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By the EdLaw Group at Lindabury

April 1, 2010

Court Certifies Class for Suit under IDEA

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In a recent United States District Court of New Jersey decision, the court certified certain claims under Individuals with Disabilities Act (“IDEA”) for class action certification pursuant to Rule 23 of the Federal Rules of Civil Procedure.

In *M.A. on behalf of E.S., et al. v. Newark Public Schools, N.J. Department of Education, et al.*, the parents of six students who were residents of Newark filed a putative class action suit against the district and the New Jersey Department of Education. They claimed violations of the students’ rights to a free appropriate education (“FAPE”) under the IDEA as a result of the defendants’ failure to identify and evaluate children potentially eligible for special education services as required by statute and failure to make eligibility determinations and to provide needed services in a timely manner.

The six named defendants brought the suit on their own behalf, and on the behalf of a class defined as all present and future children, including children and their parents who reside in the district who are or may be eligible for special education services under the IDEA and New Jersey’s special education statute, but who have not been timely identified, located, referred, evaluated or provided with services. The class is also defined to include children on “waiting lists” for special education evaluations and all children who have been provided with services but did not receive services in a timely manner. The court ultimately concluded that the plaintiffs could be certified as a class as to their claims for injunctive and declaratory relief, but not as to their claims for compensatory education to remedy the defendants’ alleged violations of the IDEA.

Rule 23 sets forth a two-prong test for class certification. In order to be certified as a class, plaintiffs must first meet the four requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. First, numerosity requires that the proposed class be so numerous that joinder is impracticable. The court found that the plaintiffs easily met the numerosity requirement as the proposed class included present and future children which the district systematically failed to identify and evaluate for special education services and to timely provide eligible students with needed special education services.

Second, under the commonality requirement, there must be “questions of law or fact common to the class,” which the Third Circuit has previously found can be satisfied by a “single common issue.” The court found that the commonality requirement was satisfied because plaintiffs alleged that the entire class of children residing in the district had been subject to the district’s systematic failure to identify and evaluate children who may reasonably be suspected of having a disability under the IDEA and to provide special education services to those children in a timely manner.

Third, in order to meet the typicality requirement, the proposed (*cont’d* ➔)

class must show that their interests are aligned with those of the absent class members. The district argued that the plaintiffs failed the typicality requirement because four of the students involved were no longer enrolled in the district's schools. The court found, however, that the plaintiffs met the typicality requirement because their claims all arose from the same course of conduct – the district's failure to locate, identify and evaluate children who may need special education services and to timely provide said services.

Lastly, adequacy requires plaintiffs to demonstrate that their attorney is qualified, experienced and generally able to conduct the proposed litigation, and plaintiffs must not have interests antagonistic to those of the class. Defendants argued that because the plaintiffs pursued compensatory damages and reimbursement on their own behalf, and not on behalf of the whole class, their position was antagonistic to that of the class. Further, that plaintiffs were inadequate representatives of the class because their changed circumstances had extinguished their interest in the case and any relief it could afford.

The court found that the compensatory damages sought by plaintiffs did not hinder the adequacy of their representation because judicial precedent dictates that compensatory damages are not available under the IDEA. Thus the plaintiffs were in fact unable to obtain compensatory damages, which removed any possible impediment. However, the court did find that the individual reimbursement claims of the plaintiffs could foster antagonism between the class representatives' interests and the class interests. But as the plaintiffs offered to withdraw their claim for reimbursement if it harmed the adequacy claim, the court ordered the reimbursement claim withdrawn. The court further found that the fact that the named plaintiffs' circumstances had changed did not make them inadequate representatives of the class. The court stated that in a class action involving educational rights it would be "absurd" to disqualify the named plaintiffs from representing the class because they had concluded their secondary education. Thus, the court found that the plaintiffs met all four requirements of Rule 23(a).

Once the requirements of Rule 23(a) are met, plaintiffs must also establish that the class is maintainable under one of the categories of Rule 23(b). Rule 23(b)(2) authorizes class certification when "the party opposing class certification has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect

to the class as a whole." Rule 23(b)(2) does not, however, extend to cases where the appropriate final relief relates exclusively or predominantly to money damages. The court found that although compensatory education was equitable relief and not damages, the plaintiffs' claims for compensatory education could still not be certified under Rule 23(b)(2) because the class lacked "cohesiveness." Cohesiveness, as required under Rule 23(b)(2), cannot be found where an action or claim would present significant liability or defense issues which would require separate hearings for each class member in order to establish the defendant's liability.

The court held that whether or not any particular student was entitled to compensatory education would require a student by student analysis, thus entitlement to the remedy "would not flow directly from defendants' failure to locate, identify and evaluate a potentially eligible student but rather from the deprivation of an appropriate education to a student who is or was in fact disabled under the IDEA." Thus, the plaintiffs' claims for compensatory education could not be certified as a class.

However, the court held that the plaintiffs' claims for injunctive and declaratory relief could be certified as a class under Rule 23(c)(4), which authorizes class certification of certain issues or claims in an action, as opposed to granting or denying certification to the action as a whole. Thus, the court concluded that the portion of the plaintiffs' claim against the defendants that sought a declaration that the district violated the IDEA and an order from the court compelling them to take certain remedial actions could be certified as a class action.

The court also held, in response to defendants' assertion that the plaintiffs' cause of action against the state for failure to provide an appropriate remedy in response to a complaint resolution proceeding under the IDEA failed to state a claim upon which relief could be granted, that *Beth V. v. Carroll*, which found that an aggrieved student had an express right to sue under the IDEA for a state's failure to comply with federal regulations concerning complaint resolution procedures, was still controlling law.

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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.

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