

Wyner & Tiffany

ATTORNEYS AT LAW

3878 CARSON STREET, SUITE 104
TORRANCE, CALIFORNIA 90503

TELEPHONE (310) 792-8999, EXT. 304
FACSIMILE (310) 792-8988

www.specialedlaw.org

STEVEN WYNER
swyner@specialedlaw.org

MARCY J.K. TIFFANY
mtiffany@specialedlaw.org

FOR IMMEDIATE RELEASE

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FEDERAL JUDGE APPROVES RECORD \$6.7 MILLION SETTLEMENT IN SPECIAL EDUCATION CASE

Porter v. Board of Trustees of Manhattan Beach Unified Sch'l Dist., et al.
Case No. CV 00-08402 GAF (USDC, C.D. Cal. 2005)

The Manhattan Beach Unified School District and the California Department of Education have agreed to pay more than \$6.7 million to a special education student and his parents for failing to appropriately educate the student for longer than five years.

Steven Wyner, a partner with the law firm Wyner & Tiffany, which specializes in representing students with disabilities and negotiated the settlement, said that “the settlement amount represents a record payment in a special education case. This lawsuit could have been avoided and millions of dollars could have been saved had the Manhattan Beach USD and the CDE simply complied with clearly established statutes and regulations.”

The Application for Court Approval of Minor’s Compromise, approved by U.S. District Court Judge Gary Allen Feess, states that the failure to provide services required by federal and state law “resulted in permanent damage to [the student’s] academic, physical and social/emotional well-being, and has impaired his ability to function at the level at which he could have reasonably been expected to function”

Marcy J.K. Tiffany, who also represented the Manhattan Beach family, said “this case should send a clear message to school districts that they cannot ignore the legal rights of special needs students with impunity. Sooner or later, the law will hold them accountable.”

Most of the payments will go toward the future education and care of the student, now 17, who has been diagnosed with autism spectrum disorder.

The family respectfully requests that the press not identify their child by name. He continues to be educated in the Manhattan Beach USD. This is the culmination of one family’s six-year struggle to obtain services that are guaranteed by the law. They are happy that this process has finally come to an end, but extremely sad that it has taken so long for them to secure their child’s legal rights, and that it has come at such a great loss to their child’s academic and social well-being.

“No amount of money can compensate for the school district’s deliberate failure to provide an appropriate education at a crucial point in our son’s life,” said Deborah Porter. “This will provide for his future well-being and we also hope this will force this school district, and all school districts, to do the right thing for other children.”

The settlement, which was approved by the Court on August 10th, followed a strongly-worded decision by Judge Feess filed on December 20, 2004, granting partial summary judgment in favor of the student and his parents, Deborah and John Porter. Judge Feess found Manhattan Beach USD and the California Department of Education (“CDE”) “equally culpable.”

The case began in January 1999, when the student’s parents requested a due process hearing claiming that Manhattan Beach USD had failed to provide their child with a “free appropriate public education.” Despite not being represented by counsel, the family prevailed in the due process proceeding. In June 1999, the California Special Education Hearing Office (“SEHO”) issued a decision finding that Manhattan Beach USD had failed to provide the student with appropriate reading and language instruction and socialization interventions. The District was ordered to provide compensatory education to the student during the 1999-2000 school year, but never complied with the SEHO decision.

In August 2000, after waiting over a year for the District to provide the compensatory services, the Porters sued Manhattan Beach USD and the CDE in U.S. District Court seeking to enforce the SEHO decision. The judge to whom the case was then assigned dismissed it on the ground that the Porters had to first exhaust administrative remedies by filing a compliance complaint with the CDE.

In December 2000, the Porters appealed the dismissal to the Ninth Circuit Court of Appeals, and at the same time filed a compliance complaint with the CDE. The CDE issued a Compliance Report in March 2001 finding that Manhattan Beach USD had not complied with the SEHO decision and ordering both compliance with that decision and additional compensatory education. However, Manhattan Beach USD also did not comply with the corrective actions set forth in CDE’s Compliance Report.

In October 2002, the Ninth Circuit reversed the dismissal of the lawsuit and remanded the case to the District Court for further proceedings. *Porter v. Board of Trustees of Manhattan Beach Unified School District et al.*, 307 F. 3d 1064 (9th Cir. 2002), *cert. denied*, 537 U.S. 1194, 123 S. Ct. 1303, 154 L. Ed. 2d 1029 (2003). The Porters amended their complaint claiming that the CDE not only failed to take appropriate steps to force Manhattan Beach USD to comply with the SEHO decision, but also failed to take appropriate steps to ensure that Manhattan Beach USD complied with the CDE’s corrective actions. The case was subsequently transferred to Judge Feess.

In his December 2004 decision, Judge Feess stated, “it seems that the District has endeavored to use the power it has over [the student’s] education as a means of retaliating against the Porters for their criticisms of, and challenges to, the District.” Judge Feess also took the CDE to task for its failure to exercise appropriate oversight over the District, stating “[a]lthough it is true that the District repeatedly flouted the State’s authority by failing to comply with two state agency orders, it was only successful in doing so because of the CDE’s inattention.”

As interim relief, in a separate order entered on November 23, 2004, Judge Feess transferred control over the student's education from the Manhattan Beach USD and the CDE to a Special Master, Ivor Weiner, Ph.D. Under the settlement agreement, Manhattan Beach USD and the CDE have been ordered to set aside approximately \$1.1 million to pay for the education of the student at the direction of the Special Master.

Wyner & Tiffany is a law firm specializing in representing students with disabilities and their parents in special education and civil rights disputes with school districts and school district officials who fail to comply with the Individuals with Disabilities Education Act ("IDEA"), and comparable provisions of state law. The firm is dedicated to assisting individuals with disabilities and their parents in securing a "free appropriate public education," as promised by the IDEA, so that these individuals obtain a meaningful education that will prepare them to live independently as productive members of society. The firm is comprised of lawyers, paralegals and advocates, all of whom are also parents of individuals with learning disabilities.

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Contacts:

Cathy Noh or Mark Saylor
Sitrick And Company
310-788-2850