

1 STATE OF ILLINOIS )  
2 COUNTY OF DU PAGE ) SS.

3 IN THE CIRCUIT COURT OF DU PAGE COUNTY  
4 FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

5 KILLIAN J. HYNES, a minor by )  
6 his parents KEVIN J. And BETH )  
7 HYNES, )

8 Plaintiffs, )

No. 2007 CH 1541

9 -vs-

10 SUPERINTENDENT ALAN LEIS and )  
11 ASSISTANT SUPERINTENDENT )  
12 KITTY MURPHY, NAPERVILLE )  
13 SCHOOL DISTRICT 203, )

14 Defendants. )

**ORIGINAL**

15 REPORT OF PROCEEDINGS had at the hearing  
16 of the above-entitled cause, before the Honorable  
17 BONNIE M. WHEATON, Judge of said Court, recorded on  
18 the DuPage County Computer Based Digital Recording  
19 System, DuPage County, Illinois, and transcribed by  
20 ERNEST C. SCOLA, Certified Shorthand Official Court  
21 Reporter, commencing on Friday, the 29th day of June,  
22 A.D. 2007 (a.m. session).

23 PRESENT:

24 MR. KEVIN J. HYNES,

appeared Pro Se.

1 THE CLERK: Add-on, 07 CH 1541, Killian Hynes  
2 versus Naperville School District 203.

3 THE COURT: Good morning.

4 MR. HYNES: Good morning, your Honor. Kevin  
5 Hynes, H-y-n-e-s, appearing pro se.

6 THE COURT: I gave my secretary a note  
7 yesterday that if you called to put this on the call,  
8 that she should tell you to give notice and that will  
9 materially advance the speed with which this is  
10 heard.

11 What I would like to do is put this on the  
12 call for 2:00 o'clock and allow you to call, fax,  
13 take an order over or whatever.

14 MR. HYNES: Very good, Judge.

15 THE COURT: I have read through everything that  
16 you gave me yesterday, and I would like to have this  
17 heard as soon as possible, but just to --

18 MR. HYNES: Understood.

19 THE COURT: (Continuing) -- belts and  
20 suspenders, just give notice for 2:00 o'clock this  
21 afternoon.

22 MR. HYNES: Yes, your Honor. And I apologize  
23 for yesterday.

24 THE COURT: I completely understand.

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MR. HYNES: Thank you.

THE COURT: I completely understand.

MR. HYNES: Thank you.

(Whereupon, the hearing of the  
above-entitled cause was continued to  
the same day, at the hour of 2:00  
o'clock p.m.)

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 23 appeared Pro Se.

24

1 PRESENT (CONTINUED):

2  
3 ROBBINS, SCHWARTZ, NICHOLAS, LIFTON & TAYLOR,  
4 LTD., by  
5 MS. LAURA M. SINARS,

6 appeared on behalf of the Defendants.  
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1 THE DEPUTY: Remain seated and come to order.  
2 Court is again in session.

3 Hynes versus Naperville School District,  
4 07 CH 1541.

5 MS. SINARS: Good afternoon.

6 THE COURT: Good afternoon.

7 MS. SINARS: Laura Sinars on behalf of Kitty  
8 Murphy, Alan Leis and Naperville School District 203.

9 THE COURT: Would you please spell your last  
10 name for the record, please?

11 MS. SINARS: Sure. S-i-n-a-r-s.

12 MR. HYNES: Kevin Hynes, H-y-n-e-s, pro se.

13 THE COURT: If there is any chance of this  
14 being resolved amicably, I can give you 15 minutes to  
15 talk about it, and then we can -- if no settlement is  
16 reached, we can proceed to a hearing.

17 This is an open courtroom. Anyone,  
18 including Mr. Barnum from the Tribune and  
19 Ms. Gutowski from the Daily Herald are free to walk  
20 in.

