NYSE Directors
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MONTHS IN REVIEW: January – February, 2012

Read All About It!

A Monthly Synopsis of Salient Cases in Special Education

INTRODUCTION

In this month's issue of "Attorney's Corner" we review several federal and SRO decisions which provide encouragement to school districts, but should also result in increased focus on obligations under IDEA and Section 504. Specifically, one district's continuing failure to refer the student to the CSE, even after being found to have violated its child find obligations the previous year, resulted in it being obligated to reimburse the parents for tuition paid at a non-SED approved, out-of-district, private school.

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U.S. Supreme Court

1. Supreme Court Will Not Review Circuit Court's Ruling on IDEA's Exhaustion of Remedies Requirement.

Payne v. Peninsula School Dist., 653 F.3d 863 (9th Cir., 2011), *cert. denied* 2012 WL 538336 (2012)

SALIENT FACTS:

Parents of a student with a disability filed a Section 1983 claim arising out of a Washington State district's alleged misuse of a timeout room. The parents

claimed that the student's teacher used a closet-sized room as a "timeout room." Specifically, the parents alleged that on various occasions, as a punishment, the teacher locked the student in the closet without supervision. In response, the student removed his clothing and urinated or defecated on himself. The parents sought monetary damages as relief.

In relying upon a previous Ninth Circuit Court of Appeals Decision, the district argued that the case should be dismissed, as the parents failed to exhaust their administrative remedies. See Robb v. Bethel School District # 403, 308 F.3d 1047 (9th Cir., 2002) (holding that parents must exhaust their administrative remedies if the injuries they alleged could be resolved to any degree under IDEA). However, in concluding that the application of the exhaustion requirement turns on *the relief sought rather than the injury alleged*, the Ninth Circuit overruled its decision in Robb. The Court noted that the exhaustion requirement arises under three circumstances - when the parent seeks: (1) an IDEA remedy or its functional equivalent (e.g. tuition reimbursement), (2) a prospective change in the student's program or placement, or (3) enforcement of rights arising from denial of FAPE. Thus, the court held that IDEA's exhaustion requirement applies only in cases where the relief sought in the pleadings is available under IDEA. The court wrote, "IDEA's exhaustion requirement applies to claims only to the extent that the relief actually sought by the plaintiff could have been provided by the IDEA."

The dissent argued that this "relief-centered" approach would provide plaintiffs with "an easy end-run around the exhaustion requirement" by requesting monetary damages, a form of relief that is not available under IDEA. However, the majority explained that a parent seeking monetary damages resulting from an alleged FAPE denial would still be required to exhaust her administrative remedies. The court wrote, "[w]here the claim arises only as a result of the denial of FAPE, whether under IDEA or [Section 504], exhaustion is clearly required no matter how the claim is plead."

COURT'S DECISION:

In denying review of the case, the Supreme Court essentially preserved the Ninth Circuit Court of Appeals' decision.

WHY YOU SHOULD CARE:

Consistent with this decision, federal and State law require that, "before the filing of a civil action under such laws seeking relief that is also available under [IDEA], the [administrative] procedures...shall be exhausted to the same extent as would be required had the action been brought [under IDEA]." 20 U.S.C. §1415(l); Education Law §4404(3); see also Polera v. Bd. of Educ., 288 F.3d 478, 483 (2d Cir., 2002). It is well settled law that under these circumstances, plaintiffs may only avoid administrative proceedings where "exhaustion would be futile because administrative procedures do not provide adequate remedies." Heldman ex rel. T.H. v. Sobol, 962 F.2d 148, 158 (2d Cir., 1992). Exhaustion is futile where: (1) the

plaintiff seeks relief from the same entity that failed to implement the student's IEP, (2) the problems alleged are "systemic violations" that cannot be addressed by the administrative procedures, or (3) the district would have been unable to remedy the alleged injury at the time it occurred. A "systemic violation" exists where the (1) framework and procedures for assessing and placing students in appropriate programs is at issue, or (2) where the nature and volume of complaints are incapable of correction through the administrative hearing process. See J.S. ex rel. N.S. v. Attica Cent. Schs., 386 F.3d 107, 114 (2d Cir., 2004). However, as illustrated here, where parents seek relief that is unavailable under IDEA (e.g. monetary damages) as a result of the district's alleged violation of Section 1983 (i.e. a deprivation of a constitutional or federally protected right), the parents may not be required to exhaust their IDEA administrative remedies.

