

Common Sense In Special Education

– a newsletter in the tradition of Thomas Paine

"AN ARMY OF PRINCIPLES CAN PENETRATE WHERE AN ARMY OF SOLDIERS CANNOT."

July 2021 Edition



What do the Palo Alto, Pasadena and Culver City Districts have in Common? –Concerns about FFF

The Palo Alto School Board and most recently the Pasadena Unified School District Board and Culver City School Board, decided not to approve contract renewals for the law firm of Fagen, Friedman and Fulfroth (FFF). The latter two districts received a flurry of comments from parents and advocates who asked the boards to investigate some of the firm's questionable tactics in special education disputes.

Some of the FFF founders were previously with Lozano Smith. In 2005, a federal Judge sanctioned the firm for unethical practices related to the denial of services to a child with autism. According to news reports, the firm spent hundreds of thousands of public dollars to deny a student's request for tutoring services. According to news reports, the attorney representing the student would have settled the case for approximately \$20,000. Elaine Yama-Garcia, the Lozano Smith attorney at the center of the controversy is currently the Assistant Executive Director, Policy & Governance Technology Services for the California School Boards Association (CSBA).

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Corona-Norco Unified School District "Out of Compliance" on 5 Counts

The California Department of Education (CDE) finds Corona-Norco Unified School District (CNUSD) out of compliance with state or federal laws on 5 counts! Three of the violations were for not providing Independent Educational Evaluations (IEEs) within a reasonable timeframe (violation of 34 CFR 300.502b). In one instance, the CDE found that although the IEE was granted and eventually completed, the CDE determined that, "...it took over six months, which is not within a reasonable amount of time." Parents have the right to request an IEE at the district's expense if they disagree with the school district's assessment. This is to safeguard against school districts writing biased reports that conclude the child.

On multiple occasions, CNUSD also required that the parent provide a reason for their requesting IEE's and imposed a deadline by which the parent must comply. This goes against the Individuals with Disabilities Education Act (IDEA) which very clearly states that a parent does NOT need to provide a reason for wanting an IEE (violation of 34 CFR 300.502b).

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Winds of Change in Central School District

Parents in the Central School District are encouraged by recent changes that include the retirement of Superintendent Donna Libutti. This Spring the board unanimously voted to bring Dr. Amy Nyguen-Hernandez to the helm.

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Parents testified that the firm has filed a myriad of legal actions to deny services to children with disabilities during the Corona Virus outbreak. With offices throughout Southern and Northern California, the firm represents various schools districts. But, while families of children with disabilities were home bound due to our country's crisis, FFF has continued billing their client school districts for legal services, namely suing kids with disabilities to deny them the services they need.

Advocates reported that, while being sequestered in their homes due to the national pandemic, FFF has filed legal actions against families of children with disabilities in the Upland Unified School District, Alta Loma School District and Fontana Unified School District.

In March 2020, while our state was under "stay-home" orders, FFF sued a family for \$12,000, arguing they are due the money they needlessly spent on hiring private investigators to conduct surveillance of the family's attorney and private tutor. Even though the school board voted unanimously to settle the case and give the student needed services, FFF continued to pursue litigation without any board approval. Public records show that the firm spent over \$124,000 in an eight month period to litigate but ZERO dollars to actually provide the services to the student which the school board had approved. The law firm hired a private investigators to do surveillance on the student's attorney and private tutor. The surveillance the district paid for with education tax dollars included: Surveillance at the home, Comprehensive background, Establishing whereabouts, Locating picture of subject, Research of social media, Verifying property ownership, and DMV vehicle registration check/verification.

All this to fight a request for reading instruction and related services. This surveillance is a standard clause in the FFF contract, usually found at Section 7 (c) which was included in both the Pasadena and Culver City contracts being considered by their respective boards.

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Corona-Norco Unified School District "Out of Compliance" on 5 Counts

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The CDE also found CNUSD out of compliance on 2 counts of not holding an IEP meeting within 60 days of an assessment plan being signed by parents (violation of CA Ed Code 56344a).

To address the district's noncompliance with the law, the CDE is mandating that CNUSD send proof to the CDE that it has sent a memorandum to ALL Special Education staff and certificated employees (teachers) responsible for implementing IEE's directing them to "implement the requirements of the law."

The district must also hold an IEP meeting by Aug 1st to go over the student's 3 IEEs and 2 district assessments. Furthermore, the CDE stated that if the assessments show that the student qualifies for services, CNUSD must provide compensatory education for the services that had been denied to the student during the delay.