21 MS. SINARS: I understand that, Judge.

22 I'm certainly willing to talk to  
23 Mr. Hynes. I've always been willing to talk to  
24 Mr. Hynes, so that's not a problem. If he would like

1 the opportunity to discuss resolution, I welcome  
2 that. That's fine.

3 MR. HYNES: Well, I had written a letter asking  
4 if you wanted to give us the Tango without us having  
5 to sign any papers.

6 MS. SINARS: I didn't receive that  
7 communication, Mr. Hynes. The only --

8 THE COURT: I'll let you talk about it. I'll  
9 give you 15 minutes.

10 MR. HYNES: Judge, we're not going to need 15  
11 minutes. I know what their position is going to be.  
12 I would rather just roll.

13 THE COURT: All right. I read the material  
14 that you have submitted. Please feel free to make  
15 any argument you wish.

16 MR. HYNES: Judge, this was a case in which my  
17 son, Killian Hynes, needs a communication device to  
18 communicate with people, and he's been using this  
19 device since January of this year.

20 It was a loaned device from his reading  
21 therapist. And in March, March 16th --

22 THE COURT: Your son is autistic?

23 MR. HYNES: He is. He has autism. Sorry.  
24 Six-years-old, non-verbal.

1           On March 16th we had an IEP meeting where  
2 the District's representative was present.

3           THE COURT: That's an Individual Educational  
4 Placement?

5           MR. HYNES: Yes, Individual Educational --

6           THE COURT: Plan.

7           MR. HYNES: -- Plan.

8           MS. SINARS: Plan.

9           THE COURT: Plan.

10          MR. HYNES: At his IEP meeting, the District's  
11 representative, Dr. Kathy --

12          THE COURT: Well, her name is not important.

13          MR. HYNES: Okay. The District became aware  
14 that Killian was using the Tango device. It's in his  
15 IEP, the notes of the IEP. Briseno is her name,  
16 B-r-i-s-e-n-o. And she became interested in the  
17 device as a result of that meeting.

18                 I spoke to her a number of times about the  
19 device. And I told her that it was a device that was  
20 being used by Killian now for three months, and he  
21 was using it also in school.

22                 So, that began the process of us trying to  
23 get the District to purchase the device for Killian.

24                 In the interim, in April, she sent an



1 e-mail to my house saying that she was unhappy with  
2 the placement where Killian was, or said there are  
3 other issues that we should be exploring for Killian.

4 At the same time as this was going on, we  
5 had a meeting with Dr. Briseno, Debra Fogg, F-o-g-g,  
6 who is the person in charge of Assisted Technology  
7 for Naperville 203, and they came over to my house  
8 and watched the video of Killian using the device.

9 As a result of all of those meetings, I  
10 was told by the District, through Dr. Briseno, that  
11 Debra Fogg had ordered the device for Killian and  
12 that it should be here by June 11th.

13 June 11th, a separate dispute happened  
14 between the District and myself concerning placement.  
15 And at the time that that dispute arose, I asked for  
16 the Tango device to be turned over.

17 We had returned the loaned device to his  
18 reading therapist because she had said that another  
19 child needed to practice on it. And since we were  
20 going to get ours on June 11th, we did that.

21 On June 11th, we were told, after the  
22 dispute, that they were not going to provide the  
23 device.

24 I then began to get letters from counsel

1 indicating that the only way that they would provide  
2 the device would be if my son were to return to  
3 Summit, which had been deemed inappropriate for him  
4 by his IEP Team, or if he went into some District  
5 program this summer, which is some six-month program  
6 that had never been discussed.

7 I said that the -- I had sent her a letter  
8 saying that the Tango device has nothing to do with  
9 the separate due process issue, and the District's  
10 position was different.

11 We then came before your Honor back on --  
12 a week ago, a little bit more than a week ago, and  
13 counsel filed a motion to remove the case to Federal  
14 Court, which I had opposed at the time and actually  
15 opposed in papers in Federal Court.

