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LEGAL UPDATE

February 12, 2020

To: Superintendents, Member School Districts (K-12)
From: Carl D. Corbin *CDC*
General Counsel
Subject: Communication Plan Limiting Staff Speech with Parent Upheld
Memo No. 03-2020

Involving a case from Washington State,¹ the Ninth Circuit Court of Appeals upheld the right of a Local Educational Agency (“LEA”) to impose a communication plan upon a parent. The communication plan limited which LEA staff would respond to the “extraordinary time-consuming communications that made District staff feel threatened and intimidated.”

In this case, the student’s father wanted his daughter to receive a plan under Section 504 of the Rehabilitation Act of 1973 (“Section 504”). The student herself and the father’s ex-wife felt the student did not need a Section 504 plan. The District denied the father’s request for a Section 504 plan for the student. The denial resulted in the father repeatedly and vehemently communicating his disagreement with the District’s decision to many LEA employees and his behavior was described by the District as “...sending incessant emails to staff accusing them of wrongdoing; making presumptuous demands; leveling demeaning insults; and...in face-to-face interactions, acting in an aggressive, hostile, and intimidating manner.”

By email, an administrator from the LEA informed the father of the communication plan, which stated communications with him would be limited to a twice per month in-person meeting with him and two LEA administrators. However, the communication plan restrictions did not apply in an emergency, did not affect his right to appeal the denial of a Section 504 plan for his daughter, and did not bar him from attending school activities associated with his two daughters, or from accessing school records. After the father violated the communication plan, the in-person meetings were reduced to once per month. And, the in-person meetings were later eliminated entirely with communication

¹ *L.F. v. Lake Washington Sch. Dist.* #414 (9th Cir. 2020) 947 F.3d 621.



reduced to an email once per month after the father continued his “pattern of extremely negative, intimidating, argumentative, and threatening communication.”

The father sued the LEA under various grounds including retaliation pursuant to Section 504 and as a violation of his First Amendment rights. The Court held that the father’s First Amendment rights were not limited, because the communication plan addressed the speech of the staff of the LEA with the father, but he was still allowed to communicate, finding:

“...the District was within its rights to impose such a limitation. Members of the public do not have a constitutional right to force the government to listen to their views... Because government entities such as the District do not have to listen to parents’ views, it is not a constitutional violation to require that parents, if they wish to be heard, communicate only with particular staff members or do so only at a specified time and place. And because the government is under no constitutional obligation to respond to such views, there is no violation where a government entity such as the District ignores (or threatens to ignore) communications from outside the specified channels.”

The Court also held that school facilities (including LEA email) are “non-public fora” unless deliberately opened to the public, and regulation of speech for non-public fora only needs to be reasonable “so long as it is not an effort to suppress the speaker’s activity due to disagreement with the speaker’s views.” The Court found that the LEA was not limiting the content or viewpoint of the father’s speech – just the manner in which he communicated.

Implications for LEAs

LEAs may want to consider the adoption of reasonable communication plans with parents that engage in objectively incessant, intimidating, insulting, demeaning, or otherwise hostile speech. We advise that any such plan allow for emergencies (as determined by the LEA), allow for the exercise of procedural rights under Section 504 and the Individuals with Disabilities Education Act (“IDEA”), and generally allow for parents to access school activities related to their child. Due to the complicated legal issues associated with communication plans, we advise clients contact legal counsel to assist in the development and adoption of any communication plan.

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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