Winds of Change in Central School District

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Parents are hopeful with new leadership the district will adopt more student and parent friendly practices when it comes to students with disabilities in particular but in general the community wishes for a more friendly district environment with improved student achievement at all schools. For nearly a decade some schools in the district have had abysmal standard testing scores. Central Elementary School has been as high as 65% of its student body not meeting standards in English and Math. Subgroups who perform the worst have typically been Students with disabilities and African-American students.

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Once the contract is approved, the District is bound to pay any investigator FFF wants to hire to conduct what amounts to government funded surveillance on the parents of special education students in the district.

In Pasadena, a Board member mentioned the volume of public comments received regarding FFF and specifically raised concerns with surveillance. One member said in his entire time on the board, he's never seen so many public comments. One board member said she had reservations about approving this particular firm. Another mentioned the long history this firm has had in Pasadena and brought up that the firm had been sanctioned. Board members questioned staff about the clause in the contract that allows FFF to hire private investigators and the Superintendent was asked to provide options to the Board to hire an in-house counsel.

You can watch the Pasadena Board deliberations at the following link (3:40:58 to 3:56:56 on ribbon):
https://pusd.granicus.com/MediaPlayer.php?view_id=15&clip_id=773

News articles chronicled the Palo Alto School District concerns about the firm several years ago. Newspapers reported that the Palo Alto board was concerned about law firms' noncompliance with the law and confrontational approach and how the district's legal bills soared to \$6 million over 5 years. Board members also raised concerns that law firm Fagen, Friedman and Fulfroft (FFF) was ineffective and adversarial. Some notable news reports:

- The district drastically reduced its budget with Lozano Smith in the 2017-18 school year, from about \$233,000 the prior year to about \$54,000.

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Winds of Change in Central School District

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In her message to the community, Dr. Amy Nguyen-Hernandez shares "This will be the start of my 25th year in education. Throughout my career, I've had the pleasure of educating and leading in the roles of teacher, program specialist/literacy coach, assistant principal, principal, director, assistant superintendent, and superintendent." She concludes with the hope to "...strive to build relationships with each of you and gain your trust." Trust is needed in Central School District. Parents are glad Dr. Nguyen-Hernandez understands that from the start.

With Superintendent Libutti's retirement have come several additional changes. Assistant Superintendent of Educational Services, Eileen Galarze resigned the day Libutti retired. She is being replaced by Lizette Diaz. Changes also include the departure of Cucamonga Middle School Principal Alan Morales, who has not been a friend to students with disabilities. Some parents reported that they perceived him to be a bully when he attended their IEP's. Parents are looking toward a brighter future with Beth Leach leading the way at CMS.

Lastly, there have also been changes on the Board of Trustees. This Spring, Barbara Rich, Area 2 Trustee, announced her retirement and was honored at her last meeting with special guests that included Mayor Dennis Michael and County Supervisor Janice Rutherford. Dustin Guerra, former teacher at Valle Vista, has been appointed by the board to fill the remainder of her term, which expires in 2022. In December 2020, parents claimed victory following their public comments when Joan Weiss was not re-elected Board President again after serving in that role for 5 straight years. It is exciting to know that our voices were heard.

As we move forward with new faces in roles of leadership in Central District, the community is hopeful for the future and a better education for all students.

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- Lozano Smith submitted and then withdrew its proposal after the district asked about a federal judge's sanctioning of the Walnut Creek firm for misrepresenting facts in a special-education case, not wanting to “divide” the board during the selection process, according to Collins. The judge ordered all Lozano Smith attorneys to undergo ethics training, according to news reports.
- After years of outsized spending on external law firms, peaking at over \$2 million in the 2017–18 school year, legal expenses overall have started to go down with the hiring of an in-house general counsel in December.
- The most litigious year was the 2017–2018 school year, when the district spent \$2.5 million on attorneys.
- In September, board President Ken Dauber told the Post that he sees the district's legal expenses as “the pig passing through the python” — a one-time consequence of the district's past of poor compliance with the law.
- (Board Member) Dauber said he's supported hiring a general counsel for years, which should hopefully cut back on “putting the district in a position where we basically hand a credit card to outside attorneys.”

Newark Unified School District (Northern CA) loses 6-Year-Long Battle over Public Records Request; Costs the Tax-Payers \$650,000

In 2014, the school district says it inadvertently gave records that should not have been disclosed to a resident making a public records request. The district demanded their return and the resident refused, leading the school district to file a lawsuit. The resident then sued the district for not following the California Public Records Act and disclosing all records. According to news accounts, the district's legal fees for their law firm, Lozano Smith, eventually ballooned to \$450,000 for the years-long dispute with the member of the public. The Alameda County Grand Jury got involved, writing a scathing report criticizing the school district leadership for showing “wanton disregard for rules and regulations governing their behavior and how they conduct the public's business.”

