Court affirms that parent participation is an absolute necessity at IEP meetings

A recent California federal court ruling, D.B. by Roberts v. Santa Monica-Malibu Unified School District, awarded reimbursement for private school costs to parents of a student with disabilities who were excluded from an IEP meeting. In this matter, the school district refused to reschedule the IEP meeting, despite the parents unavailability to attend, because it wanted to complete the meeting prior to the end of the school year. It proved to be a costly mistake for the school district, which was chided by the federal court judges and reminded that a parents' attendance takes priority over attendance of other school team members.

Ninth Circuit upholds granting of attorneys fees in dispute about "prevailing party" status

The Ninth Circuit Court of Appeals recently reversed (in T.B. v. San Diego Unified School District) a Federal Court ruling which denied parents attorneys fees because they were not considered "prevailing parties" from an administrative due process hearing decision.

In this matter, the parents of a disabled child were offered

settlement more than 10 days prior to the due process hearing, which would have provided them $150,000 per year over the next five years in order to avoid litigation. The parents rejected the offer, and moved forward with their due process hearing complaint, suing on 15 different counts. The hearing officer found in favor of the parents on three of the 15 issues, and the parents then sued for $1.4 million in attorneys fees as a result.

The school district fought the fee demand, arguing that what the parents were afforded at hearing wasn't more than what was offered to them in settlement, and the federal court mostly agreed, allowing the parents just more than $55,000 in fees and costs for the three counts on which they prevailed.

The Appellate Court, however, overturned the District court's decision, arguing that the settlement (for money only) would have forced the parents to create an entire educational program for the child at their home, and were therefore "substantially justified" in declining the offer. The Appellate Court also disagreed with the federal court's decision to lessen the fees due to the parents' prevailing on just a few issues, arguing "failure on a claim does not automatically reduce the fee award," when the attorney work was beneficial to a successful claim. For all of these reasons, the Appellate Court reversed the decision and remanded back to the District Court for a new determination on the fee amount.

It is appropriate for

juveniles in Illinois be automatically tried as adults?

A recent change in the Illinois law says no. The new law (Public Act 99-0258, which goes into effect January 1, 2016) no longer allows children under the age of 17 to be automatically transferred into the adult criminal system for certain crimes, but instead requires prosecutors to request it from the assigned judge. In addition, the new law requires courts to take "mitigating factors" into account when sentences individuals under the age of 18, including: 1) The person's age and level of maturity at the time of the crime, 2) Whether the child was subject to peer pressure or "negative influences," in commissioning the crime, 3) The child's family, home life, educational, social and emotional history, 4) The child's potential for rehabilitation, 5) The circumstances of the offense, 6) The person's degree of participation in the offense, 7) Whether the child was able to meaningfully participate in his/her own defense, 8) The child's prior criminal history, and 9) Any other relevant information. The new law seems to further support the position of restoratative justice that many states, including Illinois, are taking as a way to rehabilitate juveniles to prevent future recidivism.

Federal Court Requires

District to Pay for Medical Testing of Child with Anxiety.

In a recent Minnesota Federal Court opinion, Independent School District No. 413 v. HMJ by AJ and MN, a judge agreed that a school district violated the IDEA when it failed to arrange for a medical evaluation for a student suffering from Asthma and Anxiety. The parents of the 8-year-old girl, who had accrued numerous school absences related to her anxiety, requested a case study evaluation and IEP meeting be held to review appropriate services. A judge found that, based on Minnesota's laws requiring school districts to provide medical examinations (performed by a physician) for students eligible under the "Other Health Impairment" category, the District erred in not doing so for the girl, as it had "reason to suspect that a medical evaluation might provide critical information for the purposes of a special education determination."

Most Recent Illinois Education Legal Updates

Get updated on the most recent Illinois education legal updates by reviewing WTH's Quarterly E-Newsletter for July through September 2015.