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New York Federal District Courts

1. Student's Sudden and Sporadic Fear of Swimming Did Not Entitle Her to 504 Accommodations.

S.S. v. Whitesboro Cent. Sch. Dist., 2012 WL 280754 (N.D.N.Y., 2012)

SALIENT FACTS:

The student who did not have a Section 504 plan was on the high school's swim team. Her mental disorder caused her to experience severe and unannounced anxiety attacks in public places. These anxiety attacks caused her to fear drowning, and to ease her anxiety, the student would immediately exit the pool. However, whenever she did so, the coach would threaten to remove her from the team if she did not return to the pool. Other students with disabilities were allegedly allowed to exit the pool during practice, without being reprimanded. However, the coach refused to honor the parents' request that their daughter be allowed to leave the pool during practice and competitions for indeterminate periods of time, or on unannounced occasions, without being removed from the team. Eventually, the student quit the team when she withdrew from the district. The parents claimed that in refusing to honor their request, the District violated Section 504 and the ADA by failing to provide their daughter with reasonable accommodations.

COURT'S DECISION:

In rejecting the parents' claims, the court wrote, "[t]here is no reasonable accommodation that a swim team coach could make for an athlete who is suddenly and sporadically afraid of the water and thus has to exit the pool during practices and competitions." The court reasoned that the ability to enter and remain in the

pool, and swim when called upon to do so, are essential requirements of being a member of the swim team. Therefore, permitting the student to do otherwise would have fundamentally altered the nature of the swim team program, and thus would have been unreasonable. Moreover, the court noted that the parents failed to allege that the student was ever prohibited from leaving the pool. Rather, the student was able to do so, but experienced criticism and threats of being removed from the team. The court concluded that the student "d[id] not have a federally protected right to participate in school sports teams as part of her federally protected right to education." Further, the court wrote, "[e]ven if [this] right...was included in [the student's] federally protected right to education, that right would not contain a specific right to participate in the school's swim team." Thus, the court granted the district's motion for summary judgment.

WHY YOU SHOULD CARE:

Under Section 504 and the ADA, Districts are obligated to provide reasonable accommodations to enable students to participate in the regular education setting to the same extent as their non-disabled peers. However, the ADA provides that reasonable modifications to policies are *not* required if they would fundamentally alter the program. Thus, if certain accommodations are unreasonable or would fundamentally alter the district's program, such as competitive swimmer seeking an accommodation to leave the pool at any time, including during competitions, these accommodations may not be required under 504 or ADA.

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2. Student's Stubbornness and Tendency to Call Out Answers in Class Warranted A Special Class Placement.

J.P. ex rel. D.P. v. New York City Dept. Of Educ., 2012 WL 359977 (E.D.N.Y., 2012)

SALIENT FACTS:

Against the parents' objections, the CSE placed an ED student in a 12:1+1 special class. The CSE based its recommendations in large part on reports from the student's private school that he was an "inflexible child," who became easily frustrated and argumentative when he did not get his way, and had a tendency to call out answers in class when not called upon and without first raising his hand. The CSE reasoned that a special class was necessary because these behaviors would negatively impact the education of other students in the general education class. Further, the student required an intensive level of assistance navigating social situations. Specifically, if the student did not get his way, he tended to instigate arguments. The parents rejected the recommendation, maintained the

student's placement in a general education private school with a class range of six to eleven students, and sought reimbursement for tuition paid to the private school.

COURT'S DECISION:

The court agreed with the SRO that the district's placement recommendation did not violate the LRE considerations. The court noted that despite IDEA's "strong preference" for mainstreaming, this preference must be weighed against the importance of providing an appropriate education. The Third Circuit Court of Appeals' has taken the position that, "[i]f the disabled child's inclusion in a regular class excessively disrupts the class or requires so much of the teacher's attention that other students are ignored, a general education placement may be inappropriate" (*citing* Oberti v. Bd. of Educ. Of Clementon Sch. Dist., 995 F.2d 1204, 1217 [3d Cir., 1993]). Consistent with this position, the court noted that the IEP explained that the student was not placed in a general education environment because the severity of his emotional and behavioral difficulties requires his placement in a small self-contained class. The court found persuasive testimony from the school psychologist that it would have been almost impossible or very difficult for the student to function in a less restrictive environment as a result of his emotional difficulties. As such, the court concluded that the district offered FAPE.