16 We were in Federal Court on Wednesday.  
17 The Judge in his decision said that --

18 THE COURT: I've read the transcript.

19 MR. HYNES: Okay. And, as a result, I got the  
20 order that remanded it. I brought it before your  
21 Honor today. And I'm asking for a temporary  
22 restraining order to enjoin the District to stop  
23 withholding his device.

24 I am finished. Thank you.

1 THE COURT: Ms. Sinars.

2 MS. SINARS: Thank you.

3 I received the notice of today's hearing  
4 at approximately 10:00 a.m. this morning, so I have  
5 prepared a motion to dismiss on the legal issues that  
6 are before you, which I would like to present to the  
7 court, which I will, obviously, orally review with  
8 the court. I did not have the opportunity to file it  
9 formally before this hearing. So, I will tender a  
10 copy to you as well as to Mr. Hynes.

11 MR. HYNES: Thank you.

12 MS. SINARS: Mr. Hynes has seen the substance  
13 of this document prior to today's proceedings,  
14 because it was also filed in the Federal District  
15 Court in response to the pleadings that were removed  
16 to Federal District Court.

17 With regard to the issues that are -- or  
18 with regard to the factual claims that are before the  
19 court, I think it's critical for the court to have a  
20 full understanding of what has occurred prior to us  
21 walking through the door here today.

22 Killian Hynes has been, I think everybody  
23 agrees, in the Early Childhood Special Education  
24 Program at the Summit Early Learning Center since

1 2005.

2 That program was selected by his family  
3 for him, and the District acquiesced and agreed to  
4 fund that program.

5 It is a program --

6 MR. HYNES: Except, your Honor, that --

7 THE COURT: Wait, wait. I'll let you respond.

8 MR. HYNES: Okay.

9 MS. SINARS: It is a program that is approved  
10 by the Illinois State Board of Education in order to  
11 service students who have the diagnosis of autism, or  
12 have the eligibility determination of autism.

13 That program has been very carefully  
14 monitored. The Team has met quarterly to review  
15 Killian's progress in that program, and Dr. Briseno  
16 has been present at those meetings. Dr. Briseno is  
17 the representative that Mr. Hynes referred to  
18 earlier.

19 Dr. Briseno, in response to questions that  
20 were raised regarding the family, never suggested  
21 that the program was inappropriate, never said that  
22 Killian wasn't making progress and benefiting in that  
23 program.

24 What she said was, you've raised issues

1 regarding curriculum and you've raised issues  
2 regarding literacy. There are other programs if you  
3 would like to explore them, very different from  
4 saying, I don't think this program is appropriate.

5 She said there are other options if you  
6 would like to explore them.

7 She then participated in discussions with  
8 Mr. Hynes about securing the Tango. Nobody disputes  
9 that.

10 The District has agreed, as a part of his  
11 educational program, he can have access to Assisted  
12 Technology. It's in his IEP. It's in his  
13 Individualized Education Program.

14 They tried a variety of different devices  
15 this school year.

16 The parents have strongly preferred the  
17 Tango.

18 It's not necessarily the same device that  
19 the staff that are working with him prefer, but they  
20 have all agreed to use it in his educational program,  
21 as a part of his educational program, and it was  
22 secured for use as a part of his educational program,  
23 meaning the program that's written in his IEP,  
24 meaning the program that is ultimately approved by

1 that entire IEP Team, not just the family.

2 That device costs approximately between  
3 six and \$7,000.

4 That device was secured -- the staff was  
5 trained on that device at the Summit Early Learning  
6 Center, and that device was secured for Killian's use  
7 in the program as a part of his IEP, as a part of his  
8 program and placement.

9 On June 11, unbeknownst to the School  
10 District, the Hynes family notified the School Direct  
11 at an IEP meeting that he was not going to return to  
12 Summit Early Learning Center, that he would not be  
13 participating in their summer school program.