Appellate Court: School Districts Must Provide FAPE Even If Child is Privately Placed

In a recent U.S. Court of Appeals for the Second Circuit matter, Doe v. East Lyme Board of Education, the court agreed that despite a parent's unilateral placement of a disabled child in a private, non-special education school, the Connecticut school district was still required to develop an appropriate IEP for the student. The matter, which revolved around a boy suffering from Autism, was initially decided by a hearing officer, who found in favor of the school district because the private school, which did not provide any special education services, was inappropriate for the student. However, upon appeal in federal court, while the judges agreed that the placement was inappropriate, it did not absolve the school district of its obligation to create an IEP and offer related services to the child.

New Illinois Appellate Court Ruling Upholds Tort Immunity

for School Districts

In a recent Illinois 2nd District Appellate Court case, Donovan and Schulze v. Community Unit School District No. 303, the parents of children in a local public school attempted to transfer their children to a different public school within the same district, as their local homeschool had not met Annual Yearly Progress "AYP" as governed by the No Child Left Behind Act. Instead of moving the students, the District received a waiver from the Department of Education for the AYP requirement, claiming budget restraints forced them to consolidate schools and leaving parents with no other school choices. The parents of two families withdrew their children from the district, placing them within private schools and then sued the school district for reimbursement of tuition as well as "compensatory damages" and attorneys fees. The Second Circuit appellate court did not even consider the merits of the NCLB matter, however, agreeing with the school district's argument that it was immune from various civil legal claims.

Now that the NCLB is practically defunct, as the US legislature is updating the federal education laws through the Every Child Achieves Act, these AYP cases will soon become non-existent.

New CPS "All Means All" Pilot Program Will be a Disaster for Special Ed Students

CPS recently announced that it has expanded its "All Means All" pilot program to 102 schools. Under the "All Means All"

program, special education student funding is no longer based on enrollment and individual student need. Instead, IEP services will be driven by the amount of money left in a school's budget.

Given the status of CPS's budget, one can imagine how this will end for our most disabled students in Chicago. For 102 schools, each with limited budgets, a principal will determine what services need to be provided to each special education student. The "All Means All" program creates a conflict of interest between school administrators, preserving limited resources, and special education students, requiring supports and services that come with a price tag.

If there is any question as to who will be the winners and losers in this conflict, one only needs to follow the money, or more accurately the financial bonuses for school adminsitrators. According to a recent WBEZ report, "All Means All" includes a financial bonus for schools that move kids into mainstream classrooms (this is another way to describe cutting services and supports for special education students) or out of special education entirely. We have seen such policies in effect before. Students will be denied entry into special education in order to keep a school's numbers down, exited before they acquire necessary skills to be successful in society, and while in special education, students' educational resources will be limited by budgetary constraints.

Without question, there are benefits when special education students are educated within a mainstream setting. However, that process should be dictated by student need and not limited budgets and financial bonuses to administrators.

7th Circuit Orders Reimbursement of Private SLP Services to Pro Se Parent

The 7th Circuit Court of Appeals recently found in favor of the parent of a disabled child seeking reimbursement for private speech-language services in Foster v. Board of Education of the City of Chicago and Amandla Charter School. The parent, who conducted a due process hearing and subsequent appeal of the same without legal counsel, failed to specify the word "reimbursement," in her due process hearing complaint, which the District argued would preclude her from receiving the remedy. However, the 7th Circuit panel pointed out that the parent had, in fact, specified that she was seeking "compensatory education," including reimbursement for out-of-pocket educational expenses, and that was enough to allow her reimbursement for the private SLP therapies.

Parents Denied Transportation of Disabled Student to Preferred School

An administrative law judge in Texas recently agreed with the school district in the opinion, In re: Lamar Consolidated Independent School District, that a student with Autism was not entitled to transportation services if the parents choose to enroll the child in a private school. The hearing officer found that the child: 1) Had no disability-related needs that required specialized transportation, and 2) The parents chose

not to to enroll their child in its local home school (which could have met the child’s needs), but instead decided to place her at a different school located several miles away from their home.