

# **PLAYING FAIR: THE LEGAL CONSEQUENCES WHEN PARENTS AND SCHOOLS MISBEHAVE**

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When disagreements arise between parents and schools, emotions run high. Sometimes tempers flare and there are accusations from both sides that the other is engaging in bad faith behavior. This is despite the fact that one of the goals of Congress in the IDEA 2004 reauthorization was “fairness”. How parents and schools treat one another in the context of a dispute over services can impact the outcome. This presentation will include a review of court cases in which the conduct of the parent and/or the school was at issue and a discussion of how the court ruled.

## **THE IMPORTANCE OF PROCEDURAL COMPLIANCE WITH THE IDEA**

### **1. Do procedural mistakes matter under the IDEA?**

Yes. The IDEA guarantees to all children with disabilities a free appropriate public education (FAPE). The U.S. Supreme Court has defined FAPE as follows:

First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more. *Board of Educ. v. Rowley*, 102 S.Ct. 3034, 3051 (1982).

## 2. Why did the Supreme Court place so much emphasis on procedural compliance?

The Supreme Court's emphasis on procedural compliance is the result of all of the procedural requirements imposed by Congress. The U.S. Supreme Court explains it as follows:

When the elaborate and highly specific procedural safeguards embodied in §1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g., §§1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Secretary for approval, demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP. *Board of Educ. v. Rowley*, 102 S.Ct. 3034, 3050 (1982).

## 3. Does every procedural error constitute a denial of FAPE?

No. IDEA 2004 and its implementing regulations tell us what types of procedural errors are fatal errors:

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (iii) Caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

## **THE COOPERATIVE PROCESS**

### 4. Why is parental participation in the process so important to a FAPE?

The U.S. Supreme Court recently observed:

The core of the statute, however, is the cooperative process that it establishes between parents and schools. *Rowley, supra*, [] 102 S.Ct. 3034 (“Congress placed every bit as much emphasis upon compliance with

procedures giving parents and guardians a large measure of participation at every stage of the administrative process, ... as it did upon the measurement of the resulting IEP against a substantive standard”). *Schaffer v. Weast*, 126 S.Ct. 528, 532 (2005).

**5. What about when the District is unaware of a problem and is not given a chance to fix it before the parent files for a due process hearing?**

Many of the provisions in IDEA 2004 (sufficient notice of a due process complaint, mandatory resolution meeting, 30-day resolution period, opportunity for district to recover its attorneys’ fees) were designed to remedy this situation. The Senate Committee for the 2004 reauthorization of IDEA expressed that “the goal of these new provisions is fairness: to be sure that a district is aware of a problem and has a chance to resolve it in a less formal manner before having to spend the time and resources for a due process hearing.” S.Rep. No. 108-105, at 39 (2003).

**PLAYING FAIR IN THE CONTEXT OF EVALUATION**

**6. Parents barred from complaining about the adequacy of the district’s evaluation when they refused to consent to the district’s new evaluation.**

Torda v. Fairfax County School Board, 59 IDELR 71 (E.D. Va. 2012)

The court held that the parent’s refusal to consent to an evaluation barred the parent’s claim that the district did not evaluate for an auditory processing disorder. The district had proposed new psychological, educational and ophthalmological testing. The parent refused to consent. Even though the proposed testing did not specifically call for auditory testing, the court held that the parent refusal barred her later complaint over the failure to test. The evidence did not show that the failure to list “auditory” testing was the reason for the parent’s refusal. Moreover, the court held that the testing that was proposed would have led to a test of auditory processing.

**7. Parents not entitled to an Independent Educational Evaluation (IEE) when they placed too many restrictions on the District’s proposed evaluation.**

G.J. v. Muscogee County School District, 58 IDELR 61 (11th Cir. 2012)

The lower court had affirmed a hearing officer’s decision that the parents had placed so many restrictions on their consent to a three-year reevaluation that they did not actually give “consent.” The Court of Appeals agreed with that decision and affirmed it. Key Quote (from the lower court’s ruling):

Though Plaintiffs argue that, for the most part, their addendum [containing the conditions to consent] merely tracks what is required by IDEA and the Family Educational Rights and Privacy Act of 1974, [cite omitted] some of their requirements are much more restrictive. For example, the

addendum specifies who shall conduct the evaluation; it requires that the parents approve each of the specific instruments to be used for the evaluation; it requires that the evaluator meet with the parents before and after the evaluation; it requires that the evaluator discuss the evaluation results with the parents before the results are submitted to the IEP team; and it requires that the evaluation be used only for the purpose of developing G.J.'s IEP. In addition, Plaintiff added the condition that the testing must be done in L.J.'s presence.

