

CLIENT NEWS BRIEF

Special Education Eligibility Influenced by Pre-Referral Interventions

A recent Ninth Circuit decision, *L.J. v. Pittsburg Unified School District* (9th Cir., Sept. 1, 2016, No. 14-16139) __ F.3d __ [2016 U.S.App. LEXIS 16201], underscores the importance of accounting for pre-referral interventions when evaluating special education eligibility. Rejecting the assertion that specific pre-referral services were general education interventions, the Ninth Circuit held the student required and benefitted from specialized services and should have been found eligible for special education.

Students must meet a two-prong test to qualify for special education. The first prong asks whether the student has a disability. If the answer is yes, then the eligibility team must next determine whether the student requires more specialized services than simple modification to the general school program. In other words, even with a disability, a student does not qualify for special education if general education interventions are sufficient.

A fourth-grade student, L.J., struggled with maladaptive behaviors in school and suicidal thoughts at home. He had diagnoses of bipolar disorder, oppositional defiant disorder and attention deficit/hyperactivity disorder. The District provided L.J. with interventions to address his behaviors at school, including mental health counseling services, one-on-one aide assistance, behavior supports and academic accommodations. The District assessed L.J. at various times throughout his third and fourth grade years, but determined that specialized services were not necessary due to his satisfactory performance in general education classes utilizing available interventions. The Ninth Circuit court disagreed.

The Ninth Circuit concluded that L.J. should have been found eligible for special education under the two-part eligibility test. The first prong was not in dispute because the parties agreed L.J. was a child with a disability. The critical issue was whether L.J. demonstrated a need for special education and related services, having previously received what the district referred to as general education interventions.

The Ninth Circuit court distinguished general education interventions from special education services, noting that special education services must be memorialized in an Individualized Education Plan (IEP) to guarantee their provision in the future. The court defined general education interventions as those provided to non-disabled children in the classroom, not including "specialized services," which are those services specially designed to meet the needs of a child with a disability.

With that distinction drawn, the Ninth Circuit rejected the classification of L.J.'s services as general education interventions. Despite the availability of mental health services to all students, L.J.'s services, which included ongoing assessments, plan development, rehabilitation, therapy and intensive home-based services, were specially designed for him over the course of three school years. Additionally, the level, amount and type of service L.J. was provided was not available to his general education peers and the behaviorally-trained one-

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on-one aide, specially designed mental health services, extensively tailored clinical interventions provided by the school district's behaviorist and the various academic accommodations provided in the general education classroom including teacher oversight, additional time to complete classwork or tests, shortened assignments, the option to complete tests or classwork in other rooms with one-on-one support and the option to leave the classroom at will amounted to specialized services.

Finally, the Ninth Circuit held that L.J.'s impairments had been greatly ameliorated with these specialized services, which effectively demonstrated his need for special education and related services. L.J. met both prongs of the analysis and should have been made eligible for special education.

L.J. v. Pittsburg Unified School District is an important reminder to look closely at the accommodations, modifications and services a student has previously received as a factor in determining eligibility for special education. Eligibility teams should understand which general education interventions are available to all students and which may actually amount to specialized instruction tailored to a specific student.

If you have any questions about this decision or special education eligibility in general, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).