

## Case Update:

In January 2019, I began representing a student in Sarasota, Florida. It was a strange case. This student had a learning disability and was functioning well below grade level, yet he was in a general education setting with little support. No one could explain how this student got to this place in his academic career. A review of the records only made things more confusing. This student had an average IQ but in third grade he was removed from his general education curriculum and placed on a modified curriculum. He was moved just days before the FCAT (now FSA). This student was poor, African American and had an IEP. There were, and there still are, requirements for the District to ensure that poor, African American or disabled students make adequate progress each year. This student checked all those high risk, highly watched, boxes. Moving him to a modified curriculum in third grade ensured that he did not have to take the FCAT. His progress was no longer being monitored or reported to the state or the federal government. He became invisible. He remained that way - all the way through elementary school and middle school. In 2016 (six years later), the state told the district that there was a problem with students like this one being on modified curriculums. Modified curriculum was reserved for only those students with a significant cognitive impairment. This student did not have a cognitive impairment. He had a language deficit. Thus he had to be taken off a modified curriculum. Abruptly his paperwork was changed reflecting a move to a general education curriculum. But the student remained in the same class, with the same teachers, with the same students for the remaining of that school year (8<sup>th</sup> grade) which was his last year in middle school. He did not take the FSA or any standardized testing that school year. He was entered into the National Junior Honor Society. He thought he was a good student, doing well in school. He had no idea what was about to happen to him.

Transitioning to high school is challenging for every student. But for this student it was devastating. He went from small special education classrooms with special education teachers to a regular general education high school. Gone were the small class sizes, gone were the teachers with special education training and gone were the supports that were in place to help get through the curriculum. This student learned for the first time that he was functioning years behind his classmates. He

was reading at a 2<sup>nd</sup>-3<sup>rd</sup> grade level while his peers were reading at a 10<sup>th</sup> grade level. For the first time, this student received failing grades on his classwork, homework, grades and report cards. He became depressed, angry and disinterested in school. His self-esteem and self-worth were shattered. He was bullied, constantly. One incident, where this student was violently thrown into a trash can while others watched, laughed and filmed the incident, was so bad that the bully was expelled for the remainder of the school year. The district did nothing. Nothing to protect this student from bullying, nothing to support him in school, nothing about his failing grades, nothing about his depression or change in attitude towards school, nothing to address the gap that existed between where he was functioning and where he should have been functioning. The district did nothing because they had a plan. The plan was predetermined and executed with intention and deliberation. The plan was to allow the student to fail so that he could be returned to a modified curriculum. Once returned to a modified curriculum the district had no obligation to educate this student and he would again be invisible. The plan almost worked.

What the district did not account for was the perfect storm of advocacy that surrounded this student. The advocacy began with his own mother who was relentless in her quest to understand what was happening to her normally happy good grades getting child. How does a student go from getting straight As to all Fs. She could not understand. When she could not get any answers, she sought help from a big brother/big sister volunteer, Stephen Marland. Stephen picked up the quest – asking questions, asking for records, asking for meetings and again trying to figure out what was going on with this normally happy student. Getting nowhere fast, watching this student deteriorate before his eyes, even attempting suicide, Stephen made a plea for help during a legislative session. A local educational advocate, Sue Memmenger, stood up and agreed to look at some records. The records made no sense. Sue reached out to her colleague, Susan Magers, for a second review of the records. The records made no sense. Sue and Susan began a relentless and amazing pursuit for records to explain what occurred.

What slowly, painfully slow, began to emerge was a fantastical unbelievable story. This student, along with 112 others, were improperly placed on modified curriculums and then years later returned to the general education setting functioning years behind their same aged peers because of years of lack of

exposure to the same curriculum as their peers. The district knew about it but did nothing to ensure that these 113 students were ok and getting the supports they needed for this abrupt change. The district knew these students were behind but offered no services to help them close the gap. The district intentionally dumped all these students into the proverbial deep end without knowing how to swim. The district wanted these students to fail so that the district would be able to return the students to modified curriculums where the students would be able to graduate below grade level and the district would be able to hide their mistake.

Once caught, the cover up began. The district refused to turn over records, lied under oath at deposition and during an administrative hearing and fabricated and destroyed records. The brazen way the district went about these criminal acts, made it clear that this was not the first time and that there was no expectation that they would ever be held accountable for their bad acts and omissions. They were behaving with impunity. And in this climate who could blame them. With little to no oversight by the federal department of education and federal office of civil rights, there is little to no oversight by the Florida department of education and thus the districts have been able to act unchecked for the last two and half years.

Until Monday, October 21, 2019. For the first time, Sarasota was held accountable. Their blatant and discriminatory actions and omissions were called out and memorialized in a 109 page order issued by an administrative law judge. The district was found to have violated the Individuals with Disabilities Education Improvement Act (IDEA) and Section 504 of the Rehabilitation Act. The administrative judge praised the efforts of the advocates and the student's mother. Something I have never seen before. This student will never be invisible again.

I have been humbled and honored to represent this family and work with these incredible advocates. I am forever changed by this case.