

District Loses: Ex-Student Wins Compensatory Ed

November 21, 2003

Under a new federal ruling, school districts must provide a due process hearing under the *Individuals with Disabilities Education Act* ("IDEA") to a student no longer enrolled or living in the school district. The court also found that IDEA's hearing provisions can be used to air issues covered by a state's complaint process, so long as they are also alleging violations of IDEA.

In *Lewis Cass Intermediate School District v M.K.*, the hearing-impaired student's parent filed complaints with the intermediate school district ("ISD") and the Michigan Department of Education ("MDE") alleging that the district failed to provide the student a free appropriate public education ("FAPE"), and he requested compensatory education. At the same time, he notified the district that the family no longer resided in the district. The ISD investigated, found for the parents and both the ISD and MDE directed compensatory educational services.

But, the parent also requested a due process hearing "over all the allegations contained in the complaint." A local hearing officer ("LHO") heard the case and granted the district's motion to dismiss for two reasons: 1) complaint issues cannot be raised in a due process hearing; and 2) the matter was moot because the parent and student had moved out of the district. The parent appealed to a state review officer ("SRO") who reversed the LHO's determination that the issue was moot and ordered the district to hold a due process hearing.

The school district appealed to the federal district court arguing that complaint issues already submitted are not within the LHO's jurisdiction, that the parent lacked standing at the time of the hearing process request, and that the move out of state mooted all of his claims against the district. The federal district court disagreed and upheld the decision of the SRO.

In reaching its decision on mootness, the court stated that "the right to a hearing under the IDEA is too significant to be barred simply because the student filed the request after moving from the district, when IDEA itself and its regulations fail to contain any express requirement of this type." As for whether an adequate "compensatory remedy" would be possible, the court stated the district "would have the ability to provide such services by contracting with the student's new resident district (even if in another state) or a private entity near the student in order to fulfill its obligations under the IDEA."

Finally, the court held that IDEA grants both parents and schools the right to raise "complaint issues" related to the "provision of FAPE to the child" in a due process hearing.

Thus, districts need to be aware that they may be liable to provide compensatory educational services to former students - even those living in a different state - for violations of IDEA. And further, that in some circumstances, they may face challenges on the very same issues through both complaint and due process channels.

If you need assistance with revision of this or any other school policy, or with other questions related to school law, please contact our Labor Group, Beverly Hall Burns at (313) 496-7508, email: burns@millercanfield.com.