

# CLIENT NEWS BRIEF

## Ninth Circuit Court of Appeals Addresses School Districts' Ability to Recover Attorneys' Fees for Frivolous IDEA, Section 504, ADA, and § 1983 Claims

School districts may recover attorneys' fees and costs for frivolous claims under the Individuals with Disabilities Education Improvement Act (IDEA), section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), and/or 42 U.S.C. section 1983 (Section 1983). The Ninth Circuit Court of Appeals recently addressed a matter in which a school district attempted to recover such fees, overturning what would typically be the bulk of the award.

In *C.W. v. Capistrano Unified School District* (9th Cir. 2015) 2015 U.S. App. Lexis 3240, the Ninth Circuit held that school districts are entitled to attorneys' fees and court costs where they show that the plaintiffs' IDEA, Section 504, the ADA, or Section 1983 claims are frivolous. Claims are considered frivolous when the claim's outcome is plainly obvious or the arguments in favor of a given claim are completely without merit. In *Capistrano*, the school district conducted an occupational therapy assessment of a disabled student. The student's parent disagreed with the assessment and requested an independent educational evaluation (IEE) at public expense. The school district denied the parent's request and filed a due process complaint before an administrative law judge (ALJ) under the IDEA 41 days later. The ALJ held that the school district's assessment was appropriate and that 41 days was not an unnecessary delay.

After the ALJ's decision, the student's parent wrote the school district and offered to forgo an appeal in federal district court in exchange for a school district funded IEE and for payment of her attorneys' fees and court costs. The school district responded by reserving its right to seek sanctions against the plaintiff and her counsel as the ALJ already determined the school district's evaluation was appropriate and that the school district timely filed its due process complaint. In response, the plaintiff proceeded with her appeal in federal district court and added claims under Section 504, an ADA claim for intimidation, and a Section 1983 claim for monetary damages, asserting the school district's response regarding sanctions constituted retaliation in violation of the plaintiff's First Amendment rights. The district court upheld the ALJ's findings on appeal, and went so far as to "invite" the school district to file a request for attorneys' fees because "the base(s) for appeal were frivolous." The school district ultimately sought such sanctions and attorneys' fees from the plaintiff, and the district court awarded the district over \$96,000.00 in fees and costs.

However, the plaintiff appealed to the Ninth Circuit and the appellate court determined that the plaintiff should *not* have to pay the portion of the school district's attorneys' fees in relation to the plaintiff's IDEA or Section 504 claims, which typically would be the most significant portion of the fees. The appellate court emphasized that a case is frivolous only when the result is obvious or the arguments in favor are completely without merit, and noted the importance of resisting the "understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." Applying the frivolousness standards established in *Christiansburg Garment Co. v. EEOC* (1978) 434 U.S. 412, 412-22, the Ninth Circuit had previously held that "(a) case may be deemed frivolous only when the result is obvious or the . . . arguments of error are wholly

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without merit.” Based in part on the fact that the school district’s occupational therapy assessment did not include a statutorily required statement of whether the pupil may need special education and related services, the appellate court concluded that the plaintiff had some basis on which to believe that the school district’s assessment was inappropriate. Thus, the court found that the plaintiff’s claims under the IDEA and Section 504 claims were *not* frivolous, and reversed the district court’s fee award to the school district in relation to those claims.

Applying the test for frivolousness to the plaintiff’s ADA intimidation claim, however, the Ninth Circuit held the claim *was* frivolous because it was obvious that the ADA does not protect plaintiffs seeking to vindicate the right to an IEE which is granted by the IDEA, not the ADA. Second, the court ruled that the plaintiff’s Section 1983 monetary damages claim was frivolous because “it is well established that a school district cannot be sued for (monetary) damages” under Section 1983 since school districts are state agencies entitled to immunity from such claims. As a result, the plaintiff’s failure to justify her claims supported the conclusion that her claims were frivolous, and the district court’s fee award to the school district for the portion of fees in relation to the plaintiff’s ADA and Section 1983 claims was affirmed.

If you have any questions regarding the *Capistrano* decision, or about whether the claims pending against your district might be frivolous, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).