As a direct result of the school district's actions, the law was changed in 2018 to prohibit government agencies from pursuing attorney fees unless the public records act request is deemed “frivolous.” The dispute continued, however, with the school district finally admitting defeat in December 2020. The district announced at a board meeting that it was settling with the requestor of the records for \$200,000 for her attorney fees. The district will also not be able to recover the \$450,000 it paid in attorney fees — leaving the taxpayers holding the bag for \$650,000. A former board member expressed regret for following the advice of the school district attorneys (who were paid almost half a million dollars by extending the litigation) and said in hindsight the school district should have just provided the records.

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- Board member Ken Dauber opposed the renewal of the contract for Fagen Friedman & Fulfroft, citing myriad problems and an "adversarial relationship" between the district and the Office for Civil Rights that he said has not been a good use of the district's resources.
- After reading two years' worth of correspondence between the firm and the district, Dauber said he concluded that the law firm does not meet the standard for the district, and the strategies adopted by the district to handle the Office of Civil Rights investigations with the help of the firm were "mostly counterproductive, were largely unsuccessful and were extremely expensive."
- Dauber also criticized the law firm for being ineffective in helping the district comply with state and federal requirements for special education. Compliance issues include failure to meet deadlines for Individual Education Plans (IEPs) and neglecting to invite students to their own IEP meetings, according to a 2014 review by the California Department of Education's Special Education Division.
- There were also concerns that the scope of the firm's work was spilling over into public relations and political outreach.

A Win for SEALs and the YOU TOO MOVEMENT – Legislation Changed due to Concerns about Attorney Fees

SEALs members opposed AB 967 (Frazier) which would have allowed districts to use Alternative Dispute Resolution (ADR) dollars to pay attorneys. Our voices were heard and the legislation was modified to prohibit the use of the funds to pay attorney fees.

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Irvine Unified School District Faces Allegations of Discrimination – Again

Several members of the community addressed the Irvine Unified School Board regarding discrimination against students with disabilities. They referenced a complaint filed with the California Department of Education (CDE) by Disability Rights California (DRC), a nonprofit organization which upholds the rights of those with disabilities. The DRC Complaint detailed allegations of 3 families whose children had not been given services per their Individualized Education Programs (IEPs), were made to waive rights in settlement agreements rather than discuss compensatory education in IEP meetings, and who were not allowed to participate in the IEP process – among several other violations. The DRC's complaint stated, "While this Complaint contains specific incidents of violations, DRC has noticed a systemic pattern and as such, the purpose of this Complaint is to call for a District wide investigation and to seek District wide recourse on behalf of all students with disabilities at District."

This is not the first time that Irvine Unified School District (IUSD) has been accused of system-wide discrimination against children with disabilities. In 2018, the Office for Civil Rights and IUSD entered into an agreement to stop discriminatory practices throughout the district's middle schools. The vast majority of students with disabilities are those with average to above average intelligence who have learning disabilities and may need specialized methods of teaching. However, students with disabilities were often enrolled in a special education "study skills" class – regardless of their disability or need to learn study skills. This precluded their participation in elective courses or Early Period PE classes with their peers.

There were no written course descriptions for these special education classes as there were for other students. This allowed IUSD Special Education staff to give varying verbal descriptions of what services children would receive in these "study skills" classes resulting in the lack of informed consent by parents.

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A Win for SEALs and the YOU TOO MOVEMENT – Legislation Changed due to Concerns about Attorney Fees

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It was surprising to see pushback from attorneys who represent parents and students who undoubtedly see the District and not the parent as their client, and did not support the prohibition of using the funding for legal services. Governor Newsom signed the state's budget which includes \$100 million to special education departments throughout the state. This windfall to school districts is to meant to persuade parents to attend "Alternative Dispute Resolution" (ADR) rather than file a Due Process complaint to save the school district money. The cost to the parent and child, however, could include waiving their federal rights and lead to further academic harm to the child without any recourse.

ADR is an "informal" process, meaning that it is not reported to the state, and school districts may create their own rules – such as barring parents from bringing advocates or attorneys. Special education staff are highly trained in special education laws and have a team of attorneys advising them throughout the process. ADR is not reported to the state, and some have described it as an "opaque veil" where unsuspecting parents – desperate for their child to receive services – naively sign these legally-binding agreements. In exchange for minimal services, parents are usually required to waive their federal rights such as: filing any other complaints, seeking needed services in the future, or even holding IEP meetings. All of these are federal protections under the Individuals with Disabilities Education Act (IDEA). In addition, parents are usually required to sign what amounts to a "gag-order" – a confidentiality clause – which restricts their ability to speak about the agreement to others. Parents need to ask themselves – if the district has not been trustworthy in providing needed services – can the district be trusted to create settlement agreements that are really in the best interest of the child?

