

MEDIA RELEASE

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## **School District pays largest discrimination and civil rights settlement for educational deprivation of a child in Washington**

A school district that blamed a hearing-impaired student for not being able to learn, has settled the resulting Federal civil rights lawsuit for \$1 Million.

The Grandview School District in Yakima, WA first claimed that José Garcia was at fault for not using effective hearing aids. Later the District claimed the child could not learn because he suffered a birth injury that affected his intellectual status. The District used these excuses to argue that they were not responsible for failing to educate José for the 14 years he attended classes in its schools.

But tests revealed that José had a completely normal I.Q. His hearing loss was profound and could not be cured simply through the use of hearing aids.

The District made the decision not to teach sign language to José starting in preschool. This decision was based upon the philosophy that all students should be “as oral as possible.”

The District was provided with substantial funding to fully cover José’s special education needs. But instead of using those finances to provide instruction, the District essentially warehoused José. From Kindergarten to high school, José was educated in a self-contained classroom serving students too disabled to access education in a less restrictive setting with accommodations. This meant that his classmates included nonverbal children with Downs Syndrome and Intellectual Disability.

Carol Carrothers, State Coordinator of Deaf and Hard of Hearing Services for the Washington Sensory Disability Services, testified she saw no disability-based reason why José would have required a self-contained classroom at any point in his academic career.

The District has a history of not fully informing parents of their child’s academic status. Even after José’s case was brought to light, the District continued these improper practices. A state Citizen’s Complaint was filed in 2013 by the teacher’s union on behalf of numerous disabled students.

José was a quiet and shy 17 year old junior, when he was first told that he would not graduate with his class. Neither he nor his mother, who is illiterate, understood that the passing “grades” he had received on his report cards over the years, had no bearing on his actual educational achievement. Instead, his reading, writing and math skills were at the second or third grade level.

In the fall of 2009, Ms. Carrothers advised the District that she had tutored José over the summer and that he was functioning at a very low academic level. She told the District that José needed both specialized instruction and appropriate assistive technology. The District did not act on that information.

That same year, the Yakima Hearing and Speech Clinic, referred José's mother to a non-attorney parent advocate, Sherry Mashburn. The advocate arranged a meeting with all of José's teachers. At least one of the teachers admitted that she did not even know that José was hearing impaired. This same teacher had humiliated José by tearing his work up in front of his classmates and throwing it in the trash.

José's plight was championed by Richland lawyer Kerri Feeney, who devotes a large part of her practice to education cases. After a three week hearing held in 2010, the administrative law judge, in a scathing opinion, found against the District and ordered it to provide six years of remedial education to José.

The District appealed this decision and a second hearing was held in Yakima County Superior Court. Judge Robert Lawrence-Berry also found that José had suffered "significant educational deprivation...over a period of several years." The judge upheld the administrative law order, except he reduced the remedial education from six years to four. This is believed to be the largest amount of remedial education ever ordered to be provided against a school district in this state.

Both judges condemned the District's behavior. Not only did it fail to provide an education to José, but its staff and administrators lied in an effort to cover up its actions.

The judges determined the District withheld information from the parent in violation of federal law. The District failed to attend or conduct mandatory IEP (Individualized Education Program) meetings with the parent, then attempted to cover up the failure by deliberately testifying falsely. The District's actions were described as "cavalier." Staff often signed IEPs as if they had participated when they did not, a clear violation of state and federal law.

The Director of Special Programs for the District, Diann Zavala, admitted in deposition that the District engaged in substantial violations of state and federal law and that even she had improperly signed off on an IEP that she had not attended.

The District appealed the Superior Court order. The Court of Appeals rejected the appeal and upheld all findings against the District.

By 2011, the District through its superintendent, Kevin Chase, still had refused to comply with the order to provide a remedial education program to José. A Citizen's Complaint was filed with the Office of Superintendent of Public Instruction (OSPI) which determined the District was in violation of state law and issued a corrective action notice. OSPI warned the District that its federal special education funding would be withheld unless it complied. Only then did the District start to fund the remedial education program. By that time, José had lost another full year of educational opportunity.

The Courts agreed with Attorney Feeney that the District should not be entrusted to educate Jose. Instead it appointed a program manager, Dr. Wendy Marlowe PhD., who assembled a team of educators

and other professionals. The District was required to pay for this rigorous program which cost approximately \$250,000 for each of the four years.

The head of the school board, Paul Jepson, testified that he had never seen the orders from the administrative proceeding, the superior court proceeding, or the OSPI decision and corrective action plan. What he knew about the case he learned from the newspapers. When asked how the board ensured the District was operating in compliance with federal and state law, Mr. Jepson said he didn't know.

The Federal Civil Rights case was filed in December 2010 by the Stritmatter law firm. Five and a half years later, the matter was settled before trial. Karen Koehler, the lead attorney says:

The District thought it could get away with what it did to José Garcia. Then, when he began to fight for his rights, they blamed him and lied to the courts in an attempt to cover up their violations of the law. This District is broken. It is shameful. It needs a complete overhaul. José has fought not only for himself, but for all of the other children who are being neglected by the District.

While the legal battle raged, José worked hard with in his intensive remedial education program. He is now in his last year and has completely disproven the District's claim that he could not learn because of a birth injury. José now has reading, writing and math skills at a high school proficiency level. He has also learned sign language. José plans to attend trade school after obtaining his high school degree in November 2015.

Attachments:

1. Amended Federal Court Complaint
2. Declaration of Karen Koehler of July 2014 and all exhibits
3. Motion for summary judgment of claims for denial of benefits, discrimination and civil rights
4. Photo of José Garcia taken at his graduation ceremony in June 2015 (he was allowed to walk in the ceremony but will officially graduate at the end of his remedial program in November 2015).

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