



Special Education Law Update

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A Warning from The Ninth Circuit-

When Holding IEP Meetings Accommodate the Parents' Schedule Or Else

The Ninth Circuit warned in its June 13th opinion, *Doug C. v. Haw. Dep't of Educ.* that an Local Educational Agency's ("LEA") decision to proceed with an IEP meeting after receiving late notice that the parent was unable to attend due to illness could prove to be in the Court's words an "expensive mistake."¹ The Court rejected the LEA's argument that it had to hold the IEP meeting as scheduled in order to meet the annual review deadline, because the parent was willing to possibly meet later in the week only if he recovered from his illness. The Court stated that the LEA should have tried to accommodate the parent rather than deciding that it could not disrupt other team members' schedules without a firm commitment of attendance from the parent. The Court held that the LEA's failure to reschedule was a denial of Free Appropriate Public Education ("FAPE") and the case was remanded back to the District Court for consideration of the parent's right to tuition reimbursement.

The record before the Court did not show that the LEA was "unable to convince" the parent to attend or that the parent "did not affirmatively refuse to attend" but simply that the parent wanted to reschedule the IEP meeting within a week after the annual review deadline.

Reemphasizing that parental participation in the formation of an IEP is critical to the IDEA² the Court determined that failure to include the parent in the IEP process is a procedural violation that constituted a denial of FAPE. The Court reasoned that absent circumstances in which accommodating a parent's schedule would do more harm to the student than proceeding without the parent's presence at the IEP team meeting a parent's scheduling request should be

¹*Doug C. v. Haw. Dep't of Educ.* 2013 U.S. App. LEXIS 11904; 113 LRP 25045 (9th Cir. 2013).

² See 20 U.S.C. § 1414(d)(1)(B)(i); 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.321(a)(1).

accommodated. Under the Court's analysis the mere fact that the IEP team meeting would have been held shortly after the annual deadline imposed under the IDEA was not a sufficient reason to hold the meeting without the parent.

Unfortunately in its ruling, the Ninth Circuit did not provide any clear guidance on what *would* be an unreasonable timeframe to accommodate a parent's scheduling request, but the Court did, however, use the facts in the case of *A.M. v. Monrovia*³ as an example of when the LEA could hold an IEP meeting without rescheduling to accommodate parents. In *Monrovia* the parents of a transfer student wanted to hold an IEP review meeting for a date *sixty days* overdue when there was no current IEP in place.

Even though this was the appeal of a District Court case from Hawaii, we should remember that the rulings of all Ninth Circuit cases are binding in California Courts. Therefore, the take away points from this ruling are as follows:

- Document every attempt to notify the parent of a scheduled IEP team meeting along with every attempt to get a parent to attend.
- Be sure to document any overt refusal by a parent to attend a meeting.
- If a parent who has indicated that they will appear at a meeting is absent when the meeting starts, be sure to call them and ask if they are still planning to attend the scheduled meeting or if they are willing to attend by speakerphone.
- Under the current Ninth Circuit ruling, if the parent wants to reschedule the meeting within a reasonable timeframe even if it is after the compliance date give them the opportunity to do so; however
- If there is an important or compelling reason that the IEP team meeting must go forward even if a parent wants to reschedule, be sure to fully document why the meeting must be held in notes and how the interest of the student will be harmed if the meeting were not held as schedule.

³ *A.M. v. Monrovia*, 627 F.3d 773 (9th Cir. 2010)

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

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