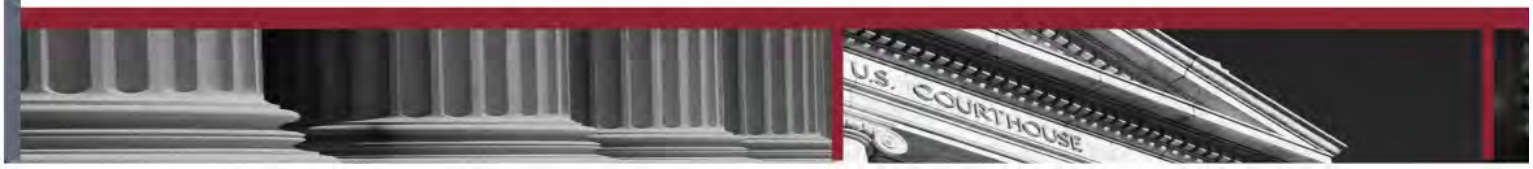
EL DORADO CHARTERSELPA

A Year in Review – 2016-17
OAH Decisions and Other Significant Court Cases/Guidance

Steering Committee

May 24, 2017

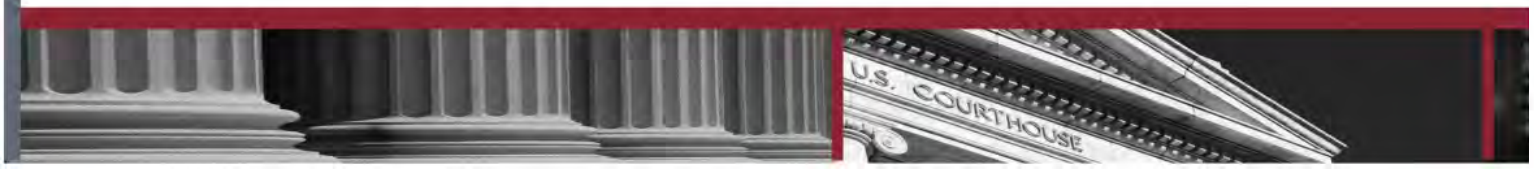
Heather M. Edwards, Attorney at Law



GIRARD EDWARDS STEVENS & TUCKER LLP

***Endrew F.* Case**

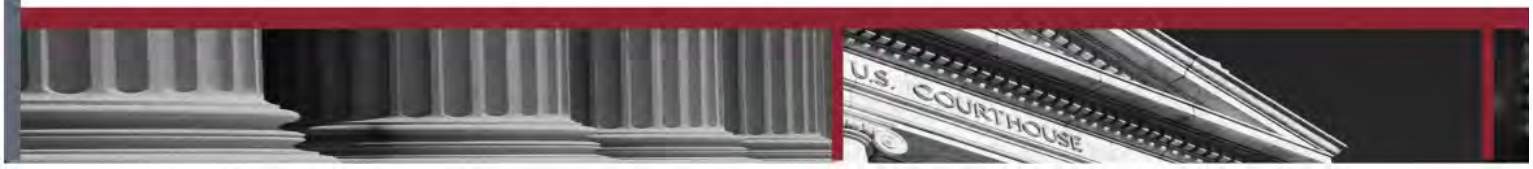
- On March 22, 2017, the U.S. Supreme Court issued its long-anticipated ruling in *Endrew F. v. Douglas County School District*, reversing the Tenth Circuit's use of a "*de minimis* benefit" test when determining whether an IEP sets out appropriately challenging educational goals.
- The Supreme Court instead held that an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas Cty. Sch. Dist.*, 580 U.S. ___ (2017) at *14-15 (emphasis added).



GIRARD EDWARDS STEVENS & TUCKER LLP

***Endrew F.* Case**

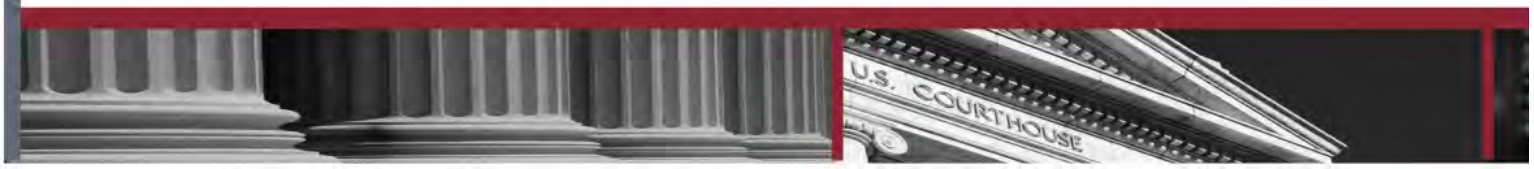
- Still no bright-line test.
- Must be determined on a case-by-case basis because the adequacy of an IEP turns on the unique circumstances of the child for whom it was created.
- Courts should give deference "based on the application of expertise and the exercise of judgment by school authorities" and cannot "substitute their own notions of sound educational policy for those of the school authorities which they review.



GIRARD
EDWARDS
STEVENS &
TUCKER LLP

Endrew F. Case

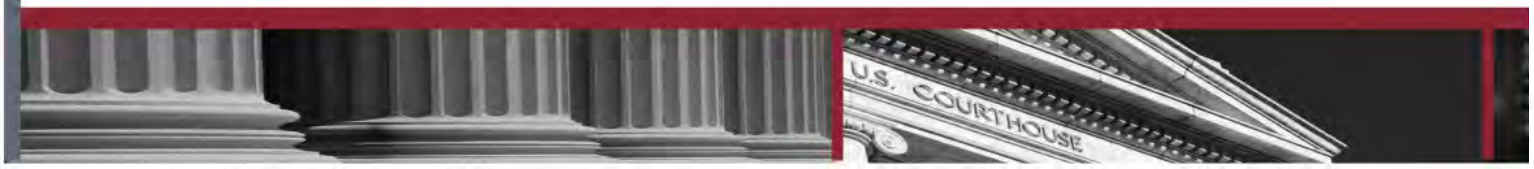
- The Court remanded the case for further findings as to whether the student actually received FAPE (and it is possible that the lower court could still find that he did).
- Court refused to adopt the standard suggested by the parents' counsel -- i.e., one that would require schools to provide educational opportunities to children with disabilities that are "substantially equal to the opportunities afforded to children without disabilities".
- Also, to the degree that there were some advocates/attorneys who thought the Court would adopt a standard requiring the "maximization of potential" or the very best or ideal program possible (the Cadillac, for example), the decision comes nowhere close to that.



GIRARD
EDWARDS
STEVENS &
TUCKER LLP

Business as Usual?

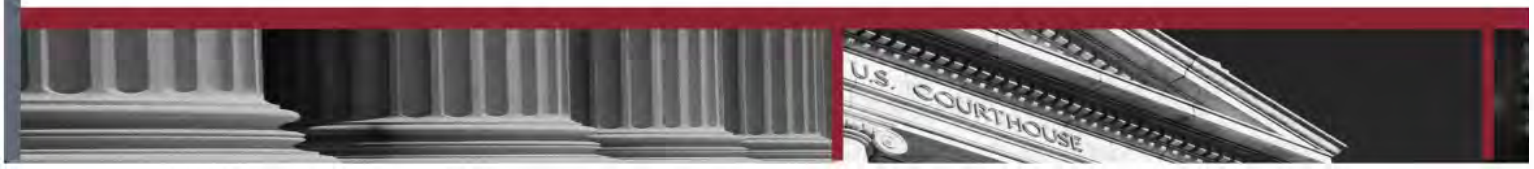
- **Yes and No**
- 9th Circuit already had higher standard than "more than *de minimis* standard"
- Standard already demanded that LEAs demonstrate that their IEPs and programs for children with disabilities are reasonably calculated to enable them to receive educational benefit, as measured in light of each child's individual circumstances, including:
  - the nature/severity of disability, age, experiences, and academic, adaptive, social/emotional, behavioral, and communication abilities.



