



March 14, 2014

### *C.L. v. Lucia Mar Unified School District*

## **The U.S. District Court Explains How to Develop an Appropriate Offer of FAPE When the Parent Won't Attend the IEP Meeting**

On January 9, 2014, the U.S. District Court for the Central District of California issued a ruling finding that the Lucia Mar Unified School District did not violate the Individuals with Disability Education Act (“IDEA”) when it developed a student’s Individual Education Plan (“IEP”) without parental input after his mother stopped attending IEP meetings.

The Court agreed with the district’s offer of determination that moving an autistic student with a history of aggression and outbursts to a placement that excluded him in a general education setting for most of the school day was the Least Restrictive Environment (“LRE”) of the school day.<sup>1</sup>

### Background

C.L. was a student with autism who was relatively high functioning but by all accounts his placement in general education with an instructional aide and two hours in an RSP class did not go well. C.L. began exhibiting some “problematic” behaviors including throwing rocks through school windows, kicking staff and threatening other students during class. By mid-September C.L. was refusing to do any work at all. In October, the district and C.L.’s mother agreed to a change in the IEP that moved C.L. to a different school with 60% of the day in general education and 40% in a special day class to focus on behavior problems. Unfortunately, C.L.’s behavior’s in the general education classroom escalated to the point that C.L. was restrained by a sheriff’s deputy.

In November, the district attempted to hold IEP team meetings to address these issues but the student’s mother became chronically “unavailable” to attend IEP team meetings, pulled C.L. from school, retained an attorney, and filed a due process complaint to compel the district to fund

---

<sup>1</sup> *C.L. v Lucia Mar Unified School District* (C.D. Cal. 2014); CACD Case No. CV 12-9713-CAS (PjWx); 2014 U.S. Dist. Lexis 3266; 144 LRP 1813.

a private school placement. However, the district finally held an IEP team meeting without the parent on February 3, 2012, and developed the student's current IEP which called for a majority of the day in a special day class and filed for due process to enforce the new IEP.

#### IEP Team Meeting Without Parental Attendance

As you may recall, last year, Schools Legal Service issued an Update regarding the Ninth Circuit holding in *Doug C.* which held that a Local Education Agency ("LEA") must accommodate the parent's schedule for an IEP team meeting regardless of procedural timelines.<sup>2</sup> The *C.L.* case illustrates how to successfully navigate scheduling and holding an IEP team meeting with an uncooperative parent in a post *Doug C.* world.

In the *C.L. v. Lucia Mar* case, from October 20, 2011, until the IEP team meeting was held on February 3, 2012, the parent or the parent's attorney would claim unavailability and then filed a due process complaint. During this time, the district made multiple attempts to schedule an IEP meeting with the parent and even continued to attempt to secure the involvement of the parent at an IEP team meeting after the due process complaint was filed against the district. Finally, the district sent the mother a letter offering *nine* different dates for an IEP team meeting. When she refused to reply, the district issued the meeting notice for the last date offered. At that point, the Court found it was proper to comply with the IDEA by unilaterally formulating an IEP and then filing a due process complaint to obtain approval.<sup>3</sup>

#### Least Restrictive Environment

The Court determined that the district's placement in a special day class that focused on behavior modification was the LRE for C.L. In its analysis, the Court looked at the IEP and the record in light of the *Rachel H.* factors: (1) the educational benefits of placement full-time in a regular class; (2) the nonacademic benefits of such a placement; (3) the effect [the student has] on the teacher and children in the regular class; and (4) the costs of mainstreaming [the student].<sup>4</sup> The Court determined that the documented behaviors show the student would not have benefitted with more time in a general education environment.

The Court noted that even though there was no parental participation at the February 3, 2012 IEP team meeting, the resulting IEP contained extensive discussion of the student's present levels of performance and behavior issues along with discussion of the methods of responding to behavioral episodes. The Court, specifically, found the thoroughness of the IEP established that the district's offer of FAPE provided the student with a meaningful educational benefit.

---

<sup>2</sup> Schools Legal Service Update dated July 5, 2013, reviewing *Doug C. v. Hawaii Dept. of Education*, (9<sup>th</sup> Cir. 2013) 720 F.3d 1038.

<sup>3</sup> Citing *Anchorage Sch. Dist. v. M.P.* (9<sup>th</sup> Cir. 2012) 689 F.3d 1047, 1056; (See also 20 USC § 1415(b)(6); and 34 CFR 300.507(a).)

<sup>4</sup> *Sacramento City Unified Sch. Dist. v. Rachel H. ex rel Holland*, (9<sup>th</sup> Cir. 1994) 14 F3d 1398, 1403-1404

## Conclusion

The Court in *C.L.* offered an illustration on how to deal with the difficult parent who is chronically unavailable, who won't consent to holding an IEP team meeting in their absence, but also won't give a clear indication of a refusal to participate.

1. Offer multiple dates. In this case, the district offered nine dates.
2. If the parent won't respond, send the meeting notice for the last date offered.
3. Keep attempting to get the parent to participate in the IEP team meeting even if the parent files for due process and document these efforts.
4. If you have to hold the IEP team meeting without the parent's participation, make sure to have *and document* a full discussion regarding all aspects of the district's offer of FAPE because the IEP team notes may be the only record that justifies how the district developed its offer of FAPE.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— Darren J. Bogié

---

*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*