

2010-2011 CASE LAW SUMMARIES

In the absence of IDEA reauthorization and Part C regulations, case law will continue to control the provision of special education throughout the country. In addition, the interplay between No Child Left Behind (NCLB) and Title II (the new guidelines for Accessible Design) with IDEA make the litigation of cases increasingly complex. No special education cases were taken for review by the U.S. Supreme Court during 2010. District and appellate courts, however, did make several important rulings. They involved attorney fees, behavior and discipline, eligibility, evaluations and child find, FAPE, educational methodology, placement, least restrictive environment, and compensatory education.

1. The 9th Circuit ruled that when a child's classification changed from intellectual disability to autism, his parents were entitled to recover attorney's fees (Weissburg v. Lancaster School District, 53 IDELR 249.)
2. Frivolous lawsuits were also addressed in District of Columbia v. Nahass, 54 IDELR 115. This and a variety of other cases showed the difficulty of a school district proving a parent's action to be frivolous. Only one case was won by a school district when a parent's lawyer continued to seek compensatory education for a student who no longer needed services (El Paso Independent School District v. Berry, 55 IDELR 186).
3. Behavior management and the ability to handle behaviors that interfered with the student's ability to learn had several decisions. These rulings showed that good faith efforts to handle problem behaviors were needed as a defense for provision of FAPE (Lathrop R-II School District v. Gray, 54 IDELR 276). Further schools only needed to address behaviors in school and not those at home (Doe v. Hampden-Wilbraham Regional School District, 54 IDELR 214).
4. Failure to evaluate a child saw an increasing number of cases. Washington, D.C. violated child find for many 3-5 year olds when it failed to evaluate them (D.L. v. District of Columbia, 55 IDELR 6). Compton Unified School District v. Addison, 54 IDELR 71 violated IDEA when it disregarded the developmental status of a student and also ignored her academic and behavioral problems. Comprehensive testing is required through thorough and appropriate assessments. A district could not evaluate only for a learning disability (D.B. v. Bedford County School Board, 54 IDELR 190). A New Jersey student lost her eligibility for special education based on a software program (M.B. and K.H. v. South Orange/Maplewood BOE, 55 IDELR 18). The district court criticized the school's reliance on the program, saying that dismissal from special education "must be based on more than a formula-driven assessment."
5. Determination of FAPE cannot be based on grades, especially when achievement tests showed skills well below grade level (D.S. and A.S. v. Bayonne BOE, 54 IDELR 141). Other cases held that districts provided FAPE when they quickly provided the needed services under changed circumstances. Methodology continues to be the province of the local school board personnel.
6. IEPs. Predetermination of placement before development of the IEP is boilerplate in many special education disputes (Berry v. Las Virgenes Unified School

- District, 54 IDELR 73). Efforts to ensure meaningful parent participation in the IEP meeting is also pivotal, but parents must complete the IEP process and not abandon it. (BOE of the Toledo City School District v. Horen, 55 IDELR 102).
7. New decisions confirmed that LRE can change when a student makes progress. (N.L. v. Special School District of St. Louis County, 54 IDELR 78).
 8. Independent evaluations need to meet the district's evaluation guidelines if they are to be funded (P.L. v. Charlotte-Mecklenburg BOE, 55 IDELR 460).
 9. Awards of compensatory education must reflect the student's special needs and be timely (Wheaten v. District of Columbia, 55 IDELR 12).

Non-special education decisions of the U.S. Supreme Court also apply to students with disabilities.

1. Brown v. Entertainment Merchants Ass'n (Case # 08-1448) This decision barred California from preventing minors' purchase of violent video games. The state does not have "a free floating power to restrict the ideas to which children may be exposed." This concept will definitely appear in school related matters in the near future and may be relevant for IEP development.
2. Age can be a factor in determining whether a person in custody was entitled to Miranda warnings against self-incrimination. "A reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." (J.D.B. v. North Carolina, #09-11121). This decision has special resonance for children who are held and interrogated by school personnel who then turn them over to the police.

As the 2011-2012 school year approaches, look for increasing use of the police by school districts for a variety of school discipline and behavior issues.

Sources: www.edweek.org/ew/articles

Individuals with Disabilities Law Report, The Year in Review 2010, Amy Slater, esq., LRP Publications, 2011