GIRARD EDWARDS STEVENS & TUCKER LLP

Business as Usual?

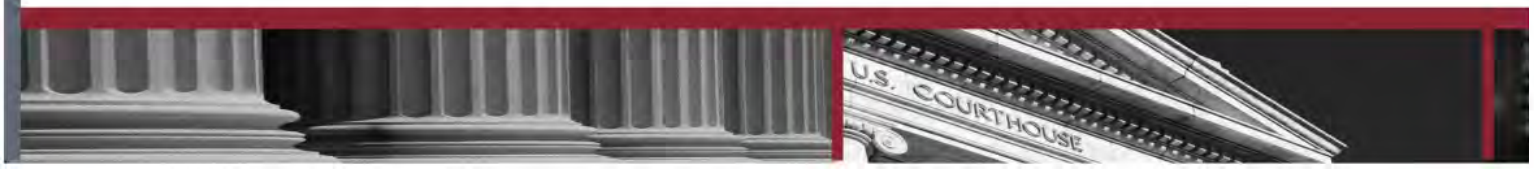
- Educators must conduct business as usual by:
  - Emphasizing compliance with the IDEA's procedural requirements and
  - Offering IEPs and programs that they can demonstrate will provide (or are reasonably designed to provide) educational benefit and progress that is meaningful to each child with a disability, based upon that child's circumstances



GIRARD EDWARDS STEVENS & TUCKER LLP

Business as Usual?

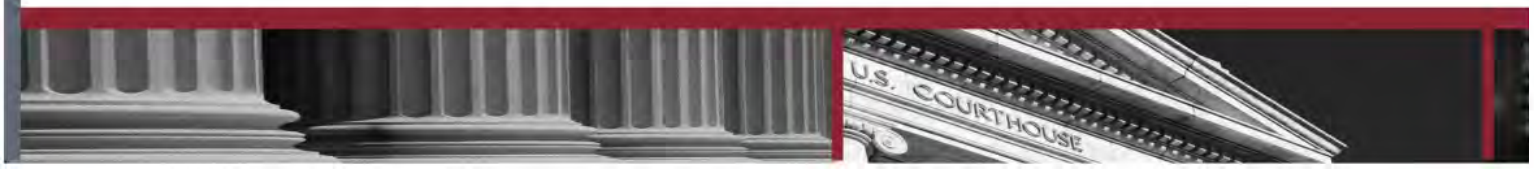
- Emphasize development of **quantifiable** goals.
- Collect data to develop baselines to develop **robust, detailed and measurable goals** for the child's expected performance of each skill after a year's time
- Are you repeating goals from the previous year? This is a red flag!
  - Are you not accurately documenting progress?
  - Was the goal statement to generic?
  - Has the child really not been making progress, and is the team really analyzing why?



GIRARD EDWARDS STEVENS & TUCKER LLP

Business as Usual?

- Don't underestimate importance of thorough assessments to determine student's "circumstances" (a.k.a., strengths, areas of need)
- Have strong procedures in place for data-collection and reporting on the child's progress toward his or her IEP goals throughout the year

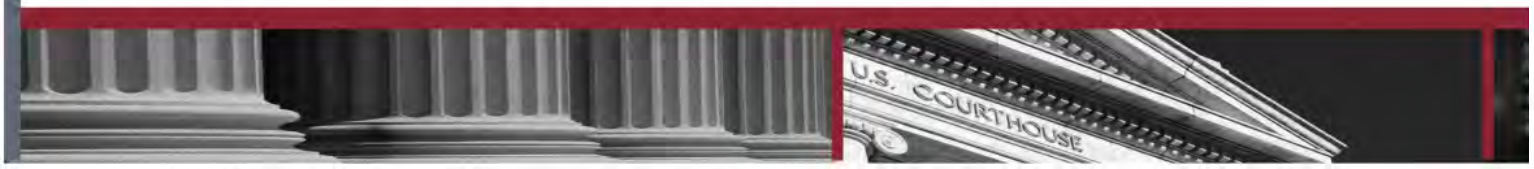


GIRARD EDWARDS STEVENS & TUCKER LLP

Cases Citing *Endrew F.*

M.C., by and through his guardian ad litem M.N. v. ANTELOPE VALLEY UNION HIGH SCHOOL DISTRICT, 69 IDELR 203 (9th Cir. March 27, 2017)

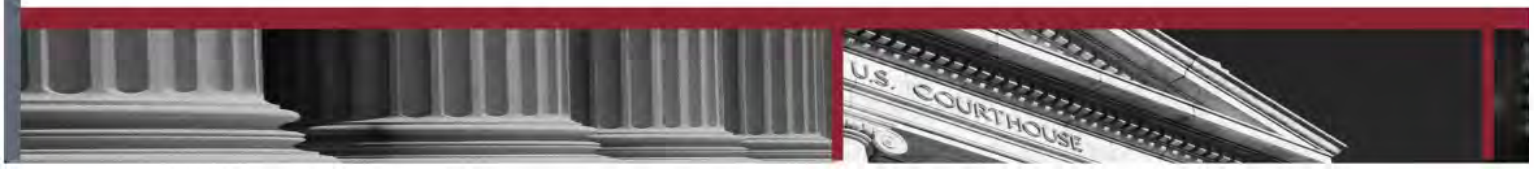
- Plaintiffs claim that District denied Student FAPE by:
  - Failing to develop measurable goals in all areas of need, including life skills, residential travel, and business travel.
  - Failing to provide adequate orientation and mobility services, as well as adequate social skills instruction.



GIRARD EDWARDS STEVENS & TUCKER LLP

Cases Citing *Endrew F.*

- Court remanded the case so the District Court can consider plaintiff's claims in light of new guidance from Supreme Court.
- Court explained that in *Endrew F.* the Supreme Court clarified *Rowley* and provided a more precise standard for evaluating whether a school district has complied substantively with the IDEA: "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."
- Court stated:
  - In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum, "**commensurate with his non-disabled peers, taking into account the child's potential**."