WHY YOU SHOULD CARE:

In addition to providing FAPE to students with disabilities, districts must also ensure that its placement recommendations are consistent with LRE considerations. In determining the LRE, the district must consider several factors including, (1) whether the district has made reasonable efforts to accommodate the student in a general education classroom, (2) the educational benefits available to the student in a general education class with supplementary aids and services in comparison to the benefits of an education in a special class, and (3) any possible negative impact the student's presence may have on general education students.

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3. *Res Judicata* Bars Two Bites at the Same IEE Apple.

K.B. v. Pearl River UFSD, 2012 WL 234392 (S.D.N.Y., 2012)

SALIENT FACTS:

The parent of a child with autism challenged three of the several evaluations conducted as components of the student's three-year reevaluation. In challenging the district's psychological evaluation, the parent requested a neuropsychological evaluation as an IEE at public expense. After denying the requests, the district filed a due process complaint to defend the appropriateness of its evaluations, and alleged that the parent was only entitled to an IEE for the specific evaluation she

challenged. Thus, the district argued, the parent was only entitled to a psychological evaluation as an IEE as a result of her challenge to the district's psychological evaluation. Three days before the hearing, the parent withdrew her request for a neuropsychological evaluation. The IHO rejected the parent's challenges to the other evaluations and the SRO denied the parent's appeal. At a subsequent CSE meeting, the parent again requested a neuropsychological evaluation as an IEE. After the district denied her request for the second time, the parent obtained a private neuropsychological evaluation for which she sought reimbursement of $3,500. After being denied her request, the parent filed a state complaint. VESID directed the district to either reimburse the parent for the evaluation, or file for due process challenging the parent's request. Consistent with the district's $3,000 cap on evaluations, the district paid the parent this sum, and filed for due process maintaining that the district's evaluation was appropriate, and asserting that the $3,000 cap was appropriate.

COURT'S DECISION:

The threshold question of whether the parent was entitled to reimbursement for the private neuropsycholgical evaluation was whether she properly disagreed with a district evaluation. The court concluded that this issue could have been raised and litigated at the previous hearing. However, as a result of the parent's decision to withdraw the request, it was not. Therefore, on the grounds of *res judicata*, the parent was not permitted to re-litigate this issue.

Nevertheless, the court considered the merits of the appeal. Its analysis turned in large part on whether the private evaluation was obtained because the parent disagreed with the district's evaluation. The court wrote, "if [the parent] did not properly object to the district evaluation, [the private evaluation] does not qualify as an IEE and the parent cannot claim reimbursement." The court noted the district's argument that "the parent was 'not entitled to an independent neuropsychological evaluation if [she] disagreed with the results of a psychological evaluation." The court held that "the [p]arents' proper recourse [when her request was denied] was to commence an impartial hearing to dispute the validity of the evaluations to which she objected." However, apart from noting the district's argument that a distinction between a psychological and neuropsychological evaluation existed, the court did not offer an opinion on this question.

WHY YOU SHOULD CARE:

When a parent requests an IEE at district expense, the district has two choices - (1) grant the request and provide the parents with a list of evaluators and its criteria for the IEE, or (2) file for due process asserting that its evaluation is appropriate or the evaluation obtained by the parents for which they seek reimbursement does not meet the district's criteria. When pursuing this second option, a threshold inquiry must be made - whether the parent properly objected to a specific district evaluation. If the parent's request for an IEE is only that she wants a second opinion, this will not satisfy the standard for entitlement.

However, if the parent's request for an IEE is that she disagrees with the district's evaluation, the district will only have two options. Although it remains unclear whether the parent is only entitled to an IEE of the same type of evaluation which she challenges, parents must specify which district evaluation they are challenging. This specificity is necessary to enable the district to either comply with the request or craft its due process complaint with sufficient particularity.

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4. The Only Party Entitled to Attorney's Fees is the Prevailing Party.

J.G. v. Kiryas Joel U.F.S.D., 2012 WL 398823 (S.D.N.Y., 2012)

SALIENT FACTS:

The parents of a child with multiple disabilities were unsuccessful in convincing the Southern District that the school district denied FAPE on procedural and substantive grounds. Specifically, the court concluded among other things, that the absence of a special education teacher did not result in a denial of FAPE, because several of the CSE members had extensive backgrounds and relevant certifications in special education. As to the substantive adequacy of the IEP, the court concluded that the CSE properly based its recommendations upon the recommendations of the CPSE, made the previous year. Specifically, the court wrote, "in [r]elying on evaluations…it was not unreasonable for [the] CSE to propose an IEP virtually identical to [the student's] previous one. In fact, the district would have been hard-pressed to justify a dramatic shift toward mainstreaming in light of the depiction of [the student] as a child with severe disabilities who fell within the first percentile for his age group in critical areas like speech and language."