**8. School district denied child FAPE when it failed to ensure parents' expert evaluator received copies of test protocols.**

Woods v. Northport Public School, 59 IDELR 64 (6th Cir. 2012)

The court held that the parents were denied meaningful participation because the school did not deliver test protocols that the parents requested to their expert. The protocols were mailed, certified, but not picked up. Upon return to the school, the school did not notify the parents that the package was not received. The school argued that it was only required to provide access to the protocols, not copies. The court rejected this:

In this case, the parents themselves did not want to review the protocols, but wanted Dr. Milanovich to review them in making his IEP recommendations. Dr. Milanovich, located in Ann Arbor, could not reasonably be expected to travel to Northport to perform such a review.

The due process hearing lasted 32 days, from November 2007 to August 2008. The record exceeded 7000 pages. The IHO wrote a 141-page decision. The briefs and replies of the parties extended to 744 pages. The father was on the school board when the case began, but was recalled before it was over.

**PLAYING FAIR IN AN IEP MEETING**

**9. School district faulted for holding the meeting without the parent.**

J.N. v. District of Columbia, 53 IDELR 326 (D.D.C. 2010)

The court held that the district denied the parent the opportunity to have meaningful participation at the IEP Team meeting by conducting the meeting without the parent and at a time to which the parent had objected. The district sent three notices proposing alternate dates, and received no response to the first two; therefore, the third notice stated when the meeting would be held. The parent responded to the third notice with phone calls asking that the meeting be rescheduled, but the district did not do so. The federal district court pointed out that: (1) the September 21 date was never agreed to; (2) there was no evidence that the parent could not be convinced to attend the meeting; and (3) the parent made "timely, diligent and reasonable efforts to reschedule" the meeting. The court thus concluded that the school had effectively eliminated the parent's ability to participate. The court noted that this was a procedural error that "undermine[s] the very

essence of the IDEA.”

**10. Parents’ challenge to the adequacy of the IEP failed because they were not forthcoming with the district regarding the extent of the child’s needs.**

S.M. v. State of Hawaii DOE, 56 IDELR 193 (D. Haw. 2011)

The court held that the IEP did not have to specify the training and qualifications of the student’s one-to-one aide. Nor was the IEP deficient due to the failure to identify behavioral services for the student when the parents had withheld information from the school about the behavioral issues. When the parents subsequently provided this information the IEP was amended to address behavioral issues. Key Quote:

Here, Student’s parents failed to disclose information they had in their records. Plaintiffs cannot hold Defendants responsible for Plaintiffs’ own failures to provide important information to Defendants.

**11. Example of school district predetermination.**

H.B. v. Las Virgenes USD, 48 IDELR 31 (9th Cir. 2007)

The Ninth Circuit has described predetermination as a particular “intent or state of mind [of the School District] prior to and during the IEP meeting.” The court described the intent or state of mind as follows:

[P]redetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. ...Thus, “[a] school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” [Citations omitted.]

...

... Although an educational agency is not required to accede to parents’ desired placement, it must maintain an open mind about placement decisions and be willing to consider a placement proposed by the parents, as well as its own proposed placement.

When the Las Virgenes case was remanded back to the district court to determine whether predetermination had occurred, the district court found there was predetermination and the Ninth Circuit agreed. H.B. v. Las Virgenes USD, 52 IDELR 163 (C.D. Cal. 2008); affirmed at 54 IDELR 73 (9th Cir. 2010). The district court’s analysis largely hinged on statements from the assistant superintendent at the start of the meeting that made it clear the school district had made up its mind that the student would be returned to a school district program from the Elliott Institute where he had been

placed.

