



CLIENT NEWS BRIEF

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SPECIAL EDUCATION STUDENTS WHO SECURE A CHANGE IN ELIGIBILITY CLASSIFICATION THROUGH DUE PROCESS MAY BE ENTITLED TO ATTORNEYS' FEES

The Ninth Circuit Court of Appeals has recently held that attorneys' fees under the Individuals with Disabilities Education Act ("IDEA") may be available to students who successfully litigate a change in their eligibility classification. Weissburg v. Lancaster School District (9th Cir. 2010) ___ F.3d ___ (2010 WL 114960) ("Weissburg").

In the Weissburg case, both Lancaster School District ("District") and a District student requested due process hearings before the Office of Administrative Hearings ("OAH") concerning the appropriateness of the student's assessment and placement. The student argued the District had inappropriately identified him as eligible for special education under the category of mental retardation and that the student's placement was inappropriate as it did not address his autism-related needs. OAH found that, while the District's assessment of the student was appropriate, the District should have classified the student as eligible for special education under both the mental retardation and autistic categories. Regardless of the student's misclassification, OAH ruled that the student's placement appropriately addressed all his needs, and he was thus provided a free appropriate public education ("FAPE").

The student then filed an action in federal district court to recover attorneys' fees. IDEA provides that students may seek attorneys' fees if they are a prevailing party in a due process hearing. In order to be awarded prevailing party attorneys' fees, the student must have succeeded in materially altering the legal relationship between the parties. In this case, the district court determined that, since the student had not been denied a FAPE, the legal relationship between the parties had not changed, and the student was not entitled to an attorneys' fees award.

The student appealed this decision to the Ninth Circuit, which reversed the district court. Citing Section 80046.5 of Title 5 of the California Code of Regulations (which requires a special education teacher to possess credentials specific to a child's primary disability), the Ninth Circuit reasoned that the student's classification as autistic made him legally entitled to a teacher who is qualified to teach students with autism, and not just students with mental retardation. Because the student obtained a new legal entitlement with his eligibility classification change, the parties' legal relationship was materially altered, and it was irrelevant that the student's teacher was qualified to teach both mentally retarded and autistic students.

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This case is also significant for the finding that the student was not precluded from recovering fees because his grandmother provided his legal representation. While it is well established that attorney parents cannot recover attorneys' fees in IDEA cases, the Ninth Circuit refused to extend this rule since non-parent relatives do not have the same investment or responsibilities assigned to parents under the IDEA.

For questions on this or any other subject relating to changes in eligibility requirements, please contact one of our [seven offices](#) located statewide.

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.