



## Special Education Law Update

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### **NINTH CIRCUIT RULES THAT DISTRICT'S REFUSAL TO RESCHEDULE INDIVIDUALIZED EDUCATION PROGRAM ("IEP") MEETING DEPRIVED STUDENT'S PARENTS OPPORTUNITY TO PARTICIPATE IN IEP PROCESS AND DENIED STUDENT A FREE APPROPRIATE PUBLIC EDUCATION ("FAPE")**

The Ninth Circuit Court of Appeals (the federal appeals court with jurisdiction over California) has recently held that a school district denied a student FAPE when it did not schedule an IEP team meeting with the student's parents at a "mutually agreed on time and place" as required by the Code of Federal Regulations. The student was denied FAPE, according to the Ninth Circuit, because parent's lack of involvement in the development of the student's IEP resulted in a loss of educational opportunity for the student and seriously infringed the parents' right to participate in the formulation of their son's IEP.<sup>1</sup>

The Court reiterated that school districts have an affirmative duty to schedule an IEP meeting with the parents of a child with a disability at a "mutually agreed on time and place." 34 Code of Federal Regulations section 300.322(a)(2). The Court further stated that before a school district can hold an IEP meeting without a child's parents, the school district must document phone calls, correspondence, and visits to the parents demonstrating attempts to reach a mutually agreed upon place and time for the meeting.

In this case, the school district notified the parents in writing that an IEP meeting was scheduled on a certain date without first inquiring about the student's parents' availability. The parents informed the school district that they were not sure if they could attend, but did not definitively state whether they could or could not attend the meeting and they did not return a signed copy of the IEP meeting notice. The District made no further attempts to confirm the parents' attendance at the IEP meeting. The school district did telephone the parents on the date of the scheduled IEP meeting and asked whether they would be attending and the parent at that time requested to reschedule the meeting. The school district then offered to the parent the opportunity to participate in the IEP meeting telephonically, however, the parent declined. The school district continued with the IEP meeting which was held to formulate the student's IEP. The Court held that the school district's offer to the parent to participate telephonically was of no consequence as the use of such methods to ensure parent participation is available only if neither parent can attend an IEP meeting. 34 Code of Federal Regulations section 300.322(c). Furthermore, the fact that the student's mother requested that the IEP meeting be rescheduled undermined the District's claim

<sup>1</sup> Drobnicki by Drobnicki v. Poway Unified School District (9<sup>th</sup> Circ. 2009) Lexis 25206.

that the parents affirmatively refused to participate – a circumstance that would allow the District to proceed in the parent’s absence.

The Court found that the Administrative Law Judge’s finding that the parents had a history of not attending IEP meetings was erroneous as the parents had only failed to attend one of six IEP meetings in the last year and notwithstanding the parents’ conduct, the school district had a duty to comply with the Individuals with Disabilities Education Act (“IDEA”).

It is also important to note that the Court found that although student’s parents attended a subsequent IEP meeting to discuss the IEP, the fact that the parents were not involved in the development of the IEP resulted in lost education opportunity for their son because the district failed to include the persons most knowledgeable about the student’s educational levels and needs.

It is strongly advised that you do not schedule an IEP meeting without first documenting your efforts to contact a student’s parents to agree on a date/time and place for an IEP meeting. Some school districts do have the practice of sending an IEP meeting notice to parent without first contacting them to agree on a date and time, but state on the IEP notice that if the parent cannot attend, to advise the district so that the meeting can be rescheduled. Based on Drobnicki, it is advised to always first try to contact a parent to mutually agree upon a date/time and place prior to sending out an IEP meeting notice even if the parent has a history of not attending IEP meetings or of rescheduling IEP meetings.

If you need further information concerning this issue, please do not hesitate to contact me.

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