

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Court Rejects Claim that Practice of Holding IEP Meetings During Workday Is a Violation of Parent Civil Rights-

The Federal District Court for the Central District of Illinois has dismissed a lawsuit against a Bloomington area special education cooperative finding that a regular practice of scheduling IEP meetings during the workday does not violate a parent's rights under the IDEA if the only evidence consists of a conflict between the parent's work schedule and the scheduled meetings.

In *Tricia C. v. Tri-County Special Education Association, et. al.* (August 24, 2006), a parent of a special education student sued the special education association and its director for violating her equal protection rights under Section 1983 of the *Civil Rights Act*.

The court, having previously dismissed most of the claims against the Association on a motion to dismiss, granted the Association's motion for summary

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District's Proposed Placement Appropriate for Autistic Student—

In *Deal v. Hamilton County Department of Education* 46 IDELR 45 (E.D. Tenn. 2006), a federal district court was faced with a clear directive from the United States Court of Appeals for the Sixth Circuit to determine whether the IEP proposed by the school for an autistic student conferred meaningful educational benefit, gauged in relation to the child's poten-

tial, and to carefully consider the student's individual abilities.

The district court had reversed the decision of the administrative law judge in favor of the parents. The Sixth Circuit, however, found in favor of the parents by finding that the school district had illegally "pre-determined" the result of the IEP meeting by offering its own

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Demotion of Principal with Depression Not a Violation of ADA-

The Seventh Circuit Court of Appeals (which has jurisdiction over Illinois) has upheld a trial court's judgment that the School Board did not violate the *Americans With Disabilities Act* ("ADA") by reassigning a principal to a teacher position while the principal was experiencing depression.

In *Cassimy v. Board of Education of the Rockford Public Schools*, 461

F.3d 932 (7th Cir. 2006), a principal claimed that the school board's action in reclassifying him amounted to failure to accommodate his depression and retaliation against him for requesting accommodations under the ADA. The Seventh Circuit affirmed the trial court's judgment in favor of the board of education.

First, the court found that the principal's depression was not a "disability" under the ADA because, although the principal's depression was a medical condition, there was no evidence in this case that it was severe enough to substantially limit any of his major life activities or that he suffered from permanent or long-term depression.

Second, the court found that there was no evidence that the school board's actions were motivated by invidious discrimination or that similarly-situated employees were treated better than the principal.

Contact Cindi DeCola or Steven Richart with your employment discrimination inquiries or to request a complimentary copy of this decision.

Consumer Price Index

Percent change for the month of **September, 2006**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-0.4	-0.5
12 Mth	0.7	0.3
St. Louis-6 Mth	0.7	0.8
12 Mth	2.1	2.3
U.S. Mthly	-0.5	-0.6
12 Mth	2.1	1.7

October CPI figures will be released November 18, 2006. Visit the most recent CPI at our website, www.hlerk.com

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Reminders/Notes

- Register now for the upcoming HLERK/PDN Special Education Law Programs scheduled for December 6th in Schaumburg and December 14th in Rockford! You can register by contacting the Professional Development Network at 715.836.9900 or by registering on their website at www.meds-pdn.com. In addition, the registration form is available at www.hlerk.com
- Save the date for the upcoming HLERK reception for clients and friends at the Joint Conference on November 18th from 3:00-7:00 p.m. at the Hyatt Hotel, Monarch Suite.
- Make sure you have submitted to ISBE your "timely and meaningful consultation" compliance information as required by IDEA 2004.

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IEP Meetings Cont.

judgment regarding the parent's equal protection claims under Section 1983 of the federal *Civil Rights Act*.

The parent claimed, in part, that the Association's pattern of scheduling IEP meetings during the workday was a violation of her rights under the IDEA. The Association continued to schedule IEP meetings during the workday, even after the parent requested new dates because of alleged conflicts with her work schedule.

Within the course of eight months, the parent made three requests to reschedule meetings to reconsider her child's current placement. Twice the Association rescheduled the meetings to another workday.

On the third occasion, the Association refused to reschedule the meeting because the meeting was scheduled for the last day of school, the school was not in session the following week and the request was untimely. The Association did recommend to the parent that she could participate in the meeting via telephone, but the parent rejected this recommendation.

In ruling in favor of the Association's motion for summary judgment, the court looked to the fact that the Association made efforts to accommodate the parent's requests. The

court did not look to any alleged violations that occurred outside the applicable two-year statute of limitations.

The court also pointed out that there needed to be more evidence of a conflict between the scheduled meetings and the parent's work schedule because the *Illinois School Visitation Rights Act* requires that qualifying employers grant employees leave for up to eight hours during a school year (with no more than four hours at one time) to attend school conferences and meetings.

Moreover, the court stated that the Executive Director of the Association, who was named individually as a defendant, could not be held liable under Section 1983 of the federal *Civil Rights Act* on the grounds of "respondeat superior". Rather, an individual is only liable if he or she is personally responsible for the violation of the plaintiff's constitutional rights, and the Director was not so responsible.

The court granted the Association's motion for summary judgment regarding all of the parent's equal protection claims and declined to assert its discretion to hear the parent's state claim for intentional infliction of emotional distress.

Please contact Bennett Rodick or Lori Martin with questions.

Autistic Placement Cont.

program for autistic students based on an "eclectic" model utilizing a variety of methodologies. The Sixth Circuit sent the case back for consideration of whether the eclectic model program offered by the district could confer FAPE on the child.

The heart of the parents' claim was that their private "Lovaas style ABA" program was the sole appropriate method for educating their son, who suffers from a severe communication delay due to autism. In reviewing the appropriateness of the school's proposed program for the student, the district court decided that the ALJ applied an improper standard by requiring the school to demonstrate that its proposed programs were as good as or better than the parents' program.

In addition, the court found that the ALJ failed to give proper deference to the school's staff. After extensive analysis of the student's potential, the district court decided that the school's substantive educational program proposed for

the student was appropriate and met IDEA's requirements in light of the law that an IEP need only confer a reasonable expectation of educational benefit.

This decision provides some authority for a school district's "eclectic" approach to serving students with autism. The school's proposed program placed the student in the special education classroom he had attended the previous year, with participation in the regular classroom for 15 minutes three times per week with an aide, to increase as tolerated. The goals and objectives addressed social/behavioral skills, adaptive skills, fine motor skills, gross motor skills, self-help skills, communication, pre-vocational, and readiness skills. The placement provided for 6.5 hours per day of special education instruction, 30 minutes per day individualized speech therapy, occupational therapy two times per month for 30 minutes, and physical therapy once per week for 30 minutes.

If you would like a copy of the court's opinion or further information in this area, please contact Bennett Rodick or Nancy Krent.

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