

# CLIENT NEWS BRIEF

## Ninth Circuit Concludes That Districts Must Share All Educational Testing Data With Parents During the IEP Process

The U.S. Ninth Circuit Court of Appeals recently ruled that a school district's failure to provide educational testing data to parents violated the procedural requirements of the Individuals with Disabilities Education Act (IDEA). Additionally, this failure deprived parents of the opportunity to meaningfully participate in the formation of their child's individualized education program (IEP).

The IDEA requires school districts to provide every qualified student with a free appropriate public education (FAPE). In providing students a FAPE, school districts must comply both procedurally and substantively with the IDEA. Procedural violations alone are enough to constitute a denial of FAPE if the violation "resulted in the loss of educational opportunity or seriously infringed the parent's opportunity to participate in the IEP formulation process." (*N.B. v. Hellgate Elementary Sch. Dist.* (9th Cir. 2008) 541 F.3d 1202, 1207.)

In *M.M. v. Lafayette Sch. Dist.* (9th Cir. September 16, 2014) \_\_ F.3d \_\_ 2014 WL 4548725, the school district found the student eligible for special education under the specific learning disability (SLD) category due to his phonological processing disorder. In making this determination, the district's assessment team utilized a variety of evaluation tools. The district relied primarily on a severe discrepancy model for the eligibility assessment and determination, though it also used response to intervention (RTI) data to corroborate the initial assessment and eligibility determination. RTI is an assessment process based on a student's response to scientific research-based interventions. The district used RTI as an intermediate step before referring a student for special education placement. While the district appropriately provided the severe discrepancy model data to the student's parents, it did not properly document the RTI data and failed to present the RTI data to the parents during the IEP team meeting.

The parents subsequently brought suit alleging, among other things, that the district's failure to provide the student's RTI data constituted a procedural violation of the IDEA, and prevented them from fully participating in the IEP process. The court agreed, finding the district violated the IDEA by failing to ensure the RTI testing data was properly documented, presented to the parents, and carefully considered by the entire IEP team. The court held that the district violated the "procedural safeguards of the IDEA by not providing parents with an opportunity to examine all records relating to C.M (the student)."

The court reasoned that the IDEA provides: "(u)pon completion of the administration and other evaluation measures, a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent." (20 U.S.C. §§ 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2).) Moreover, "if the child has participated in a process that assesses the child's response to scientific, research-based intervention," this "documentation of the determination of eligibility" must include, among other things, a statement of the "instructional strategies used and the student-centered data collected, as well as the "documentation that the child's parents were notified about" certain state policies, strategies to increase the child's learning rate, and the parent's

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right to request an evaluation. (34 C.F.R. § 300.311(a)(7).)

Here, the district's procedural failure to provide the RTI data infringed on the parents' right to meaningfully participate in the IEP process. Without the RTI data, the parents were "unable to give informed consent for both the initial evaluation and the special education services (the student) received." Finally, the court noted that the parents did not need to formally request the RTI data. If the district relied in part on the RTI data, the district "had a procedural duty to share" the student's "RTI data with his parents . . . when it sought to obtain their informed consent for initial evaluation."

*M.M. v. Lafayette Sch. Dist.* establishes that when a school district utilizes RTI data in a special education eligibility determination, the school district must ensure the parents have the same opportunity to consider the data, whether or not the parents specifically ask for it. Accordingly, school districts should ensure any test, tool, or data that is considered for the purpose of eligibility determination is properly documented and provided to the parents as part of the IEP team process.

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