Court Rejects Frivolous Claims Regarding Independent Educational Evaluation

Perhaps reflecting sympathy for limited school budgets and the impact of costly special education litigation, a federal court recently invited a school district to request attorneys' fees reimbursement from a parent who pursued frivolous litigation. In *C.W. v. Capistrano Unified School District* (August 3, 2010, C.D.Cal.), __ F.Supp.2d __ (2012 WL 3217696), the Court found that a parent acted unreasonably in litigating her request for an independent educational evaluation ("IEE"). The Court also provided clarification regarding how long a public agency has to consider whether to fund an IEE or file for due process to defend its assessment.

Parents have a right to request an IEE at public expense if they disagree with a public agency's assessment. When parents request an IEE, a public agency is required to either fund the IEE or file for due process to defend their assessment "without unnecessary delay." (Code of Fed. Regs., tit. 34, § 300.502(b)(2).) The term "unnecessary delay" is not defined in special education law.

In this case, Capistrano conducted an occupational therapy assessment of a student who had long been eligible for special education. The parent called the assessment report "stupid" and, through her lawyers at the Special Education Law Firm, requested an IEE. Neither the parent nor her lawyers provided any further explanation as to why Capistrano's assessment was inappropriate. Capistrano conducted a careful review of the assessment and filed for due process to defend it 41 days after receiving the parent's request for an IEE. At hearing, the parent argued that the assessment was flawed, in part, because the assessor did not write the words "(Student) may need special education and related services" in the assessment report. This allegation, coupled with the 41 day delay in filing for due process, formed the basis of the parent's appeal to federal court.

While Education Code section 56327 requires assessment reports to include whether a student "may need special education," the court found that the assessor had "more than adequately" fulfilled this purpose by documenting in the report that the student was already eligible for special education. The court elaborated that there is "no reason to treat this specific statutory phrase as a mystical incantation that all school districts must utter to protect themselves from liability." Additionally, the court found this argument "especially frivolous" given that neither party disputed student's eligibility for special education and that parent did not even bother to claim that this potential procedural violation arose to a level where it may have denied the student a free appropriate public education (i.e., by causing a loss of educational benefit or impacting parent's participation rights).

The 41 days it took Capistrano to file for due process to defend its assessment was also not "unnecessary delay" which caused a deprivation of rights. The Court pointed out that the briefest period of time which has been found to constitute "unnecessary delay" in California is 74 days. Further, the Court reasoned that, given the parent's vague objections and failure to identify any basis for her disagreement to the assessment, Capistrano was entitled to conduct a detailed review of the assessment which "obviously takes time and money." The Court noted that "Mother

could have reduced this time and money by identifying her specific objections. . . . her failure to do so reflects poorly on her, not (Capistrano)."

Reflecting its particular animus for the parent's actions in this case, the court found that the "frivolous arguments advanced by Mother in this case have forced (Capistrano) to incur expenses in this litigation that could have funded the special education of students with disabilities, including Mother's own child." It then invited Capistrano to seek recovery of its attorneys' fees.

This case is excellent guidance for school districts attempting to respond to requests for IEEs. It also establishes that vague or form disagreements to assessments may be insufficient, or at least will cause a longer period of time under which a school district can review such requests. Finally, this case is notable for its recognition of frivolous litigation and its willingness to consider having unreasonable litigants bear the burden of their wastefulness.

If you have any questions regarding this case, or other issues related to special education, please feel free to contact one of our eight offices located statewide. You can also visit our website or download our Client News Brief App.

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