SCHOOLS LEGAL SERVICE

LAW UPDATE
SPECIAL EDUCATION

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

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New Ninth Circuit Decision, *Rachel H.*, Clarifies Location Requirement of an IEP (And For Once It Was the Parents' Fault)

In a ruling that affirms commonsense[1], the Ninth Circuit has held that the IDEA does not require identification of a particular school in every instance, particularly where the parents have refused to disclose the location of their new home.

Under the IDEA, an IEP must contain the projected date for the beginning of services and modifications described in the IEP and the anticipated frequency, location and duration of those services and modifications.[2] However, the IDEA does not define the term location.[3]

The Court held that failure to identify a particular school in the IEP was not a procedural violation of the IDEA and did not deny FAPE; especially given the fact that the parents indicated the family was moving, but refused to identify the new address. Rather, the requirement that an IEP identify the "location" in which special education services will be provided means that the IEP must identify the general setting or type of environment.

In 2012, at the time the current legal dispute arose, *Rachel H.* (a student with down syndrome) was finishing her 9th grade year at a private school payed for under a settlement agreement that was set to expire. In May, near the end of the school year, the Department of Education[4] ("Department") held an IEP team meeting to determine the special education services the student would need in the upcoming school year. The parents wanted the Department to continue paying for Rachel to attend the private school. However, this request was declined and

[1] *Rachel H. v. Department of Education, State of Hawaii* (August 29, 2017) 9th Cir. Case No. 14-16382

[2] See 20 USC § 1414(d)(1)(A)(i)(VII)

[3] See 20 USC § 1401

[4] In the State of Hawaii, the State Department of Education acts as the LEA for special education purposes.

the Department developed an offer of FAPE in an IEP that would be "implemented on a public school campus." At the time of the May 2012 IEP meeting, all parties involved understood that the "public school campus" offered by the Department was Kalani High School, Rachel's local school.

Rachel's parents did not sign the May 2012 IEP and, thereafter, Rachel's father informed the LEA that the family was moving to Kailua, a different city. Consequently, according to Rachel's father, "Kalani [would] under no circumstances be Rachel's local public high school" given the distance from the school to their new home. He again demanded to enroll Rachel in private school at public expense. The Department did not accede to this demand. On July 30, 2012, the Department informed Rachel's parents that the May 2012 IEP was "not specific to Kalani High School." Instead, the IEP was "based on [Rachel's] current strengths and needs." Accordingly, the Department asked for the family's new address in Kailua "so the location where Rachel's IEP can be implemented can be determined." The Department further stated that "until [the family's] move, Rachel could attend Kalani High School if her parents wished."

Parents refused to provide the new address until January 2013, when, in addition to giving the Department the family's new address, they filed a due process hearing request on behalf of Rachel arguing that the Department had denied Rachel a FAPE by not identifying the anticipated school where Rachel's IEP would be implemented.

Therefore, the Ninth Circuit was tasked with discerning the meaning of "location" in the IDEA. In its analysis, the Ninth Circuit adopted the position articulated by the USDOE that "'location' means the general setting in which [special education] services will be provided and not a particular school or facility."[5]

In its ruling, the Ninth Circuit did emphasize that knowledge of a particular school, classroom or teacher may well be relevant to allowing parents to participate meaningfully in the IEP process.[6] As an example, parents may need this information to evaluate whether a proposed IEP satisfies the IDEA because of a particular special education need caused by a child's disability, such as staff training or transportation issues. The Court also cautioned that its ruling does not mean school districts have carte blanche to assign a child to a school that cannot satisfy the IEP's requirements, nor does it mean that not identifying a school can never result in a denial of FAPE, especially when a child's disability demands delivery of special education services at a particular facility.

However, the Ninth Circuit has held that IDEA does not procedurally require every IEP to identify the anticipated school where special education services will be delivered. As such, an

[5] USDOE, Assistance to States for the Education of Children with Disabilities, 64 Fed. Reg. 12,406, 12,594 (Mar. 12, 1999).

[6] See also *A.K. ex rel. J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672 (4th Cir. 2007) at 681.

educational agency does not commit a per se violation of the IDEA by not specifying the anticipated school where special education services will be delivered within a child's IEP, especially when the parents will not provide their new address.

Should you have any further questions about when a particular school site must be stated or may be omitted in an IEP, feel free to contact us for further guidance.

— Darren J. Bogié

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