14 That was the first time -- well, I  
15 shouldn't say that. Dr. Briseno had called the  
16 family two hours before the meeting to advise them  
17 that she intended to go early to observe Killian, as  
18 was her practice. And at that time Mr. Hynes  
19 informed her that he would not be there, there was no  
20 need to go earlier because they had removed Killian  
21 from the program and designed an alternative program  
22 for Killian for the summer.

23 After making that decision, the parties  
24 then participated in an IEP meeting.

1 All of the staff at Summit school, who I  
2 have spoken to, believes that they can continue to  
3 meet Killian's needs.

4 All of the staff think that his program at  
5 Summit school is appropriate.

6 The family clearly disagrees with that  
7 determination, as is their right. They spoke that  
8 disagreement at the IEP meeting. And they have  
9 subsequently filed a request for a due process  
10 hearing. That hearing request was filed on June  
11 22nd.

12 It was then filed with the Illinois State  
13 Board of Education this past Tuesday on June 25th.

14 So, there is currently an administrative  
15 hearing pending over the appropriateness of Killian's  
16 educational placement and the use of the Tango, or  
17 the receipt of the Tango.

18 It's specifically sought as relief as a  
19 part of that due process hearing.

20 So, yes, we come before you and, yes, we  
21 have a dispute about educational services for Killian  
22 Hynes. But what I submit to you is that the relief  
23 that the family is seeking is not relief that's  
24 available under the IDEA, and it's not relief that's

1 appropriate to be provided today.

2 The Tango is available as a part of his  
3 IEP. That IEP calls for placement at Summit Early  
4 Learning Center.

5 And if the family disputes that, their  
6 remedy is to seek an administrative due process  
7 hearing and bring all of these issues before a  
8 hearing Officer, which they have, in fact, done.  
9 That has been started. That has been initiated.

10 So, there are, certainly, factual disputes  
11 about the appropriateness of the program. Mr. Hynes  
12 is representing it's not appropriate. I'm  
13 representing, on behalf of the School District, that  
14 the staff very much feel that it is appropriate, that  
15 he has clearly benefited in his two years of  
16 educational services there, nevertheless, and that as  
17 a part of his educational program, that device is  
18 available to him.

19 The program that the parent has put him in  
20 this summer is private programming through a private  
21 speech and language pathologist and occupational  
22 therapist.

23 It may be wonderful for Killian, but it's  
24 not programming that's approved by the Illinois State



1 Board of Education. It's not programming that the  
2 School District can write an IEP and place the  
3 student in.

4 It's not a District 203 sponsored program.

5 It's not staffed by certified staff, as  
6 the School Code requires certification.

7 It is an option that is available to  
8 parents. Parents always have the right to seek  
9 private services for their child. But that is not  
10 something that the District is called upon to  
11 support, is required to support, and it's certainly  
12 not something that the District has to tender  
13 equipment to support. It's not a part of his  
14 program.

15 So, I suppose I'm jumping ahead of myself  
16 in terms of the legal issues that I raise in the  
17 motion to dismiss, the first of which is that this  
18 matter has to proceed through an administrative due  
19 process hearing.

20 Mr. Hynes may claim that he is not  
21 representing issues under the IDEA, but already in  
22 his opening statement he spoke about the student's  
23 IEP. He spoke about the appropriateness of his  
24 services. He spoke about his entitlement to the

1 Tango as a part of that educational program.

2 Clearly, those are all IDEA based issues,  
3 meaning the Individuals with Disabilities Education  
4 Act.

5 That statute unequivocally says you must  
6 proceed to an administrative hearing prior to going  
7 into court. That is the remedy.

8 And under that -- and even if the  
9 complaint itself doesn't specifically say IDEA,  
10 although he references it in his complaint, that  
11 doesn't matter.

12 Under the Arnold case that's cited in the  
13 decision before you, and Charlie F, which is a  
14 Seventh Circuit case, as long as the relief that the  
15 plaintiff is seeking is available under the IDEA,  
16 that is the remedy, that is the remedy that the  
17 person must follow.

