

School Law Alert

April 2009

BOARD OF EDUCATION IN CONNECTICUT AWARDED ATTORNEYS' FEES BY FEDERAL COURT IN IDEA CASE

In the first decision in Connecticut, and one of the only decisions in the country, a federal magistrate judge recently awarded the Stamford Board of Education (the "Board") attorneys' fees under the Individuals with Disabilities Education Act ("IDEA").

The case, E.K. by and through his Parents and Next of Friends, Mr. and Mrs. K. v. Stamford Board of Education, No. 07cv800 (Mar. 31, 2009), stemmed from a student's challenge to his expulsion for making racial threats toward another student. The student challenged the expulsion on the grounds that: (1) he had been unlawfully exited from special education services in March 2005 and thus the district could not expel him without first determining if his conduct was a manifestation of his disability; (2) the district violated the student's constitutional right to due process because the district relied, in part, on hearsay statements of student witnesses to the misconduct; and (3) Connecticut General Statutes § 10-233d was unconstitutionally vague. In the spring of 2007, the United States District Court denied the student's request for a preliminary injunction to require the district to readmit the student to Stamford High School and allow him to participate in graduation ceremonies. After this denial, the student, through his attorney, essentially ignored the prosecution of his IDEA claim -- although he did not officially withdraw the claim for several months -- but maintained his other claims, due process and constitutional vagueness. The Board moved for summary judgment; the student opposed this motion and filed his own motion for summary judgment.

In May 2008, the Court granted the Board's motion for summary judgment. The Court found that the Board did not violate the student's due process rights because the hearsay statements used during the expulsion hearing, and as presented at the expulsion hearing through the School Resource Officer, were sufficiently reliable, and other non-hearsay evidence demonstrated by a preponderance of the evidence that the student had committed the misconduct. The Court further found that the expulsion statute, as applied, provided the student with sufficient notice that his misconduct could result in expulsion.

The Board subsequently filed with the Court a request for attorneys' fees against the student's attorney, on the grounds that the attorney had pursued his claim under the IDEA after he knew the claim to be frivolous, and that he did so to harass or increase the cost of litigation. The IDEA, as amended in 2004, permits a board of education to recover attorneys' fees against a parent



attorney if the attorney “continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation,” or “if the parent’s complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.” 20 U.S.C. § 1415(i)(3)(B)(II) and (III).

In this case, the Court found that the Board was the prevailing party in the underlying litigation, because the Court had granted the Board’s motion for summary judgment in its entirety; and further found that the student’s and parents’ attorney had continued to litigate the IDEA claims after the attorney knew that the litigation had become frivolous. According to the Court, “after the Court denied injunctive relief . . . , plaintiff was clearly on notice of the deficiencies of his IDEA claim.” E.K., No. 07cv800 at *14. The Court then awarded fees paid by the student’s and parents’ attorney to the Board for the work of the Board’s attorneys in preparing the motion to dismiss and attorneys’ fees application. The plaintiffs’ attorney has since filed an objection to the Magistrate Judge’s ruling.

This litigation spanned over two years and involved the pursuit by the student’s and parents’ attorney of a patently frivolous claim under the IDEA. The 2004 Amendments to the IDEA that permit a board of education to be awarded attorneys’ fees from a parent or parent’s attorney can be used to assist a board to recoup fees expended on such clearly frivolous cases or cases pursued to harass. While these standards are exceedingly high, and most special education cases have some basis in law and fact, the case is a victory for boards of education that face groundless IDEA litigation continued or initiated with an obvious intent to harass.

QUESTIONS OR ASSISTANCE?

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