SPECIAL EDUCATION LEGAL ALERT

Perry A. Zirkel

This latest monthly legal alert summarizes two recent court decisions that respectively focus on (a) when districts are liable for the **attorneys' fees** of parents in IDEA cases, and (b) when the state education agencies are subject to suit for the **complaint procedures** mechanism for IDEA dispute resolution. The layout follows the usual format of a two-column table, with key rulings on the left and practical implications on the right. For automatic e-mailing of future legal alerts, sign up at **perryzirkel.com**; this website also provides free downloads of various related articles, including those specific to the complaint procedures avenue under the IDEA.

In *H.E. v. Walter D. Palmer Leadership Learning Partners Charter School* (2017), the Third Circuit ruled that parents who had obtained a court order for a due process hearing qualified for "prevailing" status for attorneys' fees under the IDEA. The defendant had argued that the court's order was not a final decision on the substantive issue for the hearing, which was compensatory education, but the Third Circuit concluded that "if a parent vindicates a procedural right guaranteed by the IDEA, and if the relief she obtains is not 'temporary forward-looking injunctive relief,' then she is a 'prevailing party' under the IDEA attorneys' fee provision and is eligible for an award of attorneys' fees."	
First, the Third Circuit concluded that the court order that the parents had obtained was final, because the substantive issue was subject to a separate decision rather than being consolidated in this same case; thus, the court order was final because was nothing else for the court to address.	"Prevailing" status does not guarantee that the parent will receive the requested amount for attorney's fees. For example, a timely settlement offer, unreasonably protraction of the proceedings, and an unreasonable rate or excessive time may reduce or preclude an award. Nevertheless, attorneys' fees amount to a significant factor for both parents and districts in IDEA litigation and settlements.
Second, the Third Circuit concluded that "even a purely procedural victory under the IDEA can confer prevailing party status." This conclusion is much broader than the lay conception of a parent prevailing in a special education case.	This decision, which was not officially published, may not be generalizable beyond the three states in the Third Circuit (DE, NJ, and PA). The reason is because the court relied on and further expanded its previous rulings that are subject to disagreement or at least amount to an open question in other jurisdictions.

A state court in California recently addressed the IDEA obligations of a state education agency (SEA) for its complaint procedures (CP) mechanism for dispute resolution. The parents of 10 students in the Oakland Unified School District, which has had a history of IDEA noncompliance, filed a complaint via the CP system that set forth 7 claims. Each claim alleged not only individual and system-wide violations (totaling 18) but also a state education agency (SEA) violation of its monitoring and supervision duties. The resulting CP report found that the SEA was in compliance but that the school district was out of compliance for 10 of the 18 alleged violations. The remedial orders for the systemic violations were policy revisions, staff memoranda, staff training, and more case reviews. Approximately 10 months later, after finding that the district had fulfilled its orders, the SEA closed the case. However, two of the parents filed an appeal in state court. Their appeal focused on four categories: (a) the investigatory stage, (b) the decisional stage, (c) the overall monitoring duty, and (d) the remedial orders. The court addressed each category in *Valenzuela v. Torlakson* (Cal. Super. Ct. Oct. 25, 2017).	
For the CP investigation stage, the court ruled against the parents, concluding that (a) the IDEA did not require the SEA to conduct a "root cause" analysis, and (b) the IDEA required the SEA to respond to only the material, not every, allegation in the complaint.	This relatively relaxed interpretation fits with the general trend of judicial deference as well as the relatively skeletal standards in the IDEA regulations and related OSEP guidance. For relevant sources, see the "Publications" section of my website for (a) SEA liability, (b) the CP process, and (c) OSEP guidance.
For the decisional stage, the court ruled against the parents on a technical basis, concluding that they did not have "standing" for their claim that the CP report did not meet the IDEA requirement to provide reasons. They lacked standing because the affected individual complainants were not part of the appeal.	This technical disposition is part and parcel of the adjudicative process, which is not only time-consuming but also replete with procedural requirements.
For the overall monitoring duty, the court again ruled against the parents, concluding that the SEA had met its obligation to ensure timely compliance with its orders for corrective action.	This non-rigorous interpretation fits with the explanation above for the first of the four rulings. "Timely" in this context, according to the IDEA regulations, is "as soon as possible, and in no case later than one year after the State's identification of noncompliance."
For the remedial orders, the court ruled for the parents, concluding that an SEA's remedial orders of policy review, staff memos, staff training, and more case reviews amounted to an abuse of discretion. The basis, as found here, was that the SEA knew or should have known that these orders had been ineffective for the particular school district.	This otherwise relatively dramatic ruling has relatively limited generalizable effect because (a) it only applies to situations of long and relatively obvious noncompliance; (b) the court decision is not published due to its low, state court level; and (c) CP decisions are not appealable in the majority of states. Nevertheless, it sheds light on the increasing importance of CP, the "other" dispute resolution avenue beyond due process hearings.