

9th Circuit Finds District Denied FAPE By Failing to File for Due Process

November 18, 2015

On November 17, 2015, the U.S. Court of Appeals, Ninth Circuit, reversed a district court judgment in a case where the school waited too long to initiate a due process hearing for a child eligible for special education. (*I.R. ex rel. E.N. v. Los Angeles Unified School Dist.* (9th Cir. Nov. 17, 2015, No. 13-56211) ___ F.3d ___ [2015 WL 7253495].) The mother contended that the school district (District) had denied her child a Free Appropriate Public Education (FAPE) for the 2010/2011 and 2011/2012 school years. In 2006, when the District found the child eligible for special education, the mother chose to place the child in private school instead of public. In 2010, when the mother decided to enroll the child in public school, she only consented to parts of the Individualized Education Program (IEP). Later that same year, when a new IEP recommended the child be placed in special education, the mother once again disagreed and only gave consent to using parts of the program that were helpful to her child. With more IEP meetings in 2011 and 2012, the mother continued to deny special education placement for the child. In May of 2012 the mother requested a due process hearing.

The Administrative Law Judge (ALJ) agreed with the District that the mother's consent to the IEP had prevented the District from providing FAPE. The appellate court disagreed and reversed the ALJ and District Court under the Individuals with Disabilities Education Act (IDEA). Under the California Education Code section 56346(f), it was the District's responsibility to start the due process hearing promptly if it believed the child was not receiving FAPE and both the District and the parent had reached an impasse. Although the District had been working with the parent during that entire time, it still hadn't initiated the due process hearing. The court declared the child had been deprived of a proper education for too long and the District could be held accountable. The district court will determine the appropriate remedy.

We expect this case will have a significant impact on the number of due process filings school districts initiate, as well as the burden of proof to establish a denial of FAPE. To read the case, please click [here](#).

If you have any questions, please contact a DWK attorney.

PRACTICE AREAS

- Students and Special Education



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