The court noted:

The option of keeping H.B. at the Elliott Institute was not discussed. ... It was clear to the District that H.B.'s parents desired for him to stay at the Elliott Institute. At the IEP meeting of August 20, his parents expressed their concern that the District was unable to provide H.B. with a FAPE. However, there is no evidence that H.B.'s parents' concerns were ever addressed.

## **12. Example of parent predetermination.**

J.S. v. Scarsdale Union Free School District, 58 IDELR 16 (S.D.N.Y. 2011)

The court denied the claim for reimbursement for a period of time due to the parents' failure to provide notice to the school. As to the remainder of the unilateral placement, the court reduced the award to the parents by 75% based on equitable concerns; principally the fact that the parents signed a tuition contract for an 18-month placement at the private program before engaging with the district in the IEP process. Key Quote:

Thus, the Court finds that the Parents should not be denied reimbursement entirely. But, this is also far from a case where the Parents sought to fully cooperate with the District. Rather, the Parents committed [the student] to an eighteen-month program in a private school far away from the District, and then requested that the District convene the [IEP Team]. And, while the Parents visited the proposed placement and relayed certain concerns to the District about it (without objecting to the IEP), they refused to make [the student] available to the school, thus making any placement virtually impossible.

## **13. What does fairness look like in an IEP meeting?**

Fort Osage R-1 School District v. Sims, 55 IDELR 127 (W.D. Mo. 2010); *affirmed* 56 IDELR 282; 641 F.3d 996 (8th Cir. 2011)

After a 29-day hearing, the administrative panel ruled that the IEP Team had denied the parents meaningful participation and predetermined issues at the IEP Team meeting. The panel noted that the parents had "extensive input" into virtually all of their daughter's IEPs; that their experts and advocates also actively participated in the process; that "as a result of that participation, numerous components of the IEPs" were changed. The panel stated that "[T]he District spent an inordinate amount of time and manpower to accommodate Parents and their representatives' positions and in the development of Student's IEPs....In addition, the District expended considerable resources in preparing for the IEPs and for testing that was considered in developing Student's IEPs. The number of meetings and hours devoted by District's staff to Student is overwhelming."

Despite that, the panel held that the IEP Team had denied the parents meaningful participation because some of the Team members had been “less than candid” with the parents about their opinions.

The federal court reversed the decision of the panel after a detailed analysis of the evidence. The court held that the panel’s decision was not based on substantial and competent evidence.

The Eighth Circuit Court of Appeals affirmed the district court decision.

T.M. v. Gwinnett County School District, 57 IDELR 272 (11th Cir. 2011)

The Eleventh Circuit summarily affirmed the district court’s decision in favor of the school district. With regard to alleged denial of meaningful participation, the court stated:

The Court's findings of fact above amply demonstrate GCSD's continuous efforts to involve S.M. and D.M., as well as T.M.'s private therapists, in the IEP meetings. The IEP team expressly asked S.M. and D.M. what they would like changed about the IEP. The team made some changes to reflect the parents' wishes. The team also incorporated some of the goals from Lindamood Bell, per S.M.'s and D.M.'s requests. Nothing requires the IEP team to obtain the parents' assent on every detail of the IEP; rather, the IDEA merely requires that the parents have a meaningful voice. GCSD provided S.M. and her advocates with that voice and, for this reason, GCSD did not restrict S.M.'s ability to participate fully in the decision-making process regarding T.M.'s education, nor did GCSD otherwise impede T.M.'s right to a FAPE. GCSD thus did not procedurally fail to provide T.M. a FAPE

**14. School district denied FAPE by failing to consider certain information provided by the parent at the end of an IEP Team meeting.**

Marc M. v. DOE, State of Hawaii, 56 IDELR 9 (D. Haw. 2011)

The court overturned a hearing officer’s decision and held that the school denied the student FAPE by failing to consider certain information provided by the parent at the end of an IEP Team meeting. The court cited Ninth Circuit authority for the general proposition that schools cannot abdicate their affirmative duties “irrespective of parental conduct.” The documents here were reports from the private school the student had been attending. The court viewed these reports as an “evaluation” that had to be considered by the Team before the development of the IEP. The school argued that the IEP had already been developed and the meeting was about to conclude when the parents provided this information. The court found this irrelevant, noting that the IEP was still weeks away from being implemented.

