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NINTH CIRCUIT DETERMINES ROWLEY "EDUCATIONAL BENEFIT" STANDARD REMAINS THE CORRECT STANDARD FOR THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION

The Ninth Circuit Court of Appeals has recently held in J.L. v. Mercer Island School District (9th Circ. 2009) WL 2393323, that the 1997 Individual with Disabilities Education Act ("IDEA") amendment did not supersede the free appropriate public education "educational benefit" standard interpreted by the U.S. Supreme Court in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S.176, 192 (1982). The Supreme Court in *Rowley* held that states must provide "a basic floor of opportunity" to disabled students, which consists of access to specialized instruction and related services, and not a "potential-maximizing education." The "educational benefit" standard set out in *Rowley* has been the longstanding standard used in determining if a school district provided a student with a free appropriate public education ("FAPE").

In J.L v. Mercer Island School District, the Administrative Law Judge ("ALJ") analyzed the parents' claims using the FAPE "educational benefit" standard interpreted by the Supreme Court in *Rowley*. The parents challenged the ALJ's decision. The District Court agreed with the parents and concluded that Congress superseded Rowley in the 1997 IDEA amendment and held that the student was denied FAPE. The District Court's reasoning was based on Congress' addition of "transition services" to the IDEA, which are defined as a coordinated set of activities for a student with a disability that is designed within an *outcome-oriented process*. The District Court, therefore, held that the 1997 IDEA amendment requires school districts to guarantee some level of outcome and not merely "access" to specialized instruction and related services.

The Ninth Circuit held that there is no plausible way to read the definition of "transition services" as changing the FAPE standard. It further held that had Congress sought to change the FAPE "education benefit" standard, a standard the courts have followed vis-a-vis *Rowley* since 1982, it would have expressed a clear intent to do so. The Court further pointed out that Congress did not alter its definition of FAPE in 1997, nor in the Act's three prior amendments, even though Congress was presumably aware of *Rowley* and its renowned "educational benefit" FAPE standard.

The Ninth Circuit ultimately held that the District Court erred in declaring *Rowley* superseded and that the proper standard to determine whether a disabled child has received a FAPE is the "educational benefit" standard set forth by the Supreme Court in *Rowley*.

The Ninth Circuit also clarified that the "educational benefit" standard has the same meaning as "some educational benefit" or "meaningful educational benefit." The Ninth Circuit's clarification was necessary as the Ninth Circuit used the term "meaningful education benefit" in N.B. v. Hellgate Elementary School District, 541 F.3d 1202 (9th Cir. 2008). As a result, there was confusion in the Ninth Circuit as to whether "meaningful educational benefit" imposed a higher standard than the "educational benefit" standard set out in *Rowley*.

The IDEA was again amended in 2004; however, the definition of a FAPE was not altered. Although, the Ninth Circuit's analysis was of the 1997 IDEA amendment, it is reasonable to assume that the Court's analysis would not be different in interpreting the 2004 IDEA amendment considering the fact that the definition of FAPE did not change in 2004.

If you need further information on this topic, do not hesitate to contact our office.

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