

Law Trends

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When Should the School District Have Identified the Student's Disability?

By Amy J. Borman



How can a school district protect itself from claims of violations of the “child find” laws? On one hand, the Individuals with Disabilities in Education Act (IDEA) demands early identification of disabilities and imposes “child find” obligations on school districts. On the other hand, IDEA has recently focused on the issue of “over-identification” of students with disabilities. How do school districts balance these competing educational social policies? The following case synopsis may give us some guidance.

T.D is a child who has exhibited behavioral problems since he started school. Up through the end of the fourth grade he was never identified as a child with disabilities under IDEA. However, he was diagnosed with both Attention Deficit Hyperactivity Disorder (ADHD) and a reading disability toward the end of his fourth grade year, which made him disabled within the meaning of IDEA. The fact that he had a disability without receiving special education services meant that he may have been denied a free appropriate public education (FAPE) under the IDEA.

T.D. appealed a District Court decision, seeking a more extensive remedy. First, T.D. argued that he was entitled to compensatory education from kindergarten forward, because school officials should have identified his disability from the start. Second, T.D. appealed the nature of the remedy – rather than the flexible remedy he was awarded, he wanted an hour-for-hour compensatory education for every hour he’d been denied a FAPE from kindergarten on.

As to the first point (whether T.D. was entitled to a compensatory education dating back to kindergarten), the Court in *Board of Education of Fayette County v. L.M et al.*, reviewed the IDEA’s “child-find requirement.” Under the IDEA, schools must have policies and procedures in place to identify children with disabilities needing special education. However, the Court held that in order to show a violation of the IDEA on this point, the claimant “must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” Because the evidence showed that (1) T.D.’s behavioral and learning problems from kindergarten through second grade were not atypical of immature young boys, and (2) the school district did not ignore T.D.’s early problems, the school was not negligent up until that point. Thus, the Court affirmed the District Court’s determination that T.D.’s denial of a FAPE began in the third grade, and that the remedy must be constructed accordingly.

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The Court declined to order an hour-for-hour award (which would have equaled 2,425 hours), which it thought excessive. It decided that a flexible approach, rather than a rote hour-by-hour compensation award, would be better to address T.D.'s educational problems. The Sixth Circuit reversed the compensatory education award and remanded the case to the District Court with instructions to reconsider the remedy awarded in a manner consistent with its analysis.

In conclusion, this school district documented the student's behavior as not atypical. Yet when the behavior was determined to be atypical, the district properly identified this student as in need of special education, thereby balancing the district's duties of under- and over-identifying under IDEA.

Ms. Borman is a member of the Firm's Public Law Practice Group and has significant experience in education law. For more information regarding IDEA, please contact her by calling 419-241-6000.

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