

CLIENT NEWS BRIEF

Ninth Circuit Focuses on Timing of Student's Due Process Complaint for Stay Put Placement

In a recent decision, *N.E. v. Seattle School District* (9th Cir., Nov. 17, 2016, No. 15-35910) ___ Fed.Appx. ___ 2016 U.S. App. LEXIS 20612, the Ninth Circuit Court of Appeals upheld a lower court's denial of a student's request for injunctive relief related to their stay put placement. The appellate court focused on the timing of the student's due process complaint and his placement for the upcoming school year.

The *N.E.* case is interesting because it involves a multi-stage Individualized Education Program (IEP) placement and a stay put ruling regarding a placement that was never implemented.

For the 2014-2015 school year, N.E. spent most of his school day in a general education setting. During the school year, N.E. began to regularly exhibit severe behavioral issues. In May 2015, Bellevue School District (Bellevue) held an IEP meeting for N.E. and discussed removing him from the general education setting and placing him in a self-contained special education class for students with behavioral and emotional disorders (self-contained class). Bellevue's proposed IEP for N.E. included placement in a self-contained class, but N.E.'s parents disagreed. The IEP team agreed that N.E. would finish the 2014-2015 school year at a different school that would provide him with a one-on-two educational setting with a teacher and a paraeducator (individual class). The next day, Bellevue finalized N.E.'s May 2015 IEP, documenting the agreement between Bellevue and N.E.'s parents that N.E. would finish the 2014-2015 school year in the individual class. Per N.E.'s May 2015 IEP, N.E. would be placed in a self-contained class for the 2015-2016 school year.

Between the end of the 2014-2015 school year and the start of the 2015-2016 school year, N.E. moved to Seattle. When N.E. tried to enroll in the Seattle School District (Seattle), Seattle proposed placing N.E. in a self-contained class, similar to the placement set forth in N.E.'s May 2015 IEP. N.E.'s parents objected, filed a due process complaint against Seattle, and sought a stay put placement. N.E.'s parents argued that the stay put placement was a general education class per N.E.'s December 2014 IEP, and further argued that the self-contained class was not stay put because the recommendation to place N.E. in a self-contained class had never been implemented.

The administrative law judge disagreed with N.E.'s parents and concluded that the self-contained class was N.E.'s stay put placement. N.E. appealed the decision to the district court. The district court denied N.E.'s request and N.E. appealed to the Ninth Circuit Court of Appeals, which affirmed the district court's denial of injunctive relief.

The appeals court held that the "then-current educational placement" was the

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educational setting that N.E. was actually enrolled in at the time of his due process request, which in this case was the self-contained class. Since N.E. filed his due process complaint after completing the 2014-2015 school year, the current placement was the self-contained class for the 2015-2016 school year. N.E. argued that the self-contained class was not the stay put placement, because he had not yet been placed in that class when the due process complaint was filed. The Ninth Circuit disagreed, emphasizing that N.E.'s reasoning would allow students to repeatedly challenge the second half of any two-stage IEP when a transition occurs – a result the court said Congress did not intend. The court also noted that N.E. was scheduled to attend the self-contained class when he filed his due process complaint.

In a dissent, one judge opined that the purpose of a stay put provision is to prevent school districts from moving students to more restrictive environments while their due process complaints are pending. The dissenting judge expressed that N.E., who argued that he did not realize the self-contained classroom would be his stay put placement until he enrolled in Seattle, was penalized for the timing of his due process complaint.

In addition to focusing on the timing of complaints when determining stay put placements, the ruling prevents students from repeatedly challenging multi-stage IEP placements during transitions between educational placements.

For more information about the decision or stay put placements in general, please contact the authors of this Client News Brief or an attorney at 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](#).

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