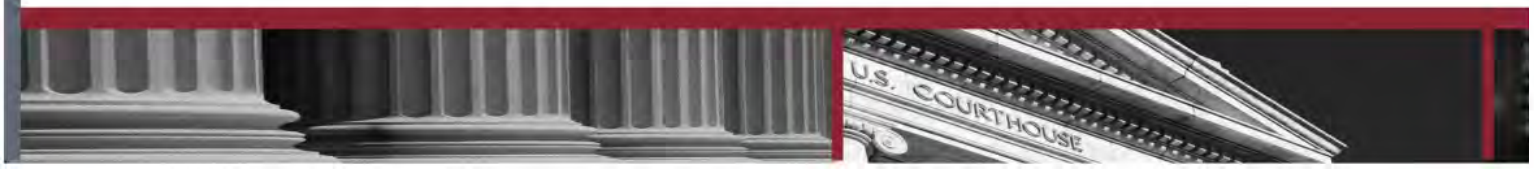


GIRARD EDWARDS STEVENS & TUCKER LLP

Cases Citing *Endrew F.*

K.M., by and through her parent and guardian ad litem, MARKHAM v. TEHACHAPI UNIFIED SCHOOL DISTRICT, et al., 117 LRP 13249 (E.D. Cal, April 5, 2017)

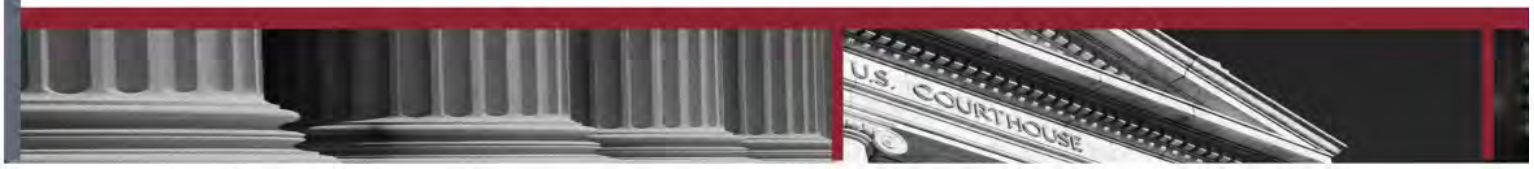
- An IEP team's failure to develop goals that specifically addressed an elementary school student's attentional difficulties did not require it to provide the child with compensatory education.
- Court ruled that the IEP goals as a whole appropriately addressed the child's ability to stay on task.
- While the child needed to improve her attention span to obtain an educational benefit an IEP does not require distinct goals to address each area of identified need.



GIRARD EDWARDS STEVENS & TUCKER LLP

Cases Citing *Endrew F.*

- "The IEP annual goals must meet a student's needs, but the IDEA does not require that they have a one-to-one correspondence with specific needs," Instead, the question is whether the annual goals as a whole will address the educational needs resulting from the student's disability.
- Here, the IEPs included goals that addressed the child's ability to comply with directions which directly measured the child's ability to stay on task long enough to comply with two- and three-step directions.
- The IEP also required the district to provide a visual schedule, preferential seating, on-task reminders, and a one-to-one aide -- all of which would address her attentional difficulties.
- Court recognized that the hearing officer issued decision prior to the U.S. Supreme Court's ruling in *Endrew F.,* but went on to determine that the IEPs in this case met that standard by including goals that addressed all areas of need, including the student's ability to remain on task.

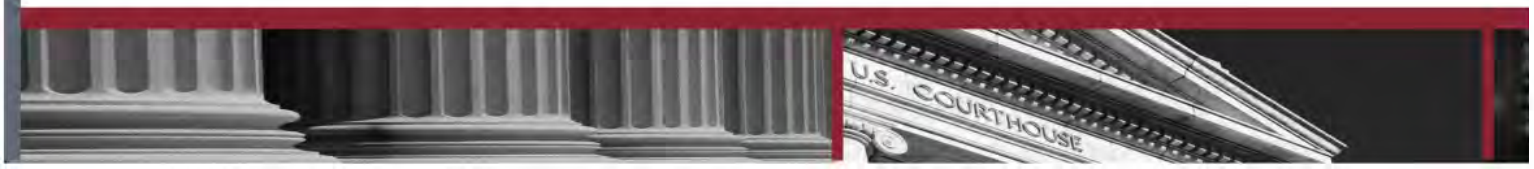


GIRARD EDWARDS STEVENS & TUCKER LLP

Which LEA Is Responsible for FAPE?

- In California, residency determines which LEA is responsible for providing a student with a disability FAPE.
- Pupils between 6-18 must attend school in the district where his/her parent or legal guardian reside.

Ed. Code §§ 48200, 56028, *Katz v. Los Gatos-Saratoga JUSD* (2004) 117 Cal.App.4th 47,54.

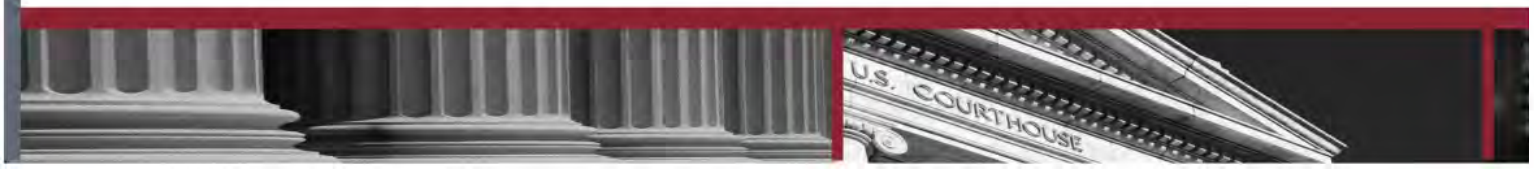


GIRARD
EDWARDS
STEVENS &
TUCKER LLP

Which LEA Is Responsible for FAPE?

- Residency is also established if a pupil is placed in a licensed children's institution or a foster home by a county placing agency.
- SELPA local plans/policies establish whether a SELPA, COE, or local district is responsible for a student's special education services while residing in an LCI or a foster home.

Ed. Code §§ 48204, 56156.4

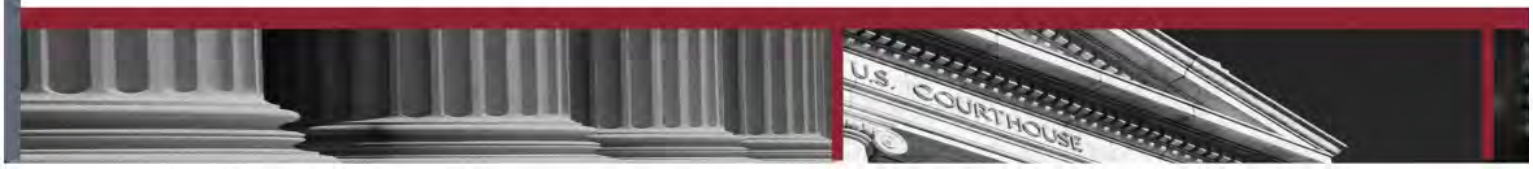


GIRARD EDWARDS STEVENS & TUCKER LLP

Which LEA Is Responsible for FAPE?

- When a court or county placing agency decides to place a student in an LCI or foster home, the court or county placing agency is responsible for residential and non-education costs.

Ed. Code 56159



GIRARD
EDWARDS
STEVENS &
TUCKER LLP

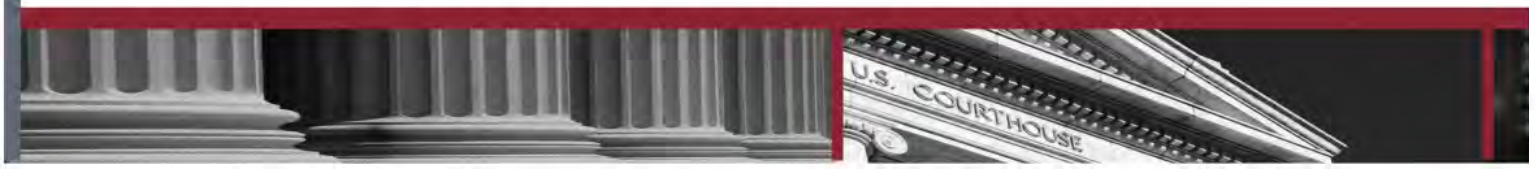
Residential Placements

- LEAs "must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services" which may include placement in a residential program.