Although the court concluded that the district did not mainstream the student to the maximum extent appropriate, it denied reimbursement on the grounds that the unilateral placement failed to meet the student's special education needs. The parents moved for attorneys' fees for the underlying action and the district filed a cross-motion for attorneys' fees relevant to the parents' motion.

COURT'S DECISION:

As a threshold issue, the court noted that "to be a prevailing party, one must either secure a judgment on the merits or be a party to a settlement agreement that is expressly enforced by the court through a consent decree." Moreover, "[a]lthough the Second Circuit generously interprets the prevailing party in terms of the degree of relief required, a 'purely technical or *de minimis*' victory, however, will not qualify a plaintiff as a prevailing party" (citations omitted).

Although the court concluded that the district failed to mainstream the student to the maximum extent appropriate, the parents did not win the judgment on the merits of any issue. Thus, the parents were not entitled to attorneys' fees as the prevailing party. Attorneys' fees are available to a prevailing school district against the parents' attorney "who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation" (*citing* 20 USC 1415[i][3][B][i][II]). However, the court declined to exercise its statutory authority to deem the parents' motion for attorney fees frivolous. The court acknowledged that the parents' attorneys "may have confused the thoroughness of the Court's opinion on the merits with partial success on the merits." However, this "confusion" did not satisfy the statutory criteria for the district's entitlement to attorneys' fees.

WHY YOU SHOULD CARE:

To be entitled to attorneys' fees, a party must be the prevailing party. Specifically, the party must have (1) secured a judgment on the merits; or (2) been a party to a settlement agreement that is enforced, with consent of both parties, by the court. Although the relief required to satisfy the prevailing party status has been broadly interpreted by the Second Circuit, a technical victory will not satisfy the statutory requirement. Thus, if a party seeks attorneys' fees relevant to an action that is dismissed on untimeliness grounds, this party will not be the "prevailing party" who is entitled to attorneys' fees. This case illustrates the reluctance among courts to grant attorneys' fees to districts on the grounds that the parents' claim is frivolous. A claim brought as a result of the attorney's "confusion" with the court's judgment will not rise to the level of frivolousness required for an award of attorneys' fees in favor of the district.

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New York State Review Officer

1. A District's Continuing Child Find Violation Obligated It To Reimburse Parents for Non-Approved Private School Tuition.

Application of the Board of Education, Appeal No. 11-153 (Jan. 23, 2012)

SALIENT FACTS:

Since 2009-10, the student was parentally placed in a non-SED approved, nonpublic school ("NPS") outside of the District. The student experienced a "paranoid episode" and received diagnoses of depressive disorder, anxiety, and behavioral problems secondary to reported peer bullying dating back to 2007-08. In a prior appeal regarding the district's child find obligations relevant to 2009-10,

the IHO concluded that the district violated its child find obligations by failing to refer the student to the CSE, and ordered it to reimburse the parents for tuition at the NPS. Thereafter, for 2010-11, neither the parents nor the district referred the student to the district's CSE. Rather, the parents maintained the student's placement at the NPS. In a subsequent impartial hearing decision relevant to 2010-11, the IHO concluded that the "continuation of the [district's] failure to refer the student to the CSE continued the lack of FAPE in the 2010-11 school year." Accordingly, the IHO ordered the district to reimburse the parents for the NPS tuition for 2010-11.

SRO'S DECISION:

The District argued that the IHO improperly found that it violated child find for 2010-11. Specifically, the district argued that it had no obligation to evaluate the student, determine his eligibility, or develop an IEP for 2010-11, because the parents' actions made it clear that they intended to continue the student's enrollment in the out-of-district NPS for 2010-11. Therefore, the district reasoned, child find obligations rested with the DOL. In rejecting this argument, the SRO wrote:

> [A]lthough…the [district's] director [of special education] did endeavor to facilitate the referral of the student to the [DOL for 2010-11], when, during a telephone conversation, she provided the student's mother with the [DOL's] contact telephone number and advised her of the name of the [DOL's] director of special education, the parents ultimately did not contact the [DOL] and attempt to initiate evaluation procedures, did not seek to obtain special education programs and services from the [DOL], did not furnish consent to the district to share the student's information with the [DOL], did not have the student evaluated by the [DOL], and did not accept an IESP developed by the [DOL] or accept services provided by the [DOL]. Thus there is no evidence here that the [DOL] had already determined "through the child find process that the child needs special education and related services," which is the necessary condition precedent to displacing the district's obligation to evaluate the student, determine the student's eligibility to receive special education programs and related services, and if appropriate, develop an IEP for the student. At 7-8.