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Students with disabilities who were prevented from taking art, music, public speaking and other electives were put at a disadvantage in high school as well as in college admissions where these skills show that the student is well-rounded and has multiple abilities. Instead, those who struggled the most with academics were relegated to only academic courses, creating a negative school experience focused on their disability, rather than allowing their talents to shine and friendships to develop in elective classes with peers.

As part of the agreement regarding district-wide discrimination with OCR, IUSD agreed to publish course descriptions for special education classes, notify parents of their ability to provide (or decline) consent, and allow for students with disabilities to take electives as well as the Early period PE class. IUSD was monitored by OCR and has to collect data annually showing that they are no longer discriminating in this manner. For more information, see OCR case #09-17-1564.

CDE Proves San Dieguito UHSD legal advisors wrong

In early 2021, San Dieguito UHSD was found to be out of compliance by the California Dept of Education (CDE). SDUHSD contracted with legal counsel to try and get CDE to reconsider their decision.

However, after receiving the request for reconsideration, CDE made it clear to district legal counsel they were rejecting their request for reconsideration because their staff determined the District's request had not set forth facts or questions of the law that justify reconsideration.

Unfortunately because CDE did not reconsider their request, SDUHSD remained out-of-compliance.

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Parents do have other options. Those filing for Due Process or "Mediation Only" have many protections which ADR lacks. Parents can file "Mediation Only" where the dispute will be overseen by an Administrative Law Judge acting as a mediator. This way, there is a neutral 3rd party that can help the parents understand their rights and be a witness to the negotiations. "Mediation Only" is reported to the state so they can monitor the number of disputes within a school district. Neither side can bring an attorney to "Mediation Only" but parents can and should bring an experienced advocate. Parents should never feel pressured to sign a settlement agreement on the spot. Always consider having an attorney review a proposed settlement agreement prior to signing. It could prevent further harm to the child without the parent having any recourse.

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State Agency Finds that FUSD Violated Special Education Student Rights

Parents have complained for several years against the former Selpa Director, Amy Foody in Fontana Unified School District (FUSD). Board meeting recordings show parents complaint against Foody on the bases of retaliation, harassment and even violations on California special education laws. A changeorg petition for Foody's removal was initiated in 2020. Evidence provided showed that litigation budget double every year while Foody was in charge at Selpa. FUSD Selpa participated in the performance indicator review by the California Department of Education(CDE) during 2019. Parents filed multiple compliance complaints against Selpa since Foody joined FUSD.

Records shown in social media showed that FUSD Selpa was found out of compliance multiple times. This ended with Foody's dismissal from Selpa.

In July 1, 2021, Selpa had a new Selpa Director Mrs. Jacqueline Williams. On that note, assistant director Rochelle Yatomi followed Foody's steps and was either let go or dismissed from FUSD. On April 21, 2021 at the FUSD Board meeting a Spanish speaker parent made a complaint that FUSD staff were ignoring her parent comments during an IEP meeting. She shared that at "her April IEP, FUSD staff said she could not make changes to IEP notes as these were on a PDF format. Parent requested FUSD to allow parent participation at IEP meetings. Parent asked FUSD not to violate parent's rights." On April 7, 2021 a member of the public (a special needs parent) submitted a complaint against special education staff.

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State Agency Finds that FUSD Violated Special Education Student Rights

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According to FUSD Board agenda documents parent stated "I wish to submit the attached complaint against a district staff I believe there has been a violation of district code of conduct. I am very disappointed with the special education department. The district staff continues to violate the special education codes. I submitted a compliance complaint and I am being asked to waived the complaint so my son can get an assessment (IEE). I believe this is wrong and it shows how corrupted the special education system can be. Please ensure the special education department always follows the law." The actual complaint was excluded from the April 7, 2021 FUSD board agenda. The FUSD Board agenda includes a change.org petition to remove Rochelle Yatomi from Upland Unified School District. On May 5, 2021, another FUSD special education parent stated she filed a compliance complaint against FUSD Selpa.

She confirmed CDE found FUSD out of compliance and requested a CAPD IEE for her student. Parent was concerned that it took her 7 months to obtain an evaluation for her student. On that same date, an FUSD student advocated for the special education community. He requested FUSD allow public to participate by phone or zoom at board meetings. He requested for FUSD Selpa to follow the special education law. He shared that his family filed two compliance complaints against FUSD and that CDE ruled in the students favor.

Another parent requested the FUSD board to allow public participation by phone or zoom and to consider the fragile and elders that wish to participate. Parent stated she filed three compliance complaint in 2020, all three were in the students favor. She stated she believed Selpa had violated her students' rights.