SCHOOLS LEGAL SERVICE

Special Education Law Update

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SCHOOL DISTRICT REQUIRED TO PROVIDE SERVICES TO TRANSFER STUDENT BASED ON LAST IMPLEMENTED IEP

In the recent decision of A.M. by Marshall v. Monrovia Unified Sch. Dist., 110 LRP 73218 (9th Cir. 12/15/10), the Ninth Circuit (Federal Appellate Court) held that a school district was not required to implement a recently developed Individualized Education Plan ("IEP") of a transfer student since that IEP was never actually implemented. Instead, the Court held that the school district was required to provide services in accordance with the last implemented IEP.

In A.M. by Marshall v. Monrovia Unified Sch. Dist., the student was enrolled in the California Virtual Academy ("CAVA"), which offered independent study at its students' homes. CAVA and the parents created an IEP where it was agreed that independent study/home placement was an appropriate placement. After three years of student's enrollment in CAVA, CAVA and the parents agreed on a new IEP that changed student's placement to a third grade general education classroom with appropriate supports. Because CAVA did not have general education classrooms, it could not implement the IEP. Parents therefore enrolled their child in their district of residence and presented the IEP wherein it stated that the student's placement was a general education classroom.

The school district was concerned that it was being asked to implement an IEP that was never previously implemented and that required a drastic change in placement from student's last placement (home schooling/independent study) to a general education classroom. Further, the IEP failed to address the transition needs of the student from home schooling to a general education classroom.

When an exceptional needs student with an IEP transfers from one California school district to another not operating under the same local plan during the school year, the local school district must provide services comparable to those described in the *previously approved IEP* for a period not to exceed 30 days, by which time the school district shall adopt the previously approved IEP or shall develop, adopt and implement a new IEP. Cal. Ed. Code section 56325 (a)(1).

The parents asserted that California law required the school district to place the student in a general education classroom because the "previously approved IEP" stated that student's placement was a general education classroom.

The Court pointed out that California law, first of all, is modeled after the Individuals with Disabilities Education Act ("IDEA"), which states that when an exceptional needs student who "had an IEP that was *in effect* in the same State" transfers to a new school, the school shall provide services comparable to the "previously held IEP." 20 U.S.C. section 1414(d)(2)(C)(i)(I). The Court, therefore, agreed with the Office of Administrative Hearings that section 56325(a)(1) refers to the last IEP that was *actually implemented*. In this case, that meant that the school district was required to implement the IEP that had actually been implemented by CAVA, which stated the student's placement was home school/independent study.

The significance of this case is huge for school districts and other local educational agencies. There have been many instances where it appears that an IEP was drafted for a student by a local educational agency knowing that they would not be the ones actually implementing the IEP because the student would be transferring to another school district. The result, therefore, is an IEP that reflects more of the parent's wishes than what services and placement the child actually needs to receive a Free Appropriate Public Education ("FAPE").

It is recommended that when you receive a transfer student with an IEP, you request at least the last three years of the student's educational records from the sending school district or local educational agency so that you can correctly determine what placement and services were actually in effect prior to the student's transfer.

If you have any questions regarding the above information, please do not hesitate to contact our office.

— Monica D. Batanero

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