

Ninth Circuit Affirms that a Change in Location is Not a Change in Placement Under the IDEA

March 21, 2019

In a recent unpublished decision, *Oliver C. v. State of Hawaii Department of Education*, the Ninth U.S. Circuit Court of Appeals upheld a District Court ruling that a child's administrative assignment to a new school did not constitute a change in the child's "current educational placement" for purposes of the Individuals with Disabilities Education Act ("IDEA").

The IDEA's "stay-put" provision requires that a child remain in his or her "then-current educational placement" during the pendency of any proceedings conducted under the IDEA. In the case at issue, the parents of a medically fragile preschooler alleged that the Hawaii Department of Education violated stay-put when it declined to keep the student in his current classroom after his parents moved to another district.

In rejecting this argument, the Ninth Circuit observed that a "change in location alone does not qualify as a change in 'educational placement'" and that a change in placement only occurs "when there is a significant change in the student's program." Because the program at the student's new school was comparable to the program at his previous school, and the new school was capable of implementing the student's individualized education program ("IEP"), no change in placement occurred and the IDEA's stay put provision did not apply.

The Ninth Circuit also found that, because changing schools did not change the student's "educational placement," the Department of Education was not required to provide the parents with prior written notice for a change in the location of the child's services.

In reaching these conclusions, the Ninth Circuit affirms once again that the IDEA's stay-put provision does not prevent a district from changing the location of a student's services and that no prior written notice is required to do so.

If you have any questions about the legal ramifications of the Ninth Circuit's decision on local California schools, or ways to ensure that your District is complying with the IDEA, please contact a DWK attorney.

PRACTICE AREAS

- Students and Special Education



DANNIS WOLIVER KELLEY

Attorneys at Law