Even though the court held that the school was not excused due to the parents' conduct, the court stated in a footnote that "this is not the first case where parents, either on their own or with the advice of an advocate, have seemingly waited until an opportune moment to 'slip' the Defendant an evaluation and then later complained that it was not considered in the IEP. This type of fundamental unfairness should not be tolerated. This Court would therefore suggest that prior to or during the IEP meeting, IEP team members affirmatively request whether the parents or their representatives have any additional materials or information that they would like the other IEP team members to consider."

**15. Can we recess a meeting when it becomes unproductive?**

R.P. v. Alamo Heights ISD, WL 6701939 (5th Cir. 2012)

The parents alleged the district denied them meaningful participation and failed to provide R.P. with a FAPE asserting that their input was not considered, that decisions about R.P.'s IEPs were made prior to the IEP meetings, and that the district prematurely ended IEP meetings. The court found that the parents had many opportunities to voice their opinions during the IEP meetings, the parents' suggestions were incorporated into R.P.'s IEP, and the district was permitted to prepare its proposals prior to the IEP meetings.

As to the district's action of ending IEP meetings prematurely, the court found at times district employees "fueled the parent's frustration" and R.P.'s parent sometimes allowed his emotions to "thwart the resolution" of educational issues. Importantly, however, when the district prematurely ended an IEP meeting, the district promptly scheduled a follow-up meeting to continue to discuss the issues; and while the court noted it would not suggest scheduling multiple meetings as a matter of course, it was appropriate and no denial of a FAPE where the circumstances indicated a cooling-off period was warranted.

**16. Parents faulted for delays resulting from their unproductive behavior.**

K.C. v. Nazareth Area School District, 57 IDELR 92 (E.D. Pa. 2011)

The court affirmed a hearing officer's decision in favor of the school district, largely based on fact findings and credibility determinations. Among other arguments, the parents asserted that the hearing officer ruled against them because of their "zealous advocacy." The court rejected this argument:

Plaintiffs are correct in noting that Hearing Officer Carroll cited to K.C.'s Parents' conduct; however, these references were done to support Hearing Officer Carroll's ultimate conclusion that it was K.C.'s Parents' actions which resulted in "profound delays" and not the District's actions. In discussing the delays at issue, Hearing Officer Carroll stated that they must be "considered in light of [Plaintiffs'] insistence that evaluators, evaluations, and IEPs meet with their approval in every aspect."

Hearing Officer Carroll cannot be faulted for taking into consideration the cooperation of the parties because, as she stated, “although Parents are members of the IEP team and entitled to full participation in the IEP process, they do not have the right to control it.”

**17. Some courts say parent lack of cooperation is no excuse.**

Anchorage School District v. M.P., 59 IDELR 91 (9th Cir. 2012)

The court held that the duty to provide FAPE is not contingent on parental cooperation. The court thus reversed a district court decision and held that the parents were entitled to reimbursement for tutoring expenses and were the prevailing party. Key Quote:

Neither the IDEA nor its implementing regulations qualifies any duty imposed on a state or local educational agency as contingent upon parental cooperation. Further, the ASD does not cite any binding case law, and we are not aware of any, that supports such a proposition.

**PLAYING FAIR IN PRIVATE SCHOOL REIMBURSEMENT CLAIMS**

**18. How do claims for private school reimbursement work?**

34 C.F.R. § 300.148 addresses private school reimbursement. Subsection (c) provides the general standard for reimbursement. Subsection (d) provides the grounds on which a reimbursement award may be reduced. These subsections read as follows:

- (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.
- (d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—
  - (1) If—
    - (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP

Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

- (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;
- (2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in § 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

There are exceptions to the notice requirements in (d) above, in narrow circumstances. Those exceptions are set out in subsection (e).

**19. Can you give some examples of what kind of behavior results in a limitation on reimbursement?**

Council Rock Sch. Dist. v. M.W., 59 IDELR 132 (E.D. Pa. 2012)

The parents were awarded tuition reimbursement for two years of private school. The Court, however, reduced this award due to the parents not sharing with the district information that was gathered for their experts, or the expert's report regarding the student's behavior, until after they had rejected the district's proposed IEP and had placed the student in the private school. The court noted the primary inquiries in determining a tuition award are the appropriateness of the IEP and the behavior of the parents. The IDEA permits the reduction or denial of tuition reimbursement if the parent did not inform the school that they were rejecting a proposed IEP; did not make the student available for a requested reevaluation prior to removal of the student from public school; or upon a finding of unreasonableness with respect to actions taken by the parents. Here, the parents had prevented the school from taking into account the expert's findings and adjusting the IEP if needed; therefore their tuition award was adjusted accordingly.

