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Ninth Circuit Court Of Appeals Upholds School District's Eclectic Approach For Student With Autism

KMTG attorneys Michelle Cannon and Marcy Gutierrez recently completed the successful defense of a school district's program that utilizes an eclectic approach for a student with autism. In an unpublished decision, the United States Court of Appeals for the Ninth Circuit considered whether the school district's program violates the Individuals with Disabilities Education Act ("IDEA"). The Court of Appeals held that the school district's Individualized Education Plan ("IEP") met the IDEA's substantive and procedural requirements. (*Joshua A. v. Rocklin Unified School District*, 2009 WL 725157, C.A.9 (Cal.), March 19, 2009).

Facts

Joshua A. asserted that the Rocklin Unified School District ("District") failed to provide him with a Free and Appropriate Public Education for the 2006-2007 school year for failing to offer an Applied Behavior Analysis ("ABA") program. An administrative law judge ("ALJ") held that the IEP prepared by District for Joshua was valid because (1) it was effectively tailored to meet Joshua's needs; (2) it was administered and supervised by personal who were qualified; and (3) "it implemented a program based on accepted principles in the field of autism education." The ALJ's findings were consistent with the opinions of experts who observed Joshua in the classroom and who opined that "District's program conformed with best practices in the field and was effectively used to educate autistic children with similar conditions." Joshua appealed the ALJ's decision to the federal district court and then to the Ninth Circuit Court of Appeals.

Decision

The Court of Appeals held that Joshua failed to show that District violated the procedural or substantive requirements of the IDEA. The court found that none of the procedural violations alleged by Joshua resulted in a loss

of educational opportunities, seriously infringed on his parents' right to participate in the formulation of his IEP, or caused a deprivation of educational benefits. The court also found that Joshua failed to show that District's program did not provide "meaningful benefit" under the IDEA.

Joshua asserted that District's program violated the IDEA because the program was "not based on peer-reviewed research." The court found that other cases have held that an eclectic approach like the one District proposed here met the substantive requirements of the IDEA. The court found, "This eclectic approach, while not itself peer-reviewed, was based on 'peer-reviewed research to the extent practicable.'" Also, other courts have rejected the argument "that a school district's proposed IEP is invalid because it provides an eclectic approach."

The court stated, "We need not decide whether District made the best decision or a correct decision, only whether its decision satisfied the requirements of the IDEA." The court found that District's IEP meets the procedural and substantive requirements of the IDEA.

The Court of Appeals' decision was not selected for publication, which means that the opinion has no precedential value. Lower courts may not rely on the decision when faced with the same or similar issues. The decision does, however, provide insight on how the court may rule in the future when faced with cases involving eclectic programs and methodologies that are based on peer-reviewed research.

In a separate published decision, the Court of Appeals also held that Joshua was entitled to a stay put order during the pendency of his appeal to the federal appellate court. (*Joshua A. v. Rocklin Unified School District*, --- F.3d ---, C. A.9 (Cal.), March 19, 2009).

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