The SRO continued,

> Even if the parents had actively pursued an evaluation of the student with the [DOL], they would not have been precluded from seeking an evaluation from the district as well, because, contrary to the district's assertion, the obligation of the [DOR]

> to provide FAPE does not terminate because a student has been privately educated elsewhere - rather, the IDEA's obligations may be shared with the [DOL], and Education Law §3602-c "does not imply that parents may not also seek a FAPE for a privately placed child from the [DOR]." At 8.

The SRO rejected the district's argument that it did not have reason to suspect that the student had a disability. Testimony relevant to the 2009-10 impartial hearing identified the student's social/ behavioral concerns sufficiently to trigger the district's child find obligations, however, the district failed to evaluate the student even after the first IHO found that it denied FAPE and ordered reimbursement. In the second impartial hearing, the director of special education testified that, she advised the parent that "'if [the student] was a student [in the district'], [they] could talk about possibly a referral and [the DOR] would have some evaluations done, but because he [was] no longer a student in the district, the obligation actually [fell] on the [DOL] to do the evaluations and to have a CSE..." The SRO concluded that, this testimony strongly suggested that the district's decision not to refer the student stemmed not from a lack of reasonable suspicion that the student may have had a disability, but from the district's erroneous belief that the responsibility to evaluate the student rested solely with the DOL.

However, the SRO was not convinced that the bullying incidents to which the student was subjected satisfied the ED criteria primarily because there was insufficient evidence that the student experienced one of the five ED criteria over an extended period of time and to a marked degree. Nevertheless, the SRO considered whether the NPS was appropriate. The parents were unable to convince the SRO that removal from the public school where the student was subjected to peer bullying satisfied the second prong of the Burlington-Carter standard. Specifically, the SRO concluded that this removal did not satisfy the parents' burden to demonstrate how the NPS program was specially designed to meet the student's unique needs. Accordingly, the SRO reversed the IHO's award of reimbursement for 2010-11.

WHY YOU SHOULD CARE:

Although the district was the prevailing party, districts are reminded of an important concept - an out of district parental placement is insufficient to release the DOR of its child find obligations. All districts must have child find procedures in place for the identification, location, and evaluation of all children with disabilities residing within its geographic boundaries. Simply because a parent has made clear his intention to unilaterally enroll or maintain the enrollment of his child in a nonpublic school in a DOL, the DOR is not relieved of its duty to offer FAPE. In fact, unless and until the DOL has identified the student through the child find procedures, *and* the parent has made clear her intention to maintain the student's enrollment in the DOL, the DOR retains its obligation to offer FAPE. *Caveat*: Even if the parent has the child evaluated by the DOL, and even if the

child receives an IESP from the DOL, the parent has the right to request a CSE meeting to see what the DOR's FAPE recommendation will be.

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2. No Educational Impact or Need for Special Education, Means No Classification.

Application of the Board of Education, Appeal No. 11-152 (2012)

SALIENT FACTS:

Parents of a student enrolled in a non-SED approved private school ("NPS") were unable to convince the CSE that the student's deficits warranted classification as OHI. The NPS was described as an international baccalaureate ("IB") school. While enrolled in the NPS, the student participated in a program, which provided support for students who have differences, but are able to perform in the general education setting ("Quest"). The student was diagnosed with ADHD, and exhibited deficits in executive functioning, reading comprehension, and writing. However, overall, on standardized testing, the student scored in the average to high average range and the student maintained good grades at the NPS. As such, the CSE concluded that the student's deficits did not result in an educational impact. Although Quest provided tutoring, extended time, assistance with organizing assignments, and use of computer, the CSE determined that the student's skill deficits did not adversely affect his educational performance to the extent that he required special education programs and services. As such, they refused to classify the student.

