



Prevailing in a Special Education Due Process Hearing on the Issue of Eligibility Classification May Entitle a Student to an Award of Attorneys' Fees

The Ninth Circuit Court of Appeals recently held in Weissburg v. Lancaster School District (9th Cir. 2010) ___ F.3d ___ [2010 WL 114960] that a student may be eligible for attorneys' fees and costs under the Individuals with Disabilities in Education Act if the student prevails on an eligibility category determination at a due process hearing. In addition, the Ninth Circuit held that although parents may not recover attorneys' fees when they represent their own child, they may receive attorneys' fees when a non-parent relative provides legal representation for the child.

In 2005, the school district assessed a student and determined that he qualified for special education services under the classification of mental retardation. During the two subsequent school years, the student's parents challenged the school district's classification because their private psychologist concluded that the student was autistic. The student's parents filed a due process complaint with the Office of Administrative Hearings, requesting a publicly-funded independent assessment of the student's disability category. The school district denied the parents' request for a private assessment and filed its own due process complaint to obtain a determination that its assessment of the student's eligibility category was appropriate and that it was not obligated to fund an independent assessment.

After a hearing on the matter, OAH held that the school district's assessment was appropriate, but that the student should have been eligible for special education under both the mental retardation and autism classifications. However, OAH found that the student was not denied a free, appropriate public education due to the school district's misclassification. Following the hearing, the parents brought an action to recover attorneys' fees against the school district in federal district court and, ultimately, the Ninth Circuit Court of Appeals.

Under the IDEA, a court may award reasonable attorneys' fees to a parent of a child with a disability who is a prevailing party in a due process hearing. To qualify as a "prevailing party," a parent must demonstrate that he or she succeeded on a claim that materially altered the legal relationship between the parties. Once the parent obtains prevailing party status, the court then takes into account various factors to determine the reasonableness of the award, including degree of success.

Here, the district court held that the parents were not a "prevailing party" because a change in disability classification by itself did not materially alter the legal relationship between the student and the school district. The court's ruling was based on OAH's determination that the school district did not deny the student a FAPE. The Ninth Circuit reversed, finding that the parents qualified as a "prevailing party" because of their success related to the eligibility category determination. It explained that a student may qualify as a prevailing party and be entitled to attorneys' fees even if the school district did not deny the

student a FAPE. The Ninth Circuit acknowledged that the IDEA does not provide a student with a legal right to a particular disability classification. However, it explained that there are legal ramifications caused by a disability classification. In this case, the Ninth Circuit found that the change in the eligibility category materially altered the legal relationship between the parties because it potentially entitled the student to a classroom placement with a teacher who was qualified to teach students with both mental retardation and autism.

The Ninth Circuit then discussed whether the parents could receive attorneys' fees because the student was represented by a grandparent who was an attorney. It explained that although attorney-parents cannot receive attorneys' fees for representing their children, they can receive attorneys' fees when a non-parent relative represents the student. The Ninth Circuit reasoned that, unlike parents who have a special role in enforcing their child's educational rights under the IDEA, other relatives, like grandparents, are not as invested in the proceedings.

This decision does not stand for the proposition that a student is entitled to a specific eligibility classification under the IDEA. To the contrary, based on this decision and the underlying due process decision, an incorrect eligibility determination does not necessarily affect whether a student received a FAPE. In this case, though, the Ninth Circuit found that an incorrect eligibility determination may be sufficiently material to alter the legal relationship between the parties and make the parents eligible for some degree of attorneys' fees. Nevertheless, in the event an IEP team cannot agree on a student's eligibility classification, district staff should designate the eligibility category that they believe to be appropriate. An IEP team may also designate primary and secondary eligibility categories.

Should you have any questions regarding this case and its impact, please contact one of our five offices.

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