

**FRIDAY**  
**FRIDAY ELDREDGE & CLARK**  
ATTORNEYS AT LAW

**To: Dr. Linda Watson  
Little Rock School District Board of Directors**

**From: Khayyam M. Eddings**

**Date: January 18, 2008**

**Re: *Doe v. Rousseau, et al.*, United States Court of Appeals for the Eighth Circuit, Case No. 07-3459**

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Will, Sherry and Wonder Doe have submitted a settlement demand for their appeal to the Eighth Circuit of the United States Court of Appeals. As each of you know, the United States District Court denied the plaintiffs' request for temporary injunctive relief and later granted the defendants' summary judgment, dismissing all of the plaintiffs' claims. Nonetheless, the Does demand the following to settle their appeal: (1) replacement of the cheerleader sponsors at Central High School or in the alternative, require the parties (including the cheerleader sponsors) to attend a conflict resolution session; (2) requirement that out of town judges judge all future cheerleader tryouts at Central; (3) discontinue use of Cheer City United as the host of Central High cheerleader practice; (4) allow Wonder Doe's trainer to attend the cheerleader practices for the tryouts for the 2008-09 school year; and (5) \$15,000 in costs fees and costs. My thoughts regarding the settlement demand follow below. I will address each demand in turn.

1. There is no reason to replace the cheerleader sponsors at Central. Whether the Board decides to settle this case or not, I believe that conflict resolution is never a bad idea. It may even prove productive in repairing the broken relationship the Does obviously believe currently exists between them and some of the staff at Central. I have participated in conferences with the Does, their advocate Joy Springer and the staff at Central on countless occasions. From my view, I believe that Nancy Rousseau, the Central High staff, Frederick Fields, Barbara Barnes and her staff all have performed admirably in addressing the Doe's concerns regarding Wonder. They have all devoted many hours to the Does. Furthermore, Wonder's teachers are in constant contact with Ms. Doe; some at least a couple of times per week. The LRSD has even contracted a licensed psychologist/behavior intervention consultant to develop a behavior modification plan for Wonder.

2. Cheerleader tryouts at Central, in past years, have been judged by out of town judges, along with the cheerleader sponsors. The aim has been to ensure that no judge (other than the cheerleader sponsors) has ties to any cheerleader candidate. I believe that Central has always been successful towards that end.

3. Mr. Walker contends that use of Cheer City United (“CCU”) for cheerleader practice sessions creates a “means test” for participation in cheerleading. In other words, only those who can afford it may participate. There is a monthly fee associated with participation in the program at CCU. Those students who can afford to pay, do. However, those who cannot are not required to.

4. The school may, of course, allow trainers to attend tryouts. The Board may even direct the school to do so. The current rule, however, prohibits persons other than the coaches, sponsors and contestants from being present during the tryout practices. The Does have produced no evidence which suggests that Wonder needs to have a trainer present during tryout practices as an accommodation for her disability. To illustrate the point, Wonder successfully competed for the 2005-06 and 2007-08 cheerleader teams without a trainer or any other accommodation. From a legal standpoint, I see no problem with allowing all of the contestants to have trainers present for the cheerleader tryouts, if they choose. Because there is no evidence suggesting that Wonder requires a trainer in order to compete evenly with other cheerleader contestants, however, allowing only Wonder to have a trainer present during the tryout practices would undoubtedly provide her an advantage not afforded to the other contestants.

5. The district court awarded the LRSD summary judgment on the merits of plaintiffs’ case. In other words, the Court found that there was no evidence that Wonder’s failure to make the cheerleading team in 2006-07 was related to the failure to accommodate her disability. Further, the court found that there was no evidence that school officials conspired to fix the cheerleader competition to ensure that Wonder would not be selected, as the Does alleged. Finally, the court, relying on the fact that Wonder had a section 504 plan in place at the beginning of the year, participated in advanced placement classes, progressed from grade to grade along with her peers and that school officials met with her parents on an almost weekly basis regarding her behavior and academic progress, held that any procedural failures alleged by the Does under the IDEA were *de minimus* and have not prevented Wonder from receiving a free and appropriate education.

Alternatively, the district court also held that plaintiffs’ failed to exhaust administrative remedies as required by the Individuals with Disabilities Education Act (“IDEA”) prior to filing suit in federal court. Under the IDEA, the burden rested with the Does to prove that they had requested a due process hearing before the Arkansas Department of Education prior to filing suit in federal court for claims under the IDEA or for claims related to Wonder’s educational programming under Section 504 of the Rehabilitation Act of 1973. The undisputed evidence was that Doe’s never requested a due process hearing, although they were apprised of that right. Because the Doe’s failed to exhaust their administrative remedies, the Court correctly held that it lacked subject matter jurisdiction to hear their claims. In regard to the Doe’s demand for \$15,000 in fees and costs, based on the facts and evidence in the record of the case I believe that the LRSD’s case on appeal is strong and expect to prevail. Moreover, I believe that we can defend the appeal for an amount less than the \$15,000 the Doe’s demand to settle their appeal.

As always, please do not hesitate to call me with any questions you may have regarding this case or any other matter.