



# CLIENT NEWS BRIEF

June 2010

Number 21

## FURLOUGH DAYS DO NOT CONSTITUTE A CHANGE IN SPECIAL EDUCATION PLACEMENT

A court has recently held that district-wide furloughs and shortened school years do not constitute a change of educational placement that would be subject to the individualized educational program ("IEP") process. (*N.D., et al. v. State of Hawaii Department of Education* (9th Cir., Apr. 5, 2010) \_\_\_F.3d\_\_\_ (2010 WL 1268235). Therefore, parents of special education students have no right to "stay-put" if they disagree with the imposition of furlough days. The court also held that parents are not required to exhaust all administrative remedies before invoking the "stay-put" provision in the Individuals with Disabilities Education Act ("IDEA").

The State of Hawaii, due to fiscal crisis, closed public schools for seventeen Fridays in the 2009-2010 school year. N.D., a student, requested a due process hearing from the State of Hawaii Department of Education, claiming the furloughs had a potential impact on his educational programs. N.D. also invoked his special education right to maintain his current educational placement pending the outcome of the due process hearing, or "stay-put."

The court determined that a student's placement is changed if the student is moved from one type of program to another or if there is a significant change in the student's program even if the student remains in the same setting. In this case, there was no change in classification, school district or the educational program of special classes. Instead, the school year was simply shortened for all students. The court further noted that "Congress did not intend for the IDEA to apply to system wide administrative decisions." Thus, a change in placement did not occur and stay-put did not apply.

If you have any questions regarding this decision, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

*Written by:*

[Daniel A. Osher](#)

Associate and Special Education Practice Group Co-Chair

Monterey Office

[dosher@lozanosmith.com](mailto:dosher@lozanosmith.com)

[Kinna P. Crocker](#)

Associate

Santa Rosa Office

[kcrocker@lozanosmith.com](mailto:kcrocker@lozanosmith.com)



*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.*