

FALL 2017 NEWSLETTER

Special Education Case Law Update

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FIFTH CIRCUIT COURT OF APPEALS

Dallas Indep. Sch. Dist. v. Woody, 865 F.3d 303 (5th Cir. 2017)

A student with learning disabilities and schizophrenia attended a private school in Dallas, although her residency was in California. The Los Angeles Unified School District (LAUSD) reimbursed Woody for one year of her daughter's attendance at the Dallas private school but then adopted an IEP which placed the student in a private school in California for the 2013-14 school year.

Woody moved to Dallas in August of 2013 and, in September, notified the school district of her daughter's residency and disabilities. Throughout the fall of 2013 the school district sought records concerning the student. In December the district met with Woody, rejected the LAUSD's IEP, and sought consent to evaluate the student. Woody provided that consent in late January of 2014, and in April the school district presented Woody with an FIE which concluded that the student was not eligible for special education services. Woody disagreed and, on May 20, 2014, provided the school with a report from an independent psychologist which concluded that the student's private placement was proper. On May 22, 2017, the ARD committee reconvened and developed an IEP which placed the student in a district high school from May of 2014 through the following spring. Woody disagreed with the IEP, and, a week later, the student graduated from the private school she was attending. Woody sought reimbursement for the tuition she paid at the private school during the entire 2013-14 school year.

The Court rejected the notion that the school district was required to provide the student with immediate interim services when it learned, two weeks into the semester, that the student, who had continued her enrollment in a local private school, had become a resident of the school district. Instead, the Court determined that IDEA's child find provisions applied to such a student and required only that the school district proceed in a reasonable fashion to determine the student's needs.

The Court also rejected the argument that Woody could not seek private school tuition reimbursement because she had not placed her student in private school due to disagreement with a public school FAPE offered by the school district. Woody's request for reimbursement did not constitute an absolute refusal of a public placement and did not render futile the school district's obligation to evaluate the student and to offer a FAPE.

The Court found that the school district failed to offer the student a FAPE because it never considered the independent evaluation Woody provided from the outside

psychologist. Additionally, because it offered only one week's worth of special education services prior to the student's graduation, the school district had not met its obligation to offer an IEP reasonably calculated to enable the student to make appropriate progress. Because the school district failed to offer a FAPE and because the district court implicitly held that the private school placement was appropriate, the school district was responsible for some tuition reimbursement.

However, the Court limited such reimbursement to the time period beginning when the school district should have provided a FAPE. The school district was not obligated to offer the student a FAPE until it had evaluated the student, and IDEA permits the school district a reasonable time in which to evaluate students. Because the school district complied with its obligation to evaluate the student within a reasonable time, even though the evaluation period continued until late April of 2014, the Court limited tuition reimbursement to the period from April 24, 2014 to the student's graduation in May of 2014.

***D.L. v. Clear Creek Indep. Sch. Dist.*, ___ Fed. App'x ___, No. 16-20673, 2017 WL 2417010 (5th Cir. July 31, 2017)**

The Fifth Circuit affirmed the district court's grant of summary judgment to the school district because, by not raising the issue in his administrative complaint, D.L. failed to preserve the issue of whether he was in need of special education services after April of 2013, and because D.L. failed to show that he was in need of special education services prior to that date.

The Court affirmed the district court's determination that, because D.L. waited until his closing argument during his due process hearing to raise the issue of whether he was in need of special education services after April of 2013, he forfeited this issue.

The Court also affirmed the district court's finding that the school district did not violate IDEA when it chose not to provide D.L. with special education services during the 2012-2013 academic year. Although the school district was aware that D.L. was a student with a disability, and although the school district had previously provided D.L. with special education services, IDEA only requires school districts to provide special education services to disabled students who have an educational need for such services. A school district need not adopt an outside evaluator's recommendations for a student's services and accommodations. Instead, the Court explained that teacher observations are especially instructive, and often of greater value than an independent evaluator's observations, because teachers spend more time with the student. Additionally, the Court reemphasized that a student's grades are an important indication of whether that student is in need of special education services. Because D.L. had received good grades and positive teacher evaluations during the 2012-2013 school year, D.L. failed to show that he was in need of special education services.

The Court also rejected D.L.'s argument that the school district should have looked to possible future consequences of his disability in judging whether to provide him with

special education services. The Court explained, “we do not judge a school district’s determination in hindsight,” and that “[a] fear that a student may experience problems in the future is not by itself a valid basis for IDEA eligibility.” In April of 2013 D.L. was excelling academically and behaviorally. That he subsequently spiraled does not undermine the earlier determination that he was not in need of special education services.

***C.G. v. Waller Indep. Sch. Dist.*, ___ Fed. App’x ___, No. 16-20439, 2017 WL 2713431 (5th Cir. June 22, 2017)**

Applying recent Supreme Court guidance from *Endrew F. v. Douglas County Sch. Dist.*, ___ U.S. ___, 137 S. Ct. 988 (March 22, 2017), and *Fry v. Napoleon Comty. Sch.*, ___ U.S. ___, 137 S. Ct. 743 (Feb. 22, 2017), the Fifth Circuit Court of Appeals affirmed the district court’s grant of summary judgment to the school district in a case in which the parents sought reimbursement for the cost of private placement of their daughter and injunctive relief under Section 504 concerning their daughter’s educational placement.