SRO'S DECISION:

On appeal from the IHO's decision, which found that the CSE should have classified the student, the district argued that the NPS is a general education program in which the student made progress. Moreover, the district argued that the support provided by Quest was the same support a public high school would have provided in general education. Based upon NPS staff reports that the student began to motivate himself to address areas that required improvement, and began to improve performance in these weaker subject areas, the SRO concluded that the student did not meet the standards for OHI classification.

The SRO considered whether the student's deficits adversely affected his educational performance, and answered in the negative. The SRO found persuasive that the student was enrolled in a "challenging" IB program at the NPS, maintained a cumulative GPA of 88.4, and earned a 1200 on his SAT without accommodations. The school psychologist who conducted the district's psycho-educational testing, noted that the evaluation revealed difficulties with initiation of activity, working memory, planning and organization of activity, problem solving

strategies primarily in social situations, and monitoring self-behavior. However, the SRO concluded that there was no evidence that these difficulties affected his classroom functioning.

Finally, the SRO concluded that, even if he had found that the student's deficits affected his educational performance, the student did not require special education or related services. The SRO wrote, "while the student exhibited some weaknesses, he did not demonstrate that level of need exhibited by a student in special education." Accordingly, the SRO reversed the IHO decision of eligibility and tuition reimbursement, and found for the district.

WHY YOU SHOULD CARE:

To be classified under IDEA, a student must not only have a specific physical, mental, or emotional diagnosis, but such condition must adversely impact the student's educational performance to the extent that he or she requires special services and programs.

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Case of Interest

1. Parents' Conditions To Evaluation Undercut Consent.

G.J. v. Muscogee County School District, 2012 WL 263382 (11th Cir., 2012)

SALIENT FACTS:

The district sought the parents' consent to conduct a reevaluation of a student with autism and brain injuries. The parents failed to sign consent and sent a statement to the district that indicated: "[n]ot approved by IEP or parents until lawyers work out guidelines. MCSD cannot evaluate [the student] for anything." Two weeks later, the parents provided consent for the reevaluation, but only under the conditions "as explained and granted in the [seven point] addendum" attached to the consent form. In addition to identifying the evaluator they would authorize to conduct the evaluation, and requiring that they be present during the evaluation, the parents also required (1) that the evaluation only be used for the purpose of developing an IEP; (2) that specifically identified testing instruments and standards be used; (3) that the evaluator consult with them before and after the evaluation; (4) that there be limited distribution of the evaluation; and (5) that the evaluation may not be used against them in litigation. The district responded by refusing to conduct the evaluation under these conditions. Both the ALJ and District Court agreed that the parents had no authority to dictate the terms and conditions of the reevaluation.

COURT'S DECISION:

The Eleventh Circuit Court of Appeals affirmed the District Court's decision. The Appellate Court wrote, "[w]e find there is absolutely no basis upon which any party could disagree with the district court's conclusion…[that the parents'] conditions vitiated any rights the school district had under the IDEA for the reevaluation process, such as who is to conduct the interview, the presence of the parents during the evaluation, not permitting the evaluation to be used in litigation, and whether the parents received the information prior to the school district." Therefore, the court found "no error in the district court's conclusion that, due to the extensive nature of the conditions demanded by the parents, the parents had refused to provide consent to the school district for the reevaluation." The Court also rejected the parents' argument that they were entitled to an IEE at public expense as a result of the district's refusal to conduct the evaluation. The Court's decision rested on the fact that the district had not conducted the evaluation as a direct result of the parents' failure to cooperate.

In an ancillary issue, the Court did not rule on the parents' request for an order allowing their evaluator to observe the child in his classroom. The Court noted that IDEA does not provide the parents' experts with authority to observe the student in the classroom. The court cited the U.S. DOE's administrative ruling in *Letter to Mamas*, 42 IDELR 10 (OSEP, 2004) and wrote, "[c]ontrary to the parties' assertions, we find no mandate either for or against access in this agency ruling. Rather, the process contemplates cooperation between parents and the school administrators." The court chose not to issue a conclusive ruling on this issue.

WHY YOU SHOULD CARE:

Although IDEA is viewed largely as a "Parents" law, this case illustrates that IDEA does not render a school powerless. The district has an obligation to evaluate a student once every three years. In performing this obligation, the district has the authority to select the evaluators; determine the qualifications of the evaluators; and use the evaluations for multiple purposes, including, but not limited to, the development of the IEP. When a parent consents to an evaluation, he/she does not have the right to name the evaluator, insist on being present for the evaluation, or limit how the evaluation will be used.

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