J.P. v. New York City DOE, 58 IDELR 96 (E.D.N.Y. 2012)

The court denied a claim for almost \$50,000 in tuition reimbursement in part on its finding that the parents were "gaming the system" and not operating in good faith. Key Quote:

Moreover, J.P.'s parents did not engage in the proceedings before the Committee, which was designed to formulate an IEP, in good faith.....[T]hey did only the bare minimum necessary to give the appearance of their good faith participation in the process—physically being present at the IEP and visiting the [classroom].

Moreover, J.P.'s mother did not fully participate in the IEP meeting, as is demonstrated by her failure to voice her view that J.P. did not belong in special education. Her attitude as an observer in the process rather than an active participant displays an utter lack of good faith. The record suggests that plaintiffs were attempting to game the system and obtain reimbursement for their son's private school education.

M.N. v. Hawaii DOE, 60 IDELR 181 (9th Cir. 2013)

The court affirmed the ruling that the parent was not entitled to reimbursement for private placement due to the inappropriateness of the private placement as well as the failure of the private school and parent to cooperate with the public school. The student had been at the private school for a year and a half and showed no progress in a number of key areas. The private school focused on language acquisition and did not provide services that were needed to address other areas of need. Moreover, the private school did not share records with the public school, thus blocking efforts to evaluate the student, and the mother evaded school efforts to contact her which included seven phone messages and four letters.

## **IMPORTANCE OF AVOIDING RETALIATORY BEHAVIOR**

### **20. I hear parents have protections against retaliation.**

These protections are part of the prohibition against discrimination under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The applicable Section 504 regulation states as follows:

A recipient may not discriminate on the basis of handicap in the following ways directly or through contractual, licensing, or other arrangements under any program or activity receiving Federal financial assistance... intimidate or retaliate against any individual, whether handicapped or not, for the purpose of interfering with any right secured by section 504 or this subpart. 28 C.F.R. § 42.503(b)(1)(vii).

**21. Can you give some examples of what kind of behavior can lead to a finding of retaliation?**

A.C. v. Shelby County BOE, 60 IDELR 271; 711 F.3d 687 (6th Cir. 2013)

This case began with a very frustrated principal leaving a voice mail on the parents' phone, thinking that she was talking to the school nurse. The voice mail referred to the parent as "out to lunch" and stated "I don't know what to do with this lady anymore." That was at the very beginning of a rocky relationship. Over two years later, the principal filed child abuse charges, asserting that "we care about this child and the parents do not." Her report also charged that one of the teachers was "having an anxiety attack from the constant harassment" from the parents.

The parents alleged that the report was in retaliation for their requests for 504/ADA accommodations. The court held that the parents had established a *prima facie* case of retaliation based on the school's report of alleged child abuse. Even taking into account the duty of the school to report suspected abuse, the court held that a reasonable jury could conclude that the school made the report in retaliation for the parents' requests for accommodations. The court repeatedly noted the "minimal" burden that plaintiffs face at the *prima facie* stage.

Smith v. Harrington, 60 IDELR 136 (N.D. Cal. 2013)

The court held that the plaintiff alleged a cause of action under 504 for retaliation based on allegations that his daughter was bullied due to her disability; that he complained about it; and that the school officials retaliated against him by filing false child abuse charges against him.

