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LEGAL UPDATE

November 16, 2020

To: Superintendents, Member School Districts (K-12)
From: Carl D. Corbin, General Counsel *CDC*
Subject: **LEA of Residence Has a Duty to Assess and Provide an Offer of FAPE**
Memo No. 70-2020

The Ninth Circuit Court of Appeals issued an unpublished decision¹ on October 26, 2020, confirming the duty of a Local Educational Agency (“LEA”) of residence, under the Individuals with Disabilities Education Act (“IDEA”), to assess and provide a formal written offer of placement for a special education student even if the student is not enrolled in the LEA.

In this case, the LEA developed an offer of placement for the student through the Individualized Education Program (“IEP”) process in 2014, but did not convene an annual IEP meeting or make a new offer of a Free Appropriate Public Education (“FAPE”) for the 2015-2016 or 2016-2017 school years. The LEA asserted it did not have a duty to convene any further annual IEP meetings or make any further offers of a FAPE because the student’s parents made clear that they did not intend to re-enroll the student in the LEA.

The Court found that, “... upon a parent's request, a school district must evaluate a child residing in its district for purposes of making a FAPE available to her, even if she is enrolled in a private school in another district.”

The Court confirmed that the LEA did not need to make an offer of FAPE for the student if the student’s parents make clear their intention to keep their child enrolled in a private school located in another LEA. However, under the facts of this case, the Court found that even though the student was enrolled in a private school located within the jurisdiction of another LEA, because the student’s parents sent letters to the LEA of residence in 2015 and 2016 indicating they were still interested in a public-school placement for the student, the LEA of

¹ *Bellflower Unified Sc. Dist. v. Lua* (2020) No. 19-55912, 2020 WL 6268424. As an unpublished decision, the decision is not precedent, but is citable as persuasive legal authority within the Ninth Circuit jurisdiction.



residence was required to make an offer of a FAPE for the 2015-2016 and 2016-2017 school years.

In upholding the decision of the Office of Administrative Hearings, Special Education Division (“OAH”), and the District Court (which affirmed the OAH decision), the Ninth Circuit found the LEA of residence denied the student a FAPE and, among other remedies, was required to reimburse the student’s parents for the student’s private school tuition (regardless of the fact the private school was parochial).

Implications for LEAs

LEAs should ensure that annual IEP meetings are convened and an offer of a FAPE is provided for students who reside within the LEA even if the student is enrolled in private school unless the student’s parents have clearly indicated in writing their intention to keep their student enrolled in private school and they do not have an interest in receiving an offer of a FAPE from the LEA. In addition, in a similar manner, the LEA of residence continues to have an on-going duty to conduct triennial evaluations for special education students attending private schools.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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