

**IN THE ALABAMA STATE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DIVISION**

██████████, a minor, by and
through his Parent and Next Friend
██████████, on behalf of himself
and all similarly situated students.

Petitioners,

v.

MONTGOMERY PUBLIC SCHOOLS

Respondent.

Case No. 2011- 60

AFFIDAVIT OF JOSEPH ACKERSON, Ph.D.

1. I, Joseph Ackerson, Ph.D., am over 18 years of age and competent to testify regarding the matters described herein.
2. I am a pediatric neuropsychologist and licensed psychologist practicing in Birmingham, Alabama. I evaluate and treat children with emotional disturbance, traumatic brain injury, epilepsy, and other disorders affecting behavior. I have worked with school districts across the state of Alabama on designing and implementing services for such children. Since 1995 I have been on the faculty of the University of Alabama – Birmingham Department of Psychiatry and Behavioral Neurobiology, where I teach and supervise medical psychology graduate students. I have researched and published articles in this area for over 25 years. My CV is attached as Exhibit 1.
3. On November 10, 2010, I evaluated ██████████ need for special education services. As part of my evaluation I reviewed ██████████'s medical and school records;

interviewed [REDACTED] and his father; and tested [REDACTED] using standard assessment tools designed to measure academic performance, adaptive behavior, and cognitive processing abilities. I concluded that [REDACTED] needs special education services, and should be taught within the least restrictive environment possible. My evaluation is attached as Exhibit 2.

4. Since conducting my evaluation, I have reviewed the complaint filed on [REDACTED] [REDACTED]'s behalf against the Montgomery Public Schools (MPS) and have also reviewed additional school and medical records for [REDACTED]. I have also spoken with other experts who have reviewed [REDACTED]'s condition and needs, including Narell Joyner and Mary Jo Dare, who I understand are filing reports in [REDACTED]'s case.
5. Based on my review of additional materials and my discussions with Ms. Joyner and Dr. Dare, I offer the following observations in addition to those in my evaluation of November 2010.
6. I agree with the statement in [REDACTED]'s complaint that there are certain related services that [REDACTED] and other students with emotional disturbance need in order to make educational progress, to learn at grade level, or to be served in a regular classroom. These services include direct behavioral interventions, teacher coaching and training, parent coaching and training, mobilizing community resources, and coordinating with other providers. The recommendations I made in my evaluation include each of these types of services. These are basic services that school districts across Alabama should provide to students with emotional disturbance. It is essential that MPS be able to provide such services to [REDACTED].

7. In my evaluation I recommend that [REDACTED] be taught within the least restrictive environment possible. The least restrictive (and most integrated) environment possible for [REDACTED] is a regular classroom in a neighborhood school. [REDACTED] can be served in a regular classroom if he is provided adequate services, including the services recommended in my evaluation.
8. I agree with Narell Joyner that it may not be advisable for [REDACTED] to continue to have a one-on-one aide attached to him as a long-term intervention. If [REDACTED] and the aide have a good relationship and the aide can provide [REDACTED] with the services I have identified, then it may make sense for [REDACTED] to continue working with his aide as he transitions to high school. However, [REDACTED] may not need this intervention and may feel stigmatized by it in regular high school classrooms. If [REDACTED] continues to have an aide, the aide needs to work effectively with [REDACTED] on his behavior skills so that eventually [REDACTED] learns to regulate his behavior by himself.
9. From the beginning of [REDACTED]'s entry into high school, all of the adults at the school who work with [REDACTED] need to know how to provide [REDACTED] with positive behavior supports. All of the adults who work with him must know how to effectively implement his behavior plan. The school should help [REDACTED] form supportive relationships with adults who can help mentor and coach him.
10. Many of [REDACTED]'s IEPs state that he will receive "social skills training." I do not know what MPS means by this. It would be appropriate to teach [REDACTED] how to better interpret social cues and respond appropriately to those cues so that he can avoid conflicts and develop meaningful relationships with his peers. This should be done in real world settings, including in the classroom.

11. As I recommended, MPS must also make environmental changes to support ██████ in his classrooms. Teachers should communicate calmly with ██████. The classroom environment itself should be structured so that, to the extent feasible, it is a calm space for learning. A smaller class size would be helpful, but not if that meant segregating ██████ from his non-disabled peers. Also, the benefits of having a smaller class size can be achieved by having more adults in the classroom, including a co-teacher or teacher's aide.
12. ██████ needs specialized instruction, particularly in reading and writing, using evidence-based interventions. Staff with both subject matter and special education expertise are needed to ensure that such interventions are being properly implemented. At this point, ██████ also needs additional learning time each day, for example, before or after school, to work on basic academic skills.
13. MPS must engage ██████'s family, communicate with them regularly about ██████'s progress, and train them to support the positive behavior interventions and the behavior plan that the school employs with ██████.
14. It is completely inappropriate for the school to require ██████'s parents to come pick him when he engages in disruptive behavior. This practice deprives him of valuable time in the classroom. To prevent the perceived need for such removals, the school should develop a crisis plan for ██████ that will guide school staff in preventing or de-escalating his disruptive behavior.
15. As I recommended, MPS should mobilize available community resources to support and complement the school's program for ██████, and should coordinate the services it provides with those provided by other agencies or providers. Specifically, MPS

must communicate with ██████'s parents and his doctor about his medication during the school day. The school should work with students' families to ensure that prescribers have the information they need to adjust medication regimens and to alert them to possible problems with students' medication regimens. I suspect that ██████ has not been taking his medication consistently. MPS should communicate with his family about his regimen, and help administer medication to ██████ if appropriate.

16. In my evaluation, I recommended that, should ██████ not respond to the interventions I outlined, he may need to be referred to a more restrictive setting. Based on my review, I believe that MPS has never provided ██████ with the services I recommended. As such, there is no basis for concluding that ██████ would not respond to such services and be able to stay in a regular classroom. I also wish to state emphatically that a more restrictive setting must be a last resort for ██████. If the services I have recommended do not meet ██████'s needs, then ██████'s IEP team, including his parents, should make modifications to that plan to more effectively support him in a regular classroom. There should be a "Plan B," a "Plan C," and so on, before a more restrictive placement is considered or made.

Date: July 27, 2011

Joseph Ackerson, Ph.D.