**ATTORNEYS' FEES**

**22. Can either the parent or the school district obtain attorneys' fees from the other?**

In general, a parent can recover attorneys' fees if they prevail in a due process hearing and obtain relief. There are exceptions, including when a timely settlement offer is made, the parent does not accept the offer, and the hearing officer or court does not award more than what was offered through settlement. Under IDEA 2004, the school district can also recover its attorneys' fees from either the parent or the parent's attorney but under narrower circumstances than the parent. The regulation is extensive. See 34 C.F.R. § 300.517. Below is subsection (a)(1) which sets out the general standard:

In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to—

- (i) The prevailing party who is the parent of a child with a disability;
- (ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that

- is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (iii) To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

**23. Can you give some examples of when the school district was able to recover attorneys' fees from the parent?**

Bridges Public Charter School v. Barrie, 57 IDELR 3 (D.D.C. 2011)

The court awarded the charter school over \$15,000 in attorneys' fees based on a finding that the parent's complaint was frivolous, unreasonable and without foundation. The hearing officer had ruled in favor of the charter school on the merits, noting that the evidence and witnesses strongly supported the school's view of the facts. In support of its decision, the court cited the parent's refusal to participate in the resolution meeting.

C.W. v. Capistrano USD, 60 IDELR 67 (C.D. Cal. 2012)

The court ordered the parent to reimburse the school district \$96,660 in attorneys' fees and costs due to litigation that the court deemed frivolous and brought for improper purposes. The opinion characterizes the mother as attempting to "extort fees from District to which Mother was not legally entitled" and offering "to ransom her child's IDEA appeal in exchange for money to which her non-attorney advocate was not entitled." This convinced the court that the true purpose of the litigation "was to harass and unnecessarily increase the litigation costs incurred by District until it acquiesced to lining the pockets of her non-attorney advocate, who is also the spouse of Mother's attorney on appeal."

**24. Is parent anger an improper purpose?**

R.P. v. Prescott USD, 56 IDELR 31 (9th Cir. 2011)

While upholding a district court decision in favor of the district, the Circuit Court vacated the award of attorneys' fees and costs (\$141,211.71) awarded to the school district. The court held that the suit was not frivolous, nor was it brought for an improper purpose. Key Quotes:

As a matter of law, a non-frivolous claim is never filed for an improper purpose. It's therefore harder for a school district to collect attorney's fees against parents than against their lawyers: Collecting against parents requires a showing of both frivolousness and an improper purpose, while collecting against their attorneys requires only a showing of frivolousness.

This makes sense, since parents are not usually in the position to assess whether a claim is frivolous. Because the parents' action wasn't frivolous, it could not be filed for an improper purpose. They shouldn't have to face financial ruin for attempting to vindicate the rights of their disabled child.

In any event, the district court erred in holding that anger is an improper purpose that could justify an award of attorney's fees. Anger is an altogether different motive from those listed in [the statute] as improper: "to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation." In fact, anger is a legitimate reaction by parties who believe that their rights have been violated or ignored.

*The information in this handout was created by Walsh, Anderson, Gallegos, Green & Treviño, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*

**A.C. v. Shelby County BOE, 60 IDELR  
271 (6th Cir. 2013)**

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**Background Facts**

- A.C. suffered from Type I Diabetes and peanut allergies.
- “The relationship between A.C.’s parents and Bon Lin officials started off on the wrong foot and, unfortunately, never seemed to improve.”

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**Background Facts**

- Just before A.C. began kindergarten at Bon Lin in 2007, J.C. made a series of requests for accommodations for A.C., including to:
- retain a full-time nurse at the school to help with diabetes management;
  - make A.C.’s classroom a peanut-free zone; and
  - conduct A.C.’s blood tests (several each day) in A.C.’s classroom rather than in the school clinic.

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### Background Facts

- According to the court, the principal “had never faced similar requests in her many years as a teacher or principal and found the situation quite frustrating.”
- The day before the meeting to address the parent’s accommodation requests, the principal leaves a voice mail on the parents’ phone, thinking that she was talking to the school nurse.

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### The Voice Mail Message

- “Hey, Barbara. I know we’re having a meeting tomorrow about [A.C.]. This is Kay Williams from Bon Lin. [J.C.] is here causing all kinds of confusion and [A.C.’s teacher] has already broken down and cried. This woman is out to lunch. My teacher had ten minutes for lunch because she’s trying to make sure there are no peanut people by her, and now she claims the kid did sit by her with peanut butter...”

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### The Voice Mail Message (continued)

- “...I mean, yet she doesn’t want the child sitting at another table because she doesn’t want her singled out. I don’t know what to do with this lady anymore. She does not reason or have any common sense. So you know that since I am the one with common sense, I am going to have a little problem with her. But at any rate, love ya, and I’ll see you tomorrow unless you want to call.