18 And, so, the relief that this gentleman is  
19 seeking is clearly relief that's available under the  
20 IDEA.

21 THE COURT: And how long is it going to take  
22 the District to provide this administrative hearing?

23 MS. SINARS: It's been filed with the State  
24 Board of Education. The hearing is to be conducted

1 in 45 days.

2 THE COURT: 45 days?

3 MS. SINARS: Um-hum.

4 During that period of time, interim orders  
5 for relief can be presented.

6 There is nothing that precludes Mr. Hynes  
7 from presenting his motion for temporary restraining  
8 order to the Administrative Law Judge or Hearing  
9 Officer. He's entitled to --

10 THE COURT: And what would make you think that  
11 he is going to get any more cooperation from the  
12 District than he's gotten so far?

13 MS. SINARS: In what sense?

14 THE COURT: In the expedited hearing of a  
15 temporary restraining order in front of any tribunal.

16 MS. SINARS: Well, I believe the proper  
17 tribunal is the Administrative Law Judge, and so that  
18 is the Judge which I believe should be hearing the  
19 merits of the TRO and making a determination on the  
20 four elements of a temporary restraining order.

21 MR. HYNES: He has not even been appointed yet.

22 MS. SINARS: He has been appointed, or she has  
23 been appointed.

24 The State Board of Education has those

1 documents and has them since Tuesday.

2 We can probably contact Andy Eulass today  
3 and find out who the Hearing Officer is.

4 THE COURT: Quite frankly, I think I have heard  
5 enough. I have absolutely heard enough.

6 I read the transcript of Judge Shadur's  
7 opinion, and I was quite startled that a Federal  
8 Judge would be so vehement in his -- in rendering his  
9 opinion, and now I can absolutely see why.

10 I think Judge Shadur's statement that this  
11 six-year-old autistic boy is being held hostage is  
12 absolutely four square and right on.

13 And I cannot, for the life of me,  
14 understand why the District would withhold this  
15 communicative device, which has evidently been proved  
16 to be a mechanism by which this autistic boy can  
17 communicate, merely because his parents have a  
18 dispute with the District over the remainder of the  
19 IEP.

20 I think I can very, very positively say  
21 that this child has a right to this assisted learning  
22 device.

23 I'm familiar with the device, at least if  
24 it's the same one that I saw on TV some while ago.

1           He has a right to the services, whether  
2 it's piecemeal or as a whole, under an IEP that is  
3 formulated by the District and agreed to by his  
4 parents.

5           Clearly, clearly, irreparable injury will  
6 occur to him for every day that he is deprived of  
7 this assisted communicative device.

8           I believe that the motion to dismiss is  
9 unavailing. I am going to deny the motion to  
10 dismiss.

11           I think that there is a likelihood of  
12 success on the merits and clearly, clearly, no  
13 adequate remedy at law to replace the lost days that  
14 this child is without this device.

15           I will enter a temporary restraining order  
16 enjoining and restraining the District from  
17 withholding this device, which is a part of his  
18 approved IEP, and that will be in effect until we can  
19 have a preliminary injunction hearing, at which time,  
20 I guarantee you, the press will be present.

21           MS. SINARS: The press is already present,  
22 ma'am, so -- she was. She left.

23           THE COURT: Okay. Well, I'm sure it will be.

24           MS. SINARS: May I ask, then, Judge, as part of

1 the delivery of the communicative device, that the  
2 family be asked to execute the same Assisted  
3 Technology Use Form that all other families are asked  
4 to fine --

5 THE COURT: Certainly.

6 MS. SINARS: -- which means that they keep it  
7 in good working order and return it in good working  
8 order?

9 THE COURT: Absolutely. I think that's --

10 MR. HYNES: That's never been a problem for us  
11 to do.

12 THE COURT: And I will add, certainly for your  
13 benefit, Ms. Sinars, I know that you have been in  
14 practice for a long time. I know that you are very  
15 well regarded and have received all kinds of  
16 accolades, but I cannot believe that you would put in  
17 writing the Proposed Settlement Agreement that  
18 Mr. Hynes attached. That is a mistake --

19 MS. SINARS: I'm sorry, Judge --

20 THE COURT: No, no, no. Let me finish.

21 That is a mistake that a brand-new lawyer  
22 would make, not one that has been in practice and is  
23 well respected as you are. That's all I'm going to  
24 say about that.