In *Endrew F.*, the Supreme Court clarified the standard applicable to claims that a school district failed to provide a student with a free appropriate public education (FAPE), explaining that the student’s individual education plan (IEP), “must be appropriately ambitious in light of [the child’s] circumstances,” a standard which is higher than that which some circuit courts had adopted. With respect to the plaintiffs’ claim that the school district failed to provide C.G. with a FAPE, the Court found that, although the district court did not articulate the applicable standard in precisely the same terms as stated in *Endrew F.*, the district court’s analysis of C.G.’s IEP was consistent with that standard. The Fifth Circuit affirmed the district court’s determination that the school district provided C.G. with a FAPE, noting that, although the school district “could have taken different, and arguably better, approaches to C.G.’s IEP...the role of the court is not to ‘second guess’ the decision of the school district or to substitute its plan for the education of the student.”

Additionally, the Fifth Circuit upheld the district court’s dismissal of the plaintiffs’ claim under Section 504, which concerned C.G.’s placement in a “highly restrictive” classroom. The district court reasoned that the plaintiffs could not sustain their claim under Section 504 because the school district had implemented an IEP developed in accordance with the IDEA. Applying the test the Supreme Court articulated in *Fry*, the Fifth Circuit rejected the plaintiffs’ claim that their Section 504 claim was independent of their IDEA claim. The Court explained that because the Section 504 claim “incorporates an identical factual background expressed in the same language as their IDEA claim,” their Section 504 claim was not one which could have been brought at another public facility which was not a school, nor was it one which an adult could have brought against the school district.

DISTRICT COURTS

***Lauren C. v. Lewisville Indep. Sch. Dist.*, No. 4:15-CV-00544, 2017 WL 2813935 (E.D. Tex. June 29, 2017)**

The Court granted the school district's motion for judgment on the administrative record, finding that the school district provided a FAPE to the student even though the school district did not identify the student as autistic.

Although the student's parents agreed with the IEPs proposed for their daughter, they repeatedly asked the school district to identify their daughter as suffering from autism because they wanted their daughter to receive various services from other public entities. Upon review of multiple evaluations by school district personnel and by independent professionals, the school district declined to label Lauren C. as autistic, although the school district did provide Lauren with certain services for autistic students.

The Court explained that IDEA does not require school districts to provide a specific classification or label for a student but only to identify disabled students who are in need of special education services and to provide such students with a FAPE. The Court held that the school district provided Lauren C. with a FAPE because, regardless of its classification of her disability, Lauren's education program was individualized on the basis of her assessment and performance, was administered in the least restrictive environment, was provided in a coordinated and collaborative manner by the key stakeholders, and Lauren showed positive academic and non-academic benefits.

***Reed v. Kerens Indep. Sch. Dist.*, No. 3:16-CV-1228-BH, 2017 WL 2463275 (N.D. Tex. June 6, 2017)**

The plaintiff asserted claims under Title IX, Title VI, Section 504, the ADA, and Section 1983 on behalf of the estate of her son, J.R., who took his own life. Reed's son was a middle school student who complained that he had been bullied at school. The Court granted the school district's motion to dismiss with respect to all claims except the Title IX claim.

The Court found that plaintiff's Section 504 and ADA claims concerning J.R.'s identification as a student with a disability, educational placement, and accommodation were subject to administrative exhaustion under IDEA because plaintiff sought relief that could have been attained under IDEA. However, after noting that the Fifth Circuit has not yet addressed the question, the Court held further that requiring plaintiff to pursue administrative remedies after J.R.'s death would be futile, and thus plaintiff established an exception to the exhaustion requirement.

With respect to plaintiff's Section 504 claim based on her allegation that the school district failed to provide J.R. with necessary services and accommodations, the Court explained that plaintiff did not allege that the school district discriminated against J.R. because of any disability, but rather she alleged that the school district never recognized J.R. as a student with a disability. Noting that plaintiff never requested that the school district provide J.R. with a psychological assessment, school-based counseling, or other services, the Court explained that plaintiff failed to allege that the school had been informed of J.R.'s alleged disability or that the school district had any reason to suspect

that J.R. required accommodations. Because the Fifth Circuit has held that a person cannot be discriminated against on the basis of disability until a disability has been shown to exist, the Court found that plaintiff had failed to allege a plausible claim that J.R. was disabled for the purposes of Section 504. Additionally, plaintiff failed to allege that the school district had reason to suspect that J.R. needed accommodations. Consequently, the Court found that plaintiff failed to allege that the school district intentionally discriminated against J.R. on the basis of his disability and dismissed this claim.

With respect to plaintiff's Section 504 claim based on student-on-student harassment, the Court explained that plaintiff alleged that J.R. was bullied and harassed because of his weight or for no apparent reason, not because of his depression. Because plaintiff failed to allege that J.R. was harassed by other students due to his disability, she failed to state a claim under Section 504.