motivation..." In a fifty-eight page opinion, the ALJ [Administrative Law Judge] found that S.G. suffered from an emotional disturbance -- namely, schizophrenia -- and that this emotional disturbance adversely affected her educational performance in a regular classroom... S.G.'s psychiatrist testified that S.G. and students like her with schizophrenia are not 'able to cope well with... the usual stresses in an ordinary classroom' and 'do best when they're in a low level stress, a lot of support, a lot of structure, and so that if S.G. were returned to the mainstream public school -- eventually, probably sooner rather than later, [S.G.] would be hearing voices again.'

"The Board [of Education] analogizes S.G. to a student with cancer, and quotes its own witness for the claim that 'one would not treat schizophrenia with special education any more than you would treat cancer with special education.' "

Welcome to the Orwellian world of the Due Process Hearing for the children of parents who claim that their children need special education services. There is a dauntingly complex process to having children with various learning and other disabilities evaluated and placed in an appropriate educational environment. This can involve negotiation between MCPS and parents. When parents want more than MCPS is willing to offer, they can seek a Due Process Hearing before an administrative law judge, whose decision can also be appealed by either MCPS through the BOE or by the parents to federal court.

Just this week, as part of the final budget work sessions for MCPS, one of the deputy superintendents talked about the issue of MCPS legal costs related to Due Process Hearings. She stated that her doctoral thesis done in the early '90s dealt with how four state public school systems handled such appeals. She claimed that most such Due Process Hearings against MCPS these days involved parents who demanded that their children be placed in special private facilities that cost an average of \$50,000 per year and could perhaps be placed there for as long as 12 years.

As with almost every claim made by senior MCPS officials these days, nothing should be taken at face value. However, even if this statement were shown to be true, and MCPS could demonstrate that its solution was as good as a private placement, the individual case of S.G. stands out as a complete repudiation of this week's claim as to what these facts actually are. Initials are used for students caught up in this process to protect the student's identity, but this is the only protection this child has received from MCPS and BOE.

What comes across from this opinion, written by three judges on the U. S. 4th Circuit Court, is a school system willing to say anything, no matter how ludicrous, just to win, and a school system refusing to take no for an answer in a case that no reasonable person could possibly support. After the administrative law judge, a judge from the U. S. District Court for the District of Maryland, and the three judges from the U.S. 4th Circuit Court have all ruled in favor of the child, MCPS wants all of the other judges on the U. S. 4th Circuit Court to now hear the case.

The decision calls for the child to remain in the special school that she was placed in several years ago. MCPS argues that the child can do just as well in a regular classroom, because she did well right up until she started hearing voices and was diagnosed with schizophrenia. To suggest that the impact of a severe chronic mental illness like schizophrenia on a student's education is similar to the impact of cancer is absurd

in a number of ways, especially since the student has clearly benefited from the small, specialized class rooms that keeps the worst of the symptoms under control.

However, the shamelessness of MCPS, under the auspices of the BOE, is even worse in challenging the appeal made to the Maryland State Board of Education by the parents of special needs children who oppose the closing of the Special Education Learning Centers (SELC). I documented in my March 22nd column what was said by MCPS to a special session of the County Council Education Committee with other Councilmembers in attendance. "[MCPS'] deputy superintendent on Thursday conceded that the district's hotly contested decision to cut self-contained learning centers for special education students was made in the wrong way. The deputy superintendent apologized for the manner in which the public had been excluded from making the call on the sensitive budgetary matter. 'It was a huge mistake of the school system,' she said of the fact stakeholders have not been kept fully abreast of the proposal."

This confession was followed by justifications for this action by this and other senior MCPS officials that no Councilmember found to be credible. Nevertheless, these unsubstantiated justifications make up the response of the BOE to the parents' appeal, which also challenges the standing of these parents to make the appeal in the first place.

I have found that legal documents that are submitted to judges often can tell a more straightforward truth than other kinds of documents because people and institutions usually are reluctant to insult the intelligence of judges by presenting poor arguments lacking persuasive facts. While I've not seen the BOE legal documents in the Due Process Hearing or the parents' appeal, the responses of a series of judges in this case and the examples of BOE arguments cited in the appeal indicate that BOE may treat legal actions as behavior not subjected to public scrutiny, thus allowing it to say or do whatever it wants without fear of a negative community response. If BOE were required to post all of its court submissions on its website, the cost to appeal each case, and facts that show why fighting an appeal is appropriate from an educational and cost perspective, we might see a change in what BOE chooses to fight and what arguments they then make when doing so.

This could mean that one of our most vulnerable educational populations, special education students, will have a more objective, equitable opportunity to get the educational services that they really need. This could also mean that greater accountability in this often invisible world of the court room will cause greater accountability in dealing with all stakeholders in the board room and elsewhere.