

TEN COURT CASES I'M GLAD PARENTS AND STUDENTS WITH DISABILITIES "WON"

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Special Education Litigation

- Question the premise that anyone "wins" in special education litigation
- A party may prevail on the issues and still lose
- Litigation oftentimes results in the student's educational interests being lost in the adversarial process
- Litigation also oftentimes results in a strained relationship between the family and the school that takes a long time to heal
- Lesson Learned: Explore all options before litigating

Significant Case Law

- Although litigation is not encouraged except as a last resort, important cases over the last 35 years have established and clarified some basic rights of parents and students with disabilities under the IDEA
- This presentation will highlight selected cases that have helped form the foundation of those legal rights

Child Find

- Locate, evaluate and identify
- Residents birth to 21
- Highly mobile children
- Outreach activities

Compton Unified School District v. Addison (9th Circuit 2011)

- Affirmed that the IDEA places an affirmative responsibility on the school district to initiate a special education evaluation when warranted under the IDEA's child find provision

- Child find responsibilities do not arise only when a parent requests a special education evaluation

Compton Decision-Part 2

- The IDEA regulations allow a parent to initiate a due process hearing whenever the school proposes to or refuses to change:
 - Identification
 - Evaluation
 - Educational Placement
 - Provision of a Free Appropriate Public Education
- The Court held that the parent maintained the right to initiate a due process hearing since the school by its practice refused to evaluate the student

Compton Continued

- A reading of the IDEA leaving parents without an adequate remedy when a school district unreasonably failed to identify a child with disabilities would not comport with Congress' acknowledgment of the paramount importance of properly identifying each child eligible for services
- The Court stated that surely Congress did not intend such an absurd result

Comprehensive Evaluation

- After providing the parent with written notice and obtaining the parent's consent the school has 60 days to complete the evaluation (unless the state sets a different timeline)
- Purposes
 - Determine eligibility
 - Determine special and related service needs
- Evaluation shall be sufficiently comprehensive to identify all of the child's special needs whether or not commonly linked to the disability category

N.B. v. Hellgate Elementary School District (9th Circuit 2008)

- School was found to violate its responsibility to carry out all necessary special education evaluations when it provided the parents with a referral to an evaluation center in order for the student to be evaluated

- The Court held that “A school district cannot abdicate its affirmative duties under the IDEA” by simply making a referral to the parent to seek the evaluation

Eligibility

- Meets One or More of the Disability Categories

- Adversely Affects Educational Performance

- In Need of Special Education
 - Specially Designed Instruction

Timothy W. v. Rochester (1st Circuit 1989)

- A “zero reject” policy is at the core of the IDEA
 - Students with significant physical and intellectual disabilities are not only eligible under the IDEA but the law gives such students priorities

- The law’s concept of special education is broad, encompassing not only traditional cognitive skills, but basic functional skills as well.

Timothy W. Continued

- Public education is to be provided to all children with disabilities, unconditionally and without exception

- The law encompasses this universal right, and is not predicated upon any type of guarantees that the child will benefit from the special education and services before he or she is considered eligible to receive such education

Free Appropriate Public Education (FAPE)

- Special Education and Related Services
 - Provided at public expense, under public supervision
 - Without charge
 - Meet the standards of the State
 - Include pre-school, elementary or secondary school education
 - Provided in conformity with the Individualized Education Program (IEP)

FAPE Standard

- The Supreme Court in the Rowley case established two criteria in determining FAPE:
 - Have the procedures been adequately complied with? ;
and
 - Is the IEP reasonably calculated to enable the child to receive educational benefits?

Polk v. Central Susquehanna Intermediate Unit (3rd Circuit 1988)

- A key concern of and primary justification for the IDEA lay in the important goal of fostering self-sufficiency
- The “educational benefit” standard under the Rowley decision requires that the benefit be meaningful for the student
 - The Court rejected the argument that any or some benefit would meet the FAPE standard
 - The IDEA requires that the IEP likely to produce progress, not simply preventing regression or trivial educational advancement

Parent Participation at Meetings

- Notice of Meeting
 - Time, purpose, location, who will be in attendance
- Right to bring others with knowledge/expertise regarding the child
- Meetings scheduled at a mutually agreed upon time and place
- Alternative means of participation
- Documentation of attempts to arrange a mutually agreed upon meeting time and place