34 CFR § 300.115(a).

- To determine whether a residential placement under IDEA is necessary to provide a student a FAPE, the analysis focuses on **whether the residential placement is necessary for educational purposes**, or merely a response to medical, social, or emotional problems separate from the learning process.

Ashland Sch. Dist. v. Parents of Student E.H. (9th Cir. 2009) 587 F.3d 1175, 1184.

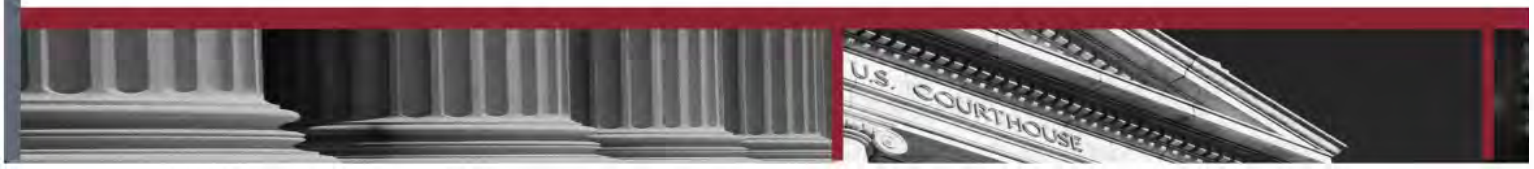


GIRARD EDWARDS STEVENS & TUCKER LLP

Residential Placements

M.S. v. Los Angeles Unified School District (U.S. Dist. Court Sept. 12, 2016) Case No. 2:15-cv-05819-CARS-MRW.

- **FACTS**: Student is a seventeen-year-old girl who has been a ward of the Court and the Department of Children and Family Services ("DCFS") since the age of eleven, making DCFS responsible for providing Student suitable housing and meeting her mental health needs.
- Student qualifies for special education services under the category of "emotional disturbance."

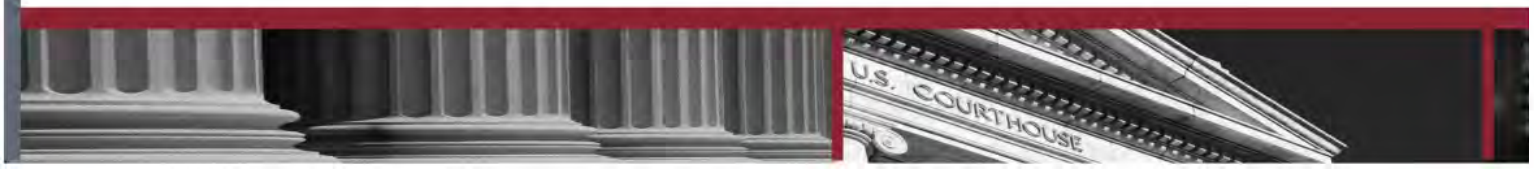


GIRARD EDWARDS STEVENS & TUCKER LLP

Residential Placements

M.S. v. Los Angeles Unified School District (U.S. Dist. Court Sept. 12, 2016) Case No. 2:15-cv-05819-CARS-MRW.

- The Juvenile Court ordered DCFS to provide Student with "permanent placement services," and DCFS placed Student in a series of residential facilities. During this time, several IEP meetings were convened.
- None of Student's IEPs called for a residential treatment component to DCFS's placements, and the Student's district of residence did not consider whether a residential placement was necessary or what residential placement would provide Student with a FAPE.

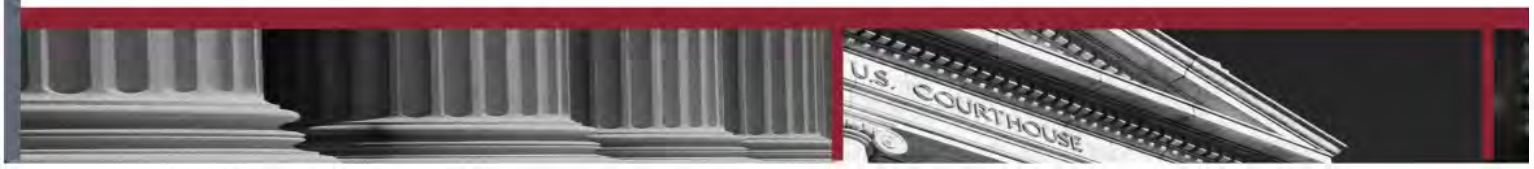


GIRARD EDWARDS STEVENS & TUCKER LLP

Residential Placements

M.S. v. Los Angeles Unified School District (U.S. Dist. Court Sept. 12, 2016) Case No. 2:15-cv-05819-CARS-MRW.

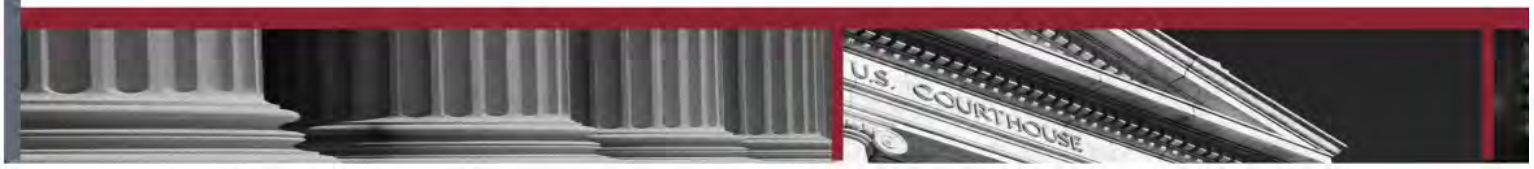
- **HELD**: The District improperly failed to consider whether a residential placement should be part of Student's IEP even though DCFS had already placed Student at a locked residential facility.



GIRARD EDWARDS STEVENS & TUCKER LLP

Residential Placements

- IEP teams should still consider whether a student requires residential placement **for educational reasons** even when the Juvenile Court has ordered residential placement to be funded by another public agency.
- Notably, the Court in this case expressly took no position regarding which public entity may ultimately be responsible for payment of residential treatment services in the event that multiples entities, like DCFS and a local school district, independently decide a particular residential placement is appropriate for a given child under the agencies' respective statutory frameworks and obligations.



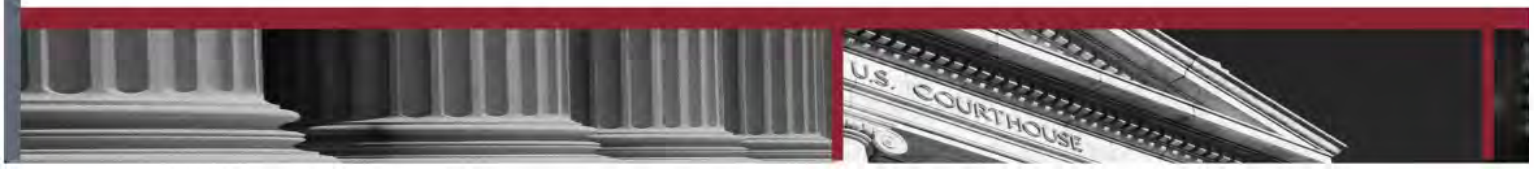
GIRARD
EDWARDS
STEVENS &
TUCKER LLP

Transition Planning

Bellflower Unified Sch. Dist., 69 IDELR 196, 117 LRP 4628.)

