
Communication is Everything: Ninth Circuit Declines to Award Private School Tuition to Parents who Failed to Respond to School District's Offer to Hold IEP Meeting

May 29, 2024
Number 26

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In *Newport-Mesa Unified School District v. D.A.* (9th Cir. 2024, No. 23-55351), the Ninth Circuit Court of Appeals held in an unpublished decision that the school district had no obligation to convene an annual individualized education plan (IEP) meeting when the parents of a parentally-placed private school (PPPS) student who had previously received special education and related services from the school district failed to indicate any interest in a current offer of a free appropriate public education (FAPE). In short, the parents' failure to communicate interest in an IEP for the PPPS student obviated the school district's obligation to prepare one.

Factual Background

M.A., a student and resident of the school district, who was eligible for special education and related services since 2014, attended private schools until his fifth grade year (2016-2017), when he enrolled in a public elementary school within the school district. When an IEP team meeting occurred on December 21, 2017, rather than giving consent to the IEP offered, M.A.'s parents (Parents) gave notice of their intent to unilaterally place M.A. in private school.

In response to M.A.'s private school placement in January 2018, and in anticipation of M.A.'s annual IEP review due in April 2018, the school district sent Parents a "Certification of Intent" form to identify their interest in an IEP meeting, a discussion of a previously offered or implemented IEP, or continued enrollment of M.A. in private school. Parents received this form three times over several months but never responded. Nor did they respond to the school district's prior written notice in March 2018 stating that M.A. was eligible for an annual IEP review in April 2018, including an offer of placement and related services for M.A.'s transition to middle school.

In April 2018, Parents paid the deposit at a private school to secure M.A.'s attendance for the 2018-2019 school year. The school district did not convene M.A.'s annual IEP review meeting. Parents subsequently filed a complaint with the Office of Administrative Hearings (OAH) against the school district, seeking,

among other things, reimbursement of M.A.'s private school tuition due to, in part, the school district's alleged failure to convene the required IEP meeting.

OAH Decision

OAH held the school district failed to convene M.A.'s annual IEP review meeting because, although Parents never responded to the school district's attempts to determine their interest in a current offer of FAPE, neither had they revoked their consent for M.A.'s receipt of special education and, therefore, the school district's FAPE obligation continued.

OAH deemed this violation a substantive denial of FAPE for the 2018-2019 school year, finding that it prevented Parents from making an informed decision regarding the placement, program, and services available for M.A.'s anticipated transition to middle school that school year, and whether they would have accepted a public school placement for M.A. at that time.

Consequently, OAH ordered the school district to reimburse Parents \$45,387.97 for the private school registration and tuition, along with the costs of related services and transportation (including \$680 for private physical education lessons), for the 2018-2019 school year.

Federal District Court Decision

Both parties appealed, and the federal District Court for the Central District of California reversed the OAH decision on the offer of FAPE issue, relying on *Capistrano Unified School District v. S.W.* (9th Cir. 2021) 21 F.4th 1125, a Ninth Circuit decision that succeeded the OAH decision here. *Capistrano* held that "when a child has been enrolled in private school by her parents, the [school] district only needs to prepare an IEP if the parents ask for one." Accordingly, the District Court held that because the school district provided Parents multiple opportunities to request an IEP meeting, and the Parents never responded, no obligation to hold an annual IEP meeting for M.A. existed.

Ninth Circuit Decision

M.A. appealed to the Ninth Circuit, which affirmed the District Court's decision, based on *Capistrano*. Although Parents alleged that they lacked adequate notice that the school district would not convene an annual IEP meeting absent their request, and that the "Certification of Intent" form was ambiguous on that point, the Ninth Circuit determined that Parents sufficiently understood the IEP process and never requested an IEP meeting such that the school district's obligation to convene an IEP meeting was never triggered.

Takeaways

In defending itself against claims for reimbursement for private school tuition, the unpublished decision in *Newport-Mesa Unified School District*, while not binding, emphasizes the importance of a local educational agency (LEA) clearly documenting its attempted communications with parents of

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PPPS students, particularly when informing them of their right to an IEP meeting and current offer of FAPE, and the parents' declination to exercise that right, or a lack of response.

If you have any questions about this decision or need guidance related to PPPS students, please contact the authors of this Client News Brief or any attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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