

Teacher Furloughs not a Change in Placement Under IDEA



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The Ninth Circuit Court of Appeals in *MD ex rel. Parents Acting as Guardians Ad Litem v. State of Hawaii Department of Education* recently held that Hawaii's decision to close its schools on certain Fridays as a cost-cutting measure did not constitute a "change of placement" under the Individuals with Disabilities Education Act ("IDEA").

To help elevate a fiscal crisis, the State of Hawaii shut down all public schools for 17 Fridays during the 2009-2010 school year. School children, both disabled and non-disabled, did not attend school on those Fridays. The reduction of the 17 Fridays from the school calendar constituted a 10% reduction in instructional days. Hawaii reached a negotiated agreement with its state teachers union to implement the furloughs.

In response to the impending furloughs, a special needs child requested a due process hearing with the State Department of Education regarding the potential change in his Individualized Education Program ("IEP"). Along with his request, the child invoked the stay-put provisions of the IDEA. Hawaii did not adjust the furloughs in response to the implementation of the stay-put provisions and moved forward with the furloughs.

In response, a total of nine disabled children enrolled in five public schools in Hawaii filed suit against the State Department of Education. The lead child in the suit alleged that the furloughs constituted a change of his educational placement,

and as part of his request for due process, he was entitled to "stay-put" in his current educational placement. The child also sought a court order immediately enjoining the furloughs.

The district court held a hearing on the request for a preliminary injunction, and the child presented evidence as to the harm he suffered as a result of the furlough days already implemented. Hawaii submitted evidence that it was undertaking efforts to provide the disabled children with alternate services consistent with their IEPs. The district court denied the child's motion for a preliminary injunction.

On appeal, the Ninth Circuit noted that it had previously interpreted the term "current educational placement" to mean "the placement set forth in child's last-implemented IEP." The child's last-implemented IEP was agreed upon before the furloughs were implemented and that the child had not been moved from the school identified in his IEP. The court concluded that under the IDEA, the term "educational placement" means the general education program of the student. And specifically, whether the student is moved from one type of program (i.e. regular class) to another type (i.e. home instruction, etc.). The change in educational placement could also result where there is a significant change in the student's program, even if the student remains in the same setting.

The court noted the children at issue remained in the same classification, same school district and same educational program. Further, these children continued to attend the same school, have the same teachers, and attend the same classes. Therefore, the court held Hawaii's teachers furloughs and concurrent shut down of public schools was not a change in the educational placement of these disabled children.

Lessons learned

The Ninth Circuit clarified that the stay-put provisions of IDEA were not intended to cover system-wide changes in public schools that affect disabled and non-disabled children alike. However, the court tempered its decision by noting that school boards do not have free rein to make "any administrative change" in terms of cutting school days, without potentially triggering the stay-put provisions of IDEA. The specific facts of each case will drive a stay-put determination.

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