

# CLIENT NEWS BRIEF

## Ninth Circuit Underscores School Districts' Affirmative Obligation to Initiate Special Education Due Process

Making clear that school districts should not ignore their obligations to initiate due process when parents refuse to consent to necessary components of special education, the Ninth Circuit Court of Appeals recently reversed and remanded the decision of a district court on the subject. In *I.R. v. Los Angeles Unified School District*, (9th Cir., November 17, 2015) 2015 U.S. App. Lexis 19900 (*I.R.*), the Ninth Circuit held that "school districts in California must comply with the additional requirement imposed by the California Education Code of initiating a due process hearing if agreement between the district and the parent on an appropriate placement cannot be reached" and "a year and a half is too long for a school district to wait to initiate a due process hearing pursuant to California Education Code § 56346(f)." This decision is applicable to school districts and other local educational agencies responsible for the offer and provision of a free appropriate public education (FAPE) for special education students.

In *I.R.*, a parent had partially consented to several Individual Education Programs (IEPs) over a span of a year and half, while failing to consent to the Los Angeles Unified School District's (LAUSD) offer of placement in a special education environment. As a result, *I.R.* remained in a general education classroom with a special education aide. *I.R.*'s mother ultimately filed a request for due process hearing on the issue of whether the school district failed to provide the student a FAPE during the relevant time period.

At the administrative level, an Administrative Law Judge (ALJ) held that the school district offered FAPE. The ALJ noted that California law requires a school district to file for due process when it believes that a parent failed to consent to a portion of the IEP that the school district believes is necessary to provide a FAPE. However, in this case, the ALJ did not hold LAUSD liable for failing to file for due process. Instead, the ALJ focused on *I.R.*'s mother's refusal to provide consent, which LAUSD argued (and the ALJ agreed) prevented LAUSD from implementing and providing the full offered FAPE.

*I.R.*'s mother appealed the ALJ's decision to federal district court, which affirmed the ALJ's decision. Upon review, the Ninth Circuit disagreed with the ALJ's decision and the district court's affirmation of the ALJ's decision. In this case, *I.R.*'s mother had consented to special education and related services for *I.R.*, but had not consented to placement. Therefore, LAUSD was obligated to file for due process hearing pursuant to California Education Code § 56346, subdivision (f), which provides that a due process hearing shall be initiated if the school district determines that the proposed special education program component "to which the parent does not consent is necessary to provide" a FAPE. Accordingly, the Ninth Circuit noted, "In effect, § 56346(f) compels a school district to initiate a due process hearing when the school district and the parents reach an impasse."

The Ninth Circuit also opined that California Education Code § 56346(f) outlines the process to be followed after an IEP is presented to a parent and the parent does not consent to all components of the IEP. In these situations, the Ninth Circuit held that the school district must first determine whether the proposed

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special education component “is necessary to provide a FAPE.” If so, the district must initiate a due process hearing “expeditiously” and “cannot opt to hold additional IEP meetings or continue the IEP process in lieu of initiating a due process hearing.”

While the Ninth Circuit does not provide a definitive timeline for filing for due process after a parent fails to provide consent for a necessary component of the IEP to provide a FAPE, the Ninth Circuit affirmatively states that the time line in this case, over one year, was too long.

This case affects all California local educational agencies responsible for offering and providing a FAPE as this case is binding precedent. This case makes clear that these issues should be addressed as they arise and affects the response to the frequent problem of parents consenting to part, but not all, of a school district’s offer of FAPE. An internal review of files may be prudent to determine whether a school district has outstanding IEPs of this nature.

If you have any questions regarding the *I.R.* decision, or about special education in general, 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](#).