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### Over two years later Principal files child abuse charges...

- “First, she said that A.C. was being ‘sent to [Bon Lin] with cookies, Kool-Aid, and candy, which makes her sugar shoot up to a very high level.’”
- “Second, she reported that A.C.’s ‘diabetes is not being monitored at home, and [that she had] documentation on this neglect.’”

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### Over two years later Principal files child abuse charges...

- “Principal Williams emphasized that she worried the abuse could be ‘fatal’ and that two previous nurses had left in fear that A.C. would die, with the third nurse now also thinking of leaving for the same reason.”
- In an interview 10-days later with DCS, “She explained that A.C. ‘could die at school,’ and that ‘the parents are just looking for a lawsuit.’”
- Ultimately the charges were found to be unfounded.

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### The Lawsuit

- The parents filed a lawsuit alleging that the report was in retaliation for their requests for 504/ADA accommodations.

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### The Outcome of the District Court

- The district court granted summary judgment in favor of the school district and dismissed the case.

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### The Sixth Circuit

- The Sixth Circuit held that the parents had established a prima facie case of retaliation based on the school's report of alleged child abuse.
- The court repeatedly noted the "minimal" burden that plaintiffs face at the prima facie stage.

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### The Sixth Circuit

- Even taking into account the duty of the school to report suspected abuse, the court held that a reasonable jury could conclude that the school made the report in retaliation for the parents' requests for accommodations.

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**Smith v. Harrington, 60 IDELR 136  
(N.D. Cal. 2013)**

By **Elena M. Gallegos**

WALSH, ANDERSON,  
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and TREVINO, P.C.  
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**The Defendants**

The school district and the following individual defendants:

- State Superintendent of Schools;
- District's Superintendent;
- District Compliance Officer;
- Principal;
- Director of Special Services; and
- School Psychologist.

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**Background Facts**

- A.S. suffered from Tourette's Syndrome.
- The parents referred their child for testing.
- A.S. was belatedly evaluated and identified as eligible for special education.
- The parents alleged ongoing bullying by other students based on disability and believed the district to be unresponsive.

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### Background Facts

- “On or about April 17, 2012, Mr. Smith was present at the Proctor Terrace and spoke with Defendants about the ongoing bullying of A.S. ... [H]e was there ‘to discuss one thing and one thing only’: ‘what the school intended to do about the ongoing bullying and harassment due to A.S.’s disability.”

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### Background Facts

- “During the meeting, ‘in a loud voice’ ([a]s would be expected of a frustrated father standing up for his disabled daughter’s rights), Mr. Smith demanded that the school do something about the bullying of A.S. [ ] At no time, however, did Mr. Smith threaten or attempt to threaten any Defendants with imminent harm.”

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### Child Abuse Charges and Request for TRO

- The day after the heated meeting, the Principal and School Psychologist filed child abuse charges, alleging emotional abuse.
- Later they and the District sought a Temporary Restraining Order against the father.
- The child was removed from the home but the TRO was denied.

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## The Lawsuit

- Parents filed suit alleging, among other things, that the child abuse charges were in direct retaliation for the father advocating for his daughter's rights under Section 504.

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## The Outcome

- A number of claims were dismissed but some survived the Defendants' Motion to Dismiss including the retaliation claim against the school district, clearing the way for a trial.

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## The Court's Reasoning on the Retaliation Claim

- "At this stage, though, the court looks to the allegations in Mr. Smith's complaint, and those allegations sufficiently allege a causal link."

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## The Court's Reasoning on the Retaliation Claim

- “He alleges that A.S. is disabled, that she was bullied because of her disability, that he complained to Defendants about it, and that Defendants, in retaliation for his complaints, then made false child abuse reports that contradicted prior statements that A.S. was in good hands with her father. This is sufficient. Accordingly, the court DENIES Defendants’ motion to dismiss Mr. Smith’s second claim insofar as it alleged against the District.”

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## The Outcome With Regard to the Individuals

- Some but not all of the claims against the individuals also survived, clearing the way for trial.
- The court declined to grant qualified immunity to school officials who reported alleged child abuse, as they were required to do under state law, and cleared the way for a trial.

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