1 MS. SINARS: Well, in my defense, Judge, it's  
2 part of my job to ensure confidentiality, and that is  
3 what I asked for from the family, which, obviously,  
4 has not been provided, but --

5 THE COURT: Oh, that's not the tenor. That is  
6 not the tenor of your letter, ma'am. That is not the  
7 tenor of your letter.

8 That's all I'm going to say.

9 You may prepare the order, Mr. Hynes.  
10 You've made some notes on the back.

11 MR. HYNES: That's okay.

12 MS. SINARS: Judge, if I may, may I read the  
13 order before it's executed?

14 MR. HYNES: I have a copy.

15 MS. SINARS: That's, obviously, quite a bit  
16 more than what, I believe --

17 THE COURT: No, I think you can just do a hand-  
18 drawn order.

19 MR. HYNES: Okay, Judge.

20 THE COURT: You have some language in here  
21 about --

22 MR. HYNES: Okay.

23 THE COURT: -- it's granted without notice.

24 MR. HYNES: That's fine. I can --

1 THE COURT: Just hand draw an order. And this  
2 should be done forthwith.

3 MR. HYNES: Please.

4 MS. SINARS: I will notify Ms. Murphy today. I  
5 don't know that's she's still at the District and  
6 whether they will be able to supply the Tango device  
7 today, but it will certainly be available Monday  
8 morning.

9 I will notify her. I just don't know if  
10 she's there. I'm assuming --

11 THE COURT: All right. If she's --

12 MS. SINARS: I don't know if the device is  
13 there or if she is there, but if not, I will  
14 represent to you that it will be available for the  
15 Hynes first thing Monday morning.

16 THE COURT: At the earliest opportunity. You  
17 can go out and make a phone call right now. It's  
18 only 22 minutes after 2:00.

19 MS. SINARS: That's fine.

20 MR. HYNES: Could you? Because I can go there  
21 forthwith.

22 THE COURT: All right. Thank you.

23 MR. HYNES: Thank you.

24 THE COURT: You can go back to my secretary and



1 get a date for a preliminary injunction hearing, as  
2 well.

3 MS. SINARS: Thank you, ma'am.

4 (WHICH were all the proceedings had  
5 at the hearing of the above-entitled  
6 cause this date and time aforesaid.)

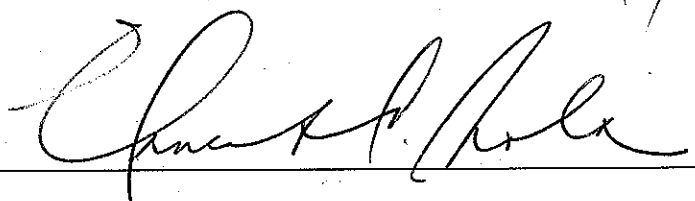
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1 STATE OF ILLINOIS )  
2 COUNTY OF DU PAGE ) SS:

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I, ERNEST C. SCOLA, hereby certify that I am a Certified Shorthand Official Court Reporter assigned to transcribe the computer based digital recording of proceedings had of the above-entitled cause, Administrative Order No. 99-12, and Local Rule 1.01(d). I further certify that the foregoing, consisting of Pages 1 to 26, inclusive, is a true and accurate transcript hereinabove set forth.

7/2/2007



Certified Shorthand Reporter  
Eighteenth Judicial Circuit of Illinois  
DuPage County  
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