FACTS:

- Autism and Intellectual Disability
- Parents repeatedly raised concerns about transition and life skills preparation as student progressed through high school.
- District failed to assess student's adaptive living skills in the community. Focused on student's academic success and continued progress towards graduating with a regular diploma. District also relied upon the opinions of teachers and other students that the student could function in the community – but these opinions were based solely on the student's performance in the classroom.
- Parents were told the district's adult transition program was for low functioning special education students, well below student's level. Parents were effectively presented with a choice to leave student on the diploma track and forego adult transition services, or move student to a non-diploma track to obtain adult transition services.



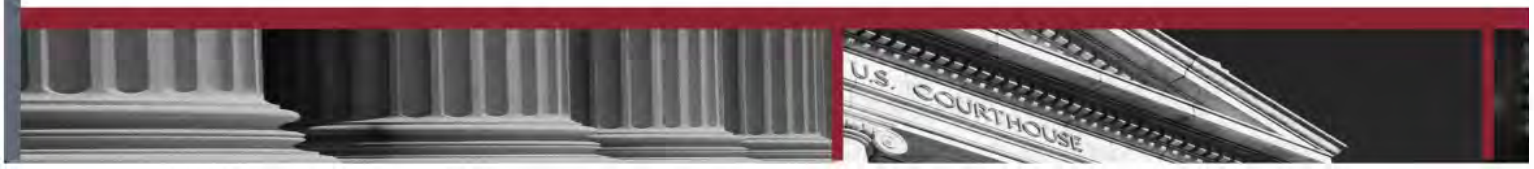
GIRARD EDWARDS STEVENS & TUCKER LLP

Transition Planning

Bellflower Unified Sch. Dist., 69 IDELR 196, 117 LRP 4628.)

HOLDING:

- OAH concluded that student was denied a FAPE.
- The transition plan listed the student's goals of going to community college and getting a job, but nothing addressed how he was going to get to school or work, buy food at a restaurant or market, or accurately pay and count change.
- The IEP post-secondary goals did not specifically address independent living.
- The IEP services did not address adaptive or functional skills directly related to independent living in the community.



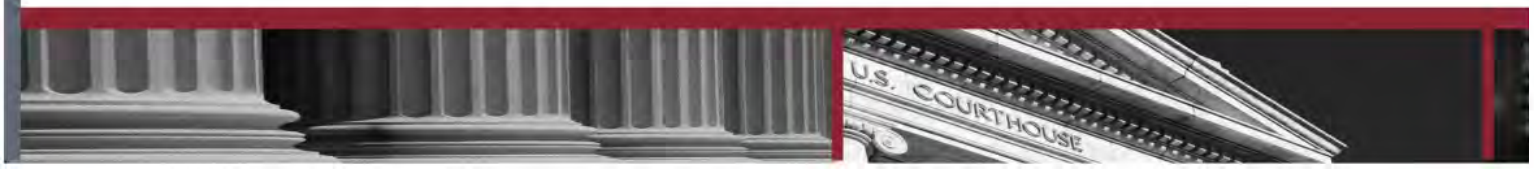
GIRARD EDWARDS STEVENS & TUCKER LLP

Transition Planning

Bellflower Unified Sch. Dist., 69 IDELR 196, 117 LRP 4628.)

TAKE AWAYS

- It can become easy to focus on a student's performance in the classroom and lose sight of special education's ultimate goal of helping students develop into adults who can function independently in society and the workforce.
- Availability of other agencies' post-secondary services (such as through the regional center or Department of Rehabilitation) does not relieve a local educational agency of its affirmative obligations under the IDEA.
- When a student is succeeding in the classroom and on track to graduate with a regular diploma, it is no less important to assess the student's ability to transition from the classroom to the community.
- An LEA should assess a student's adaptive living skills and prepare an appropriate transition plan that takes into account the student's interests and unique needs.



GIRARD EDWARDS STEVENS & TUCKER LLP

Transition Planning

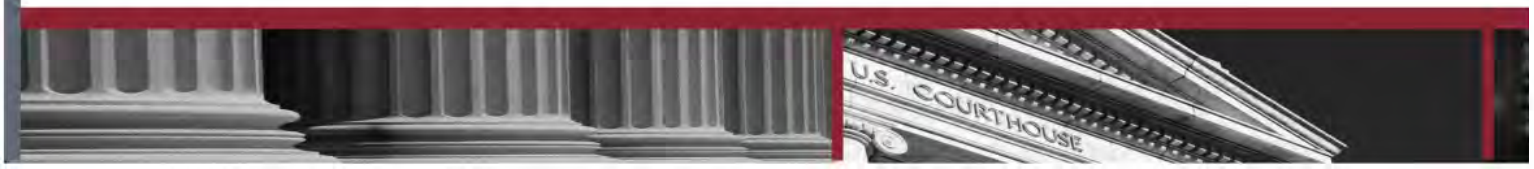
Bellflower Unified Sch. Dist., 69 IDELR 196, 117 LRP 4628.)

TAKE AWAYS

- Local educational agencies are not required to ensure that students are successful in achieving all of their transition goals. Rather the IDEA was meant to create opportunities for disabled children, and not to guarantee a specific result, such as acceptance into college. High v. Exeter Township Sch. Dist. (US Dist. Ct. E.D. Pa., Feb. 1, 2010) 2010 WL 363832.

- Generally, a student's graduation from high school with a regular diploma ends an LEA's obligation to provide a student FAPE. However, it does not preclude the student from seeking relief for a previous denial of FAPE. *Letter to Riffel*, 33 IDELR 188(OSEP 2000).Thus, a graduate's right to compensatory education will turn on whether the district provided appropriate services during his period of eligibility.

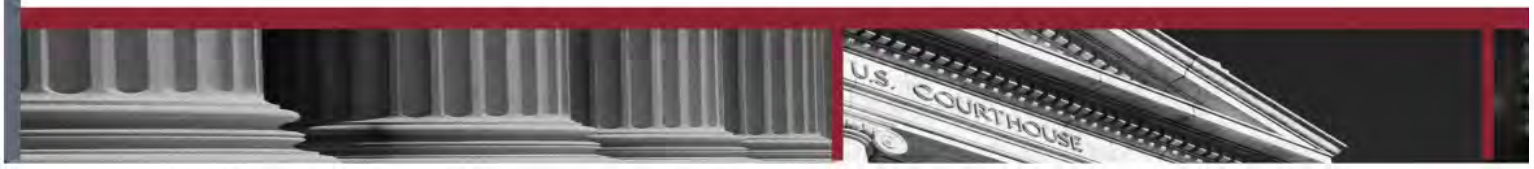
- An inadequate transition plan constitutes a denial of FAPE only where it fails to comply with the procedural requirements of IDEA, such as where the transition plan is comprised of generic and vague post-high school goals and services that are equally applicable to almost any high school student, and is not based on the specific student's needs or fails to take into account the student's strengths, preferences, and interests. Virginia S. v. Dept. of Educ. (US Dist. Ct., D. Hawaii, Jan. 8, 2007) 2007 WL 80814.



