

## CLIENT NEWS BRIEF

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### UNITED STATES NINTH CIRCUIT COURT OF APPEALS REAFFIRMS “SOME EDUCATIONAL BENEFIT” FAPE STANDARD

Since 1982, the United States Supreme Court’s decision in Board of Education of the Hendrick Hudson Central School District v. Rowley (1982) 458 U.S. 176 has defined the term “free appropriate public education” (“FAPE”). Under Rowley, school districts are required to provide special education students with a “basic floor of opportunity” that offers “some educational benefit.”

In recent years, some judicial decisions opined that the Rowley standard no longer applies, due to amendments to special education law made after Rowley was decided. Instead, the Court suggested that, rather than providing “some” educational benefit, school districts must provide a “meaningful” educational benefit. The difference between “some” and “meaningful” has never been clarified, though presumably “meaningful” means something more than “some.”

On August 6, 2009, the United States Ninth Circuit Court of Appeals squarely addressed this issue, and concluded that the Rowley standard still applies, regardless of subsequent amendments to special education law. (J.L. v. Mercer Island School District (9th Cir. 2009) 575 F.3d 1025.)

In J.L. v. Mercer Island School District, a school district offered a student a placement that incorporated several recommendations made by both the parents’ and school district’s independent assessors. The parents disagreed with the school district’s offer of FAPE and unilaterally placed the student in a private school in Massachusetts. The parents then filed for a due process hearing, seeking reimbursement for three years of private school tuition.

The administrative law judge (“ALJ”), applying the Rowley “some educational benefit” standard, found that the school district provided the student with a FAPE. On appeal, the district court reversed the ALJ’s decision. The district court concluded that Congress had intended to supersede the “some educational benefit” standard set forth in Rowley in its 1997 amendment to the Individuals with Disabilities Education Act (IDEA). In its place, the district court enunciated a new standard for FAPE requiring a school district’s offer to confer “meaningful educational benefit.”

Reversing the district court's decision, the Ninth Circuit observed that Congress did not intend to change the definition of FAPE or to express disapproval of the Rowley standard in its subsequent amendments to the IDEA. Therefore, the standard for the determination of whether a school district has provided a FAPE remains whether the district has offered a student a program that confers "some educational benefit."

If you have questions about the Rowley standard or other special education issues, please contact any of one of our seven offices located statewide.

*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.*



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