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DISTRICT'S PREDETERMINATION OF SPECIAL EDUCATION PLACEMENT RENDERS IEP INVALID

A special education student's return from a private placement to public school was impermissibly predetermined, according to a recent opinion from the federal Ninth Circuit Court of Appeals. (H. Berry v. Las Virgenes Unified School District (9th Cir., March 11, 2010) __F.3d__ (2010 WL 882866). This case is an important reminder of the legal trouble that can arise from predetermining a student's placement.

School districts may not "predetermine" a special education student's individualized education program ("IEP"). Predetermination occurs when a district presents one placement option, and is unwilling to consider other alternatives. Districts are not required to accept a parent's preferred placement, but must consider the parent's preferences in good faith. If a district predetermines its offer, the underlying IEP can be deemed invalid, and the district can be subjected to significant compensatory remedies and attorney fees.

In Las Virgenes, a district employee began the IEP meeting by stating that the team would discuss the student's transition back to public school. The court interpreted this statement to mean that the district would not seriously consider any alternatives to a public school placement. Had the comment been phrased differently (e.g., that the IEP meeting was convened to determine whether a placement in public school would be appropriate for the student), the outcome might have been better for the district. The court also found that the district representatives' testimony about being open to other placements was not credible, and believed the mother's testimony that her minimal participation was futile.

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.

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