GIRARD EDWARDS STEVENS & TUCKER LLP

Transition Planning

- Under the IDEA, districts must develop a postsecondary transition plan for a student with a disability beginning the year the student turns 16.
- A new report released in May 2017 by the Government Accountability Office recommended lowering that age, ideally to 14.
- *Youth with Autism: Federal Agencies Should Take Additional Action to Support Transition-Age Youth*, urged the U.S. Education Department to examine outcomes for students with disabilities when transition services traditionally begin at age 16 and consider the merits and implications of amending the IDEA to lower that age.
- http://www.gao.gov/products/GAO-17-352



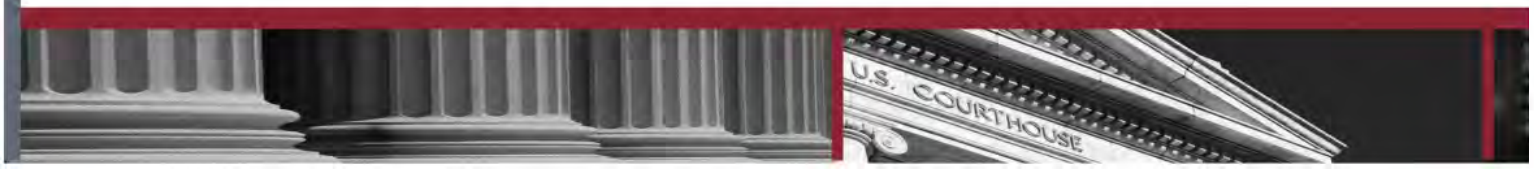
GIRARD EDWARDS STEVENS & TUCKER LLP

Assessing for Dyslexia and Dysgraphia

Avila v. Spokane School District 81 (9th Cir. 2017) 69 IDELR 204

Facts:

- Parents of a Washington student with autism sued their local school district for failing to evaluate their son for dyslexia and dysgraphia.
- The three-judge panel pointed out that the district did not refer to specific reading and writing disorders as dyslexia or dysgraphia. Instead, the district evaluated students for "specific learning disabilities" -- a term that covered a number of reading and writing difficulties.
- "The district broadly assessed [the student] for reading fluency and fine motor skills aimed at detecting writing inefficiencies," the panel wrote in an unpublished decision.
- The court found that the district's broad assessments adequately covered the areas of suspected disability sought for assessment by the parents. The court noted that the district administered a "battery of tests," many of which were also administered by the parents' private evaluator. The parents were also unable to identify any additional tests which the district should have used.

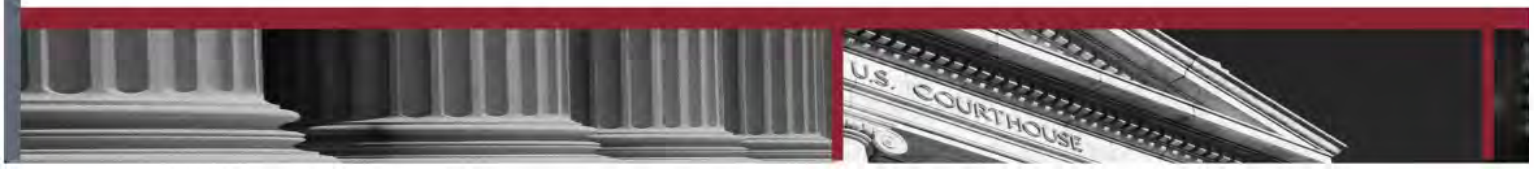


GIRARD EDWARDS STEVENS & TUCKER LLP

Assessing for Dyslexia and Dysgraphia

Avila v. Spokane School District 81 (9th Cir. 2017) 69 IDELR 204

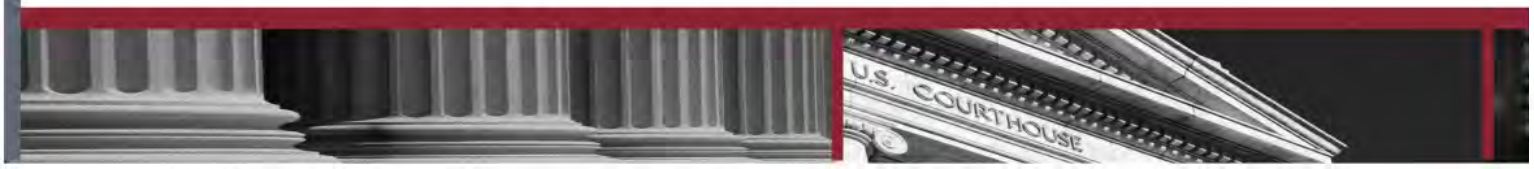
- Parents frequently ask school administrators if a school-given assessment evaluated their student for very specific disabilities.
- Describing how these assessments evaluate for potential learning disabilities to parents unfamiliar with these tests can be challenging. In this case, it appears that the parents may not have completely understood that the assessments given by the district did in fact evaluate their son for the disabilities suspected by the parents.
- Faced with this issue, it is recommended that school administrators take special care to fully describe how each assessment is designed to test for certain disabilities. For example, explain to parents how certain "reading and writing assessments" are important tools in assessing for dyslexia and dysgraphia and the skills associated with those disabilities.
- School administrators and staff will also want to familiarize themselves with the Dyslexia Guidelines to be issued by the California Department of Education in August 2017 which are intended to assist schools and parents in identifying and assessing pupils with dyslexia (as required by Education Code section 56355).



GIRARD EDWARDS STEVENS & TUCKER LLP

Using the "D" Words

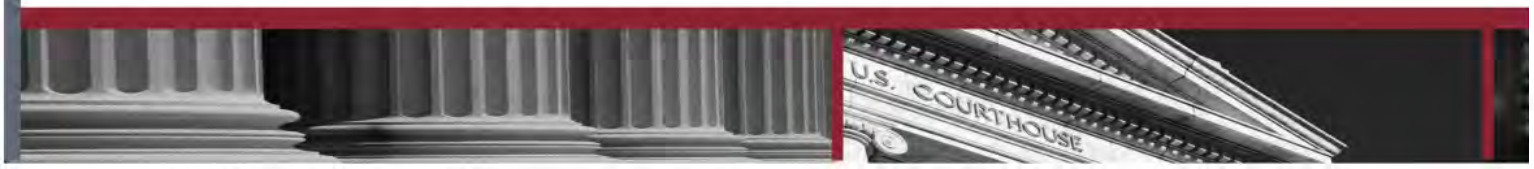
- October 2015 – Two major developments regarding dyslexia:
  - Federal: OSEP issues "Dear Colleague" Letter regarding use of the terms "dyslexia," "dyscalculia" and "dysgraphia" in evaluations & IEP process
  - California: AB 1369 passes, signed into law



GIRARD EDWARDS STEVENS & TUCKER LLP

OSEP "Dear Colleague" Letter

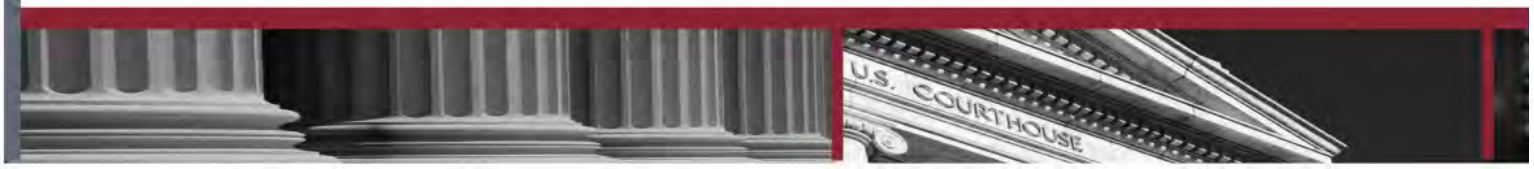
- Why issue a letter?
- Concern from many parents and other stakeholders, who expressed that SEAs and LEAs "are reluctant to reference or use dyslexia, dyscalculia and dysgraphia in evaluations, eligibility determinations, or in developing the IEP under the IDEA.



