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By the EdLaw Group at Lindabury

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## Court Ruling Limits the Extent of Parental Involvement in Creating Child's IEP

By Anthony P. Sciarrillo

A recent U.S. district court decision held that a school district did not violate the Individuals with Disabilities Education Act (IDEA) when it failed to create a student's individualized education plan (IEP) that met the student's parents' standards. The court found that the school's IEPs were "reasonably calculated to provide" a free appropriate public education to the child and that they therefore satisfied the requirements of IDEA, regardless of whether the IEPs employed the educational methodology preferred by the child's parents.

In *W.R. and K.R. v. Union Beach Board of Education*, the U.S. District Court for the District of New Jersey analyzed a complaint filed by the parents of H.R., a fifth-grade student diagnosed with dyslexia and other learning disabilities. H.R.'s parents had previously filed several due process petitions in the New Jersey Office of Special Education Programs regarding the educational plans outlined in H.R.'s IEPs. On October 18, 2007, H.R.'s parents filed the first due process application, requesting that a daily "research based, multi-sensory and phonics based" reading program and an extended school year be included in H.R.'s 2007-2008 IEP. In response to this petition, the school ultimately provided H.R. with eighty to ninety minutes daily of language arts literacy in a resource room setting, along with an in-class aide in his mainstreamed academic classes.

During the summer of 2008, H.R.'s parents rejected the school's proposed IEP for the 2008-2009 school year and filed a second due process petition seeking the same relief sought in the first petition. The administrative law judge (ALJ) consolidated both petitions and took testimony from several of H.R.'s educators regarding both the methods being used in H.R.'s education and H.R.'s progress during the 2007-2008 and 2008-2009 school years. The ALJ found that both IEPs were "sufficiently reasonably calculated to provide H.R. with a free appropriate public education in the least restrictive environment," but that H.R. "ha[d] not made meaningful educational progress" because he was "still reading at a first- or second-grade level." The ALJ concluded that because of H.R.'s lack of progress, (cont'd ➔)

“the district ha[d] not provided meaningful educational benefit to H.R.” and therefore did not satisfy IDEA’s requirements. On April 28, 2009, the ALJ ultimately ordered the school district to reform H.R.’s IEP, and the school complied by providing H.R. with more literary instruction for the remainder of the 2008-2009 school year, in accordance with the ALJ’s order. The school also offered to provide an extended school year for H.R., but H.R.’s parents declined and arranged for private instruction instead.

H.R.’s parents filed suit in the district court to recover attorneys’ fees and related costs, and the school board counterclaimed, seeking a reversal of the ALJ’s decision; the district court did not decide the attorneys’ fees issue, as the parties had bifurcated the proceeding for this question to be decided after the substantive educational issues. In analyzing the ALJ’s decision, the district court first determined that an IEP must only be “reasonably calculated to enable the child to receive educational benefits,” and that the “[a]ppropriateness of an IEP ‘is judged prospectively.’” To be successful on an IDEA claim, the plaintiffs must demonstrate “a loss of educational opportunity for the student or meaningful participation in the IEP process for the parents.”

The district court first held that the ALJ erred by analyzing the IEPs’ appropriateness based on H.R.’s progress, rather than on the IEPs’ reasonableness at the time they were implemented. In its findings, the ALJ

determined that the IEPs “included goals; benchmarks; evaluation of the strengths, deficiencies and needs of H.R.” which the district court found to “conform[] to the requirements of the IDEA.” The court then determined that the plaintiffs’ complaints about the IEPs, namely that the IEPs did not require a 1:1 teacher-student instruction ratio or the strict use of the Wilson Language program, “amount[] to an attempt to dictate educational methodology” to the school, which the IDEA forbids. Because the IDEA requires an IEP to detail the student’s educational performance and include teachers’ recent evaluations and reports, and the ALJ had explicitly found the IEPs to meet these requirements, the district court found that the school district did not deny H.R. any educational opportunity. The court concluded by noting that the IDEA does not require school districts “to select and identify a specific commercial reading program or methodology” favored by parents but rather that the school create a plan “reasonably calculated” to ensure that a student receives a free appropriate public education.

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*Assistance in writing this Alert was provided by Seton Hall law student Brigitte M. Radigan. The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at [edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com).*



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