Amanda J. v. Clark County School District (9th Circuit 2001)

- Parents were not provided a copy of the evaluation reports that they requested prior to the IEP meeting
- Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA
- An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved or fully informed

Amanda J. Continued

- Court concluded that the parents were denied meaningful participation at the IEP meeting which denied the student a FAPE
- Meaningful participation is more than attendance at the meeting
- Because the school failed to develop the IEP in accordance with the procedures mandated by the IDEA that denied the student a FAPE, the Court held it was not necessary to address the question of whether the proposed IEP was reasonably calculated to enable the student to receive educational benefit

Related Services

- Such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education
- Related services includes parent counseling and training
 - ▣ Assistance in understanding your child's sp ed needs
 - ▣ Providing info. about child development
 - ▣ Helping parents acquire the necessary skills to allow them to support the implementation of your child's IEP or IFSP (Birth through 3 yrs.)

Tatro v. Irving Independent School District (U.S. Supreme Court 1984)

- Established the legal standard for determining when a related service is required:
 - ▣ Child must have a disability and be in need of special education
 - ▣ Service must be necessary to aid the child to benefit from special education
 - ▣ Service must be able to be performed by a non-physician

Tatro Continued

- As a result of the attorney fees costs incurred by the parents in the Tatro case, Congress initiated hearings with Mrs. Tatro as a key witness regarding the costs parents incur
- Congress in 1986 amended the law to allow parents who prevail in a due process hearing or Court proceeding under the IDEA to seek reimbursement of attorneys fees from a Court

Least Restrictive Environment

- To the maximum extent appropriate, students with disabilities shall be educated in classroom and other activities with peers who are not disabled
- Continuum of Alternative Placements
- IEP shall EXPLAIN the extent, if any, to which the student will not be educated with peers who are not disabled
- Supplementary Aids and Services

Holland v. Sacramento School District (9th Circuit 1994)

- The first successful “Full Inclusion” case
- Four factors to be considered:
 - Educational benefits in a regular class
 - Placement in a regular ed class is not predicated on the student's ability to perform on par with peers who are not disabled
 - IDEA does not permit “mere token gestures” to accommodate students with disabilities in a regular ed class
 - IDEA requires that the Team consider supplementary aids and services and to modify the regular ed program

Holland Continued

- Non-Educational benefits
 - modeling social and communications skills as well as self-confidence from placement in a regular class
- Effect on the other students and teacher
 - whether there is detriment because the child is disruptive, distracting or unruly, and
 - whether the child would take up so much of the teacher's time that the other students would suffer from lack of attention.
- Costs

Caution!!! Cost is not the determining factor but can be considered in FAPE v. Most Appropriate Ed

Placement Decisions

- Placement decisions made by a group of persons including the parents and other persons knowledgeable about the child, the evaluation data and placement options

- Continuum of placements shall be considered

H.B. v. Las Virgenes Unified School District (9th Circuit 2007)

- Court held that the school violated the parents' right to be part of the placement decision.

- The school had predetermined the placement of the student prior to the IEP meeting

- Although draft IEPs are allowable, the school must have an "open mind" to make changes based on parent input

Unilateral Placements

- Parents initiate placement over a dispute regarding the provision of FAPE

- Requesting full payment or reimbursement of tuition and costs

Burlington v. Massachusetts Dept. of Ed (U.S. Supreme Court 1985)

- Established the right of a parent to seek reimbursement for their unilateral placement

- IEP did not provide FAPE, and
- Parents Placement is Appropriate
 - Need not be an approved special education facility
 - Personnel need not be credentialed

- Equitable Factors
 - Parent notice of disagreement and intent to make a unilateral placement requesting public payment
 - Providing school opportunity to evaluate student
 - Unreasonable actions by the parents

Discipline and Students With Disabilities

- Neither behavior issues nor disciplinary procedures were addressed in the IDEA statute or regulations prior to the 1997 reauthorization of the IDEA
- Case law was the driving force in establishing the disciplinary requirements

S-1 v. Turlington (5th Circuit 1981)

- The Court held that under the IDEA and Section 504:
 - Before a student with a disability can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to their disability;
 - That an expulsion is a change in educational placement thereby invoking the procedural protections of the IDEA and Section 504;
 - That expulsion is a proper disciplinary tool under the IDEA and Section 504, but a complete cessation of educational services is not.