GIRARD EDWARDS STEVENS & TUCKER LLP

OSEP "Dear Colleague" Letter

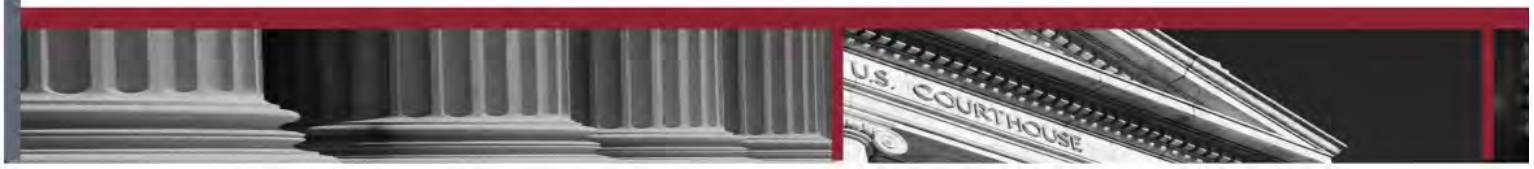
- Where's the problem?
  - Parents and educators may be speaking two different languages when it comes to assessment, eligibility determinations, and IEP development
  - Parents: may focus on the common and safe, but sometimes vague term of "dyslexia"
    - "Dyslexia" does not seem to carry much stigma and the term has been around a long time



GIRARD EDWARDS STEVENS & TUCKER LLP

OSEP "Dear Colleague" Letter

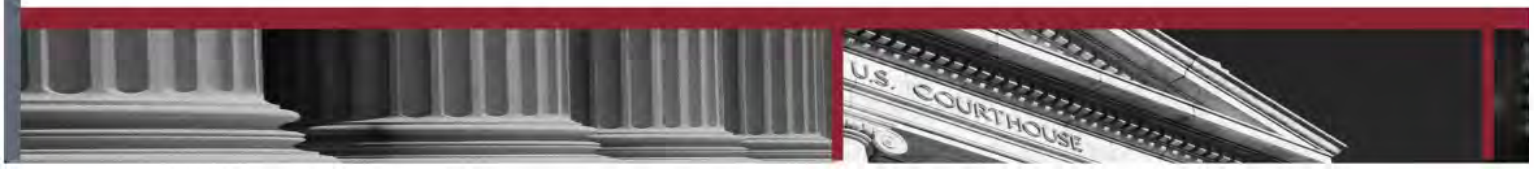
- But what language do educators use?
- Specific Learning Disability, and other IDEA-defined terms
  - SLD: "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, *dyslexia*, and developmental aphasia.
    - 20 U.S.C. §1401(30), 34 CFR §300.8(c)(10) (emphasis added)



GIRARD EDWARDS STEVENS & TUCKER LLP

OSEP "Dear Colleague" Letter

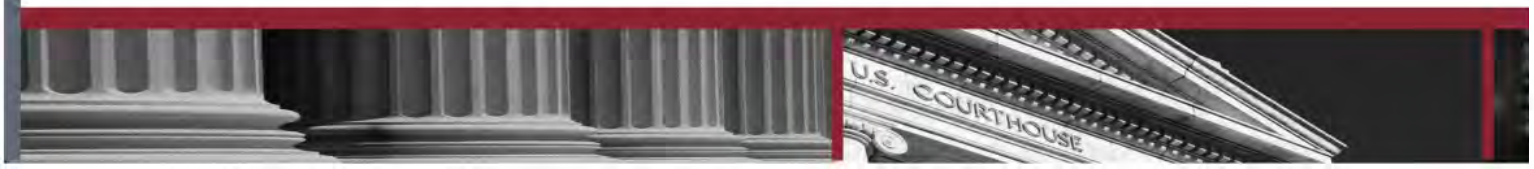
- Bridging the gap – SLD vs. Dyslexia
  - Parents tend to use colloquial term
  - Educators tend to use more precise, law-defined language.
- If dyslexia is legitimately suspected, LEA must conduct evaluation to determine if the child has an SLD, just like any other SLD type
- But, great news: you're almost certainly already screening for Dyslexia when you're evaluating a student, where SLD or other word-processing issues are suspected!



GIRARD EDWARDS STEVENS & TUCKER LLP

OSEP "Dear Colleague" Letter

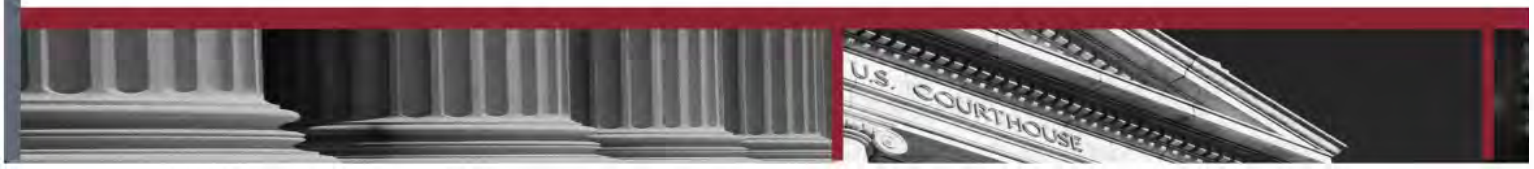
- There is nothing under the IDEA that prohibits the terms "dyslexia," "dyscalculia," and "dysgraphia" from being used in IEP meetings or in IEP documents



GIRARD EDWARDS STEVENS & TUCKER LLP

OSEP "Dear Colleague" Letter

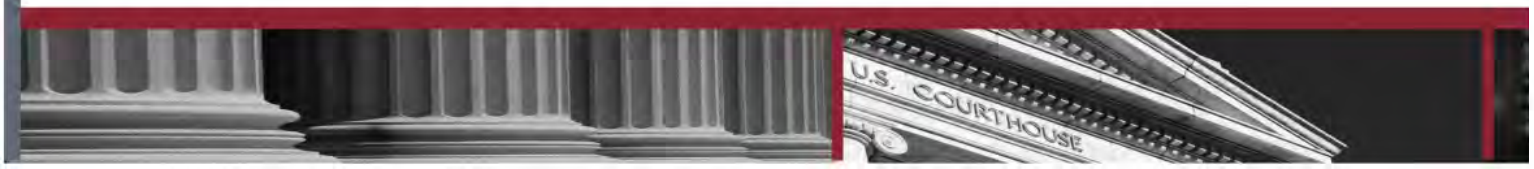
- In fact, using the terms can help:
  - Satisfy parental concerns
  - Help teachers who may not be SPED trained understand the student
- At the same time, use of the terms in IEP documents is not required.



GIRARD EDWARDS STEVENS & TUCKER LLP

CDE Dyslexia Guidelines Coming Soon!

- **August 2017** - CDE will release on its website program guidelines for dyslexia.
- To be used to assist regular education teachers, special education teachers, and parents to identify and assess pupils with dyslexia, and to plan, provide, evaluate, and improve educational services to pupils with dyslexia.
- Dyslexia Guidelines Work Group http://www.cde.ca.gov/sp/se/ac/dyslexia.asp

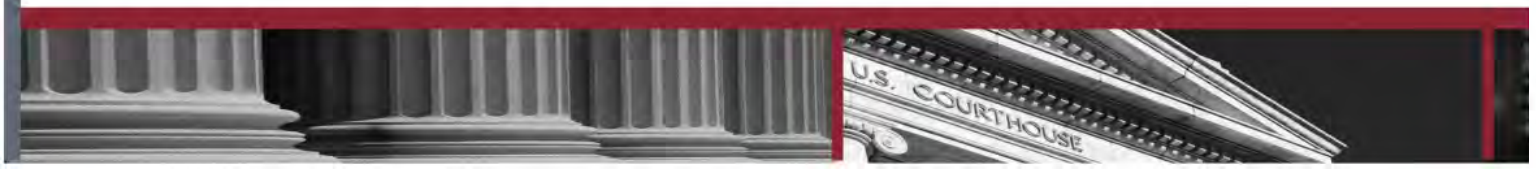


GIRARD EDWARDS STEVENS & TUCKER LLP

Mandatory IEP Team Members

- A **general education teacher** is a mandatory IEP meeting participant if the child is or may be participating in the general education environment.
- A required IEP team participant may be excused if:
  - Parent, in writing, and the public agency consent to the excusal; and
  - Member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

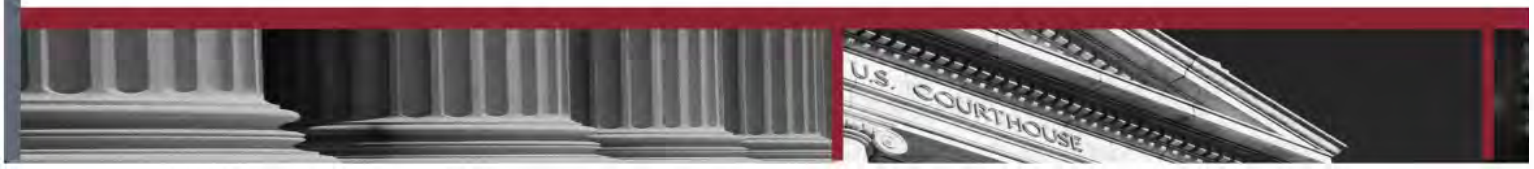
34 CFR 300.321 (e)(2).



Mandatory IEP Team Members

Compton Unified Sch. Dist., 116 LRP 31141 (SEA CA 07/22/16).

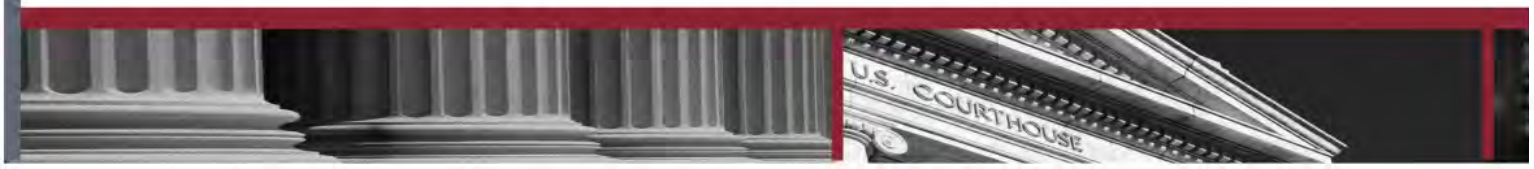
- **FACTS**: A district convened an IEP meeting to determine placement for a preschooler with ADHD.
- In attendance were the child's mother, a speech pathologist, and the district's program specialist. Parent believed that the child could succeed in a general education classroom. Although the team discussed possible general education settings, the district placed the student in a special preschool class.
- At the end of the meeting, the program specialist asked the mother to sign a form excusing the general education teacher from the meeting. She also informed the parent that a general education teacher is not required at an IEP meeting for a preschool student. The parent signed the form.
- Parent filed a due process complaint alleging that the district failed to convene an appropriate IEP team.



Mandatory IEP Team Members

Compton Unified Sch. Dist., 116 LRP 31141 (SEA CA 07/22/16).

- **HELD**: The district violated the IDEA procedurally by failing to either include or properly excuse a general education teacher from the meeting.
- The teacher's presence was required in light of the parent's expressed interest in a general education placement and the team's discussion of potential general education placements at the meeting.

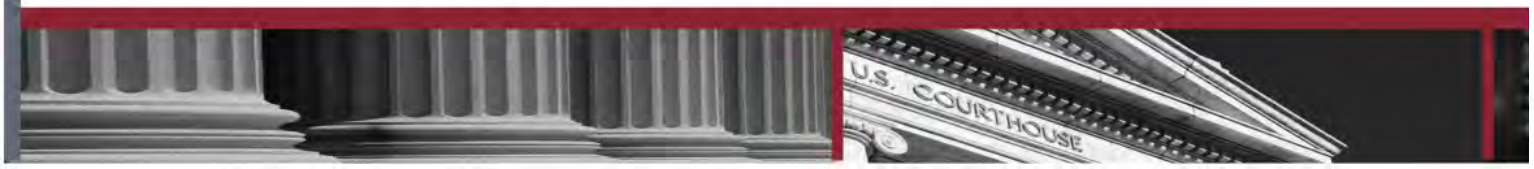


GIRARD EDWARDS STEVENS & TUCKER LLP

Mandatory IEP Team Members

Compton Unified Sch. Dist., 116 LRP 31141 (SEA CA 07/22/16).

- To obtain valid consent to the teacher's excusal, the district needed to:
  - **Fully inform the parent of all information relevant to the excusal;** and
  - **Ensure the parent understood she could revoke consent at any time**.
- The district failed to do those things.
- "Rather, the [program specialist] presented an excusal form after the meeting had adjourned, misinformed Mother regarding the required attendance of a general education teacher in the development of a preschool IEP, and represented that the excusal form was a meaningless formality," the ALJ wrote.

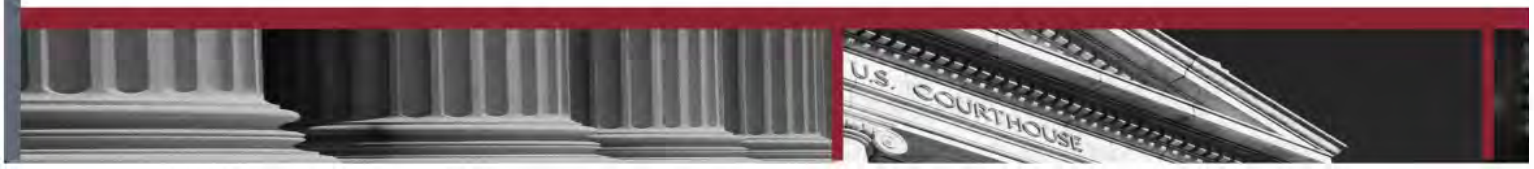


GIRARD EDWARDS STEVENS & TUCKER LLP

Unilateral Removal to Home Instruction to Address Behavior Was a Denial of FAPE

Dehesa School District and Community Montessori Charter School (OAH Case No. 2016090241/2016080384, January 4, 2017)

- 13 –year-old student had ADHD, SLD, anxiety, and depression attended a Montessori charter school, which emphasized student self-direction.
- Student was placed in a general education class for the majority of the school day. The student had challenging behaviors including disruptiveness, inattentiveness, and eloping.
- Concerned about the student's behavioral problems and lack of progress, the parents placed student in a private school in September 2016 and filed a due process complaint against the charter school and district.
- Because a Montessori charter school was a parent-choice school, staff mistakenly believed that it was not appropriate to consider other placement options.
- There were only two possible educational placements considered by the IEP team: a Montessori instruction learning center, like Montessori Charter, or home instruction.
  - Home instruction was reserved for children who had serious behavior challenges and not ready for school-based instruction.
  - Special day classes were not considered appropriate for any student because they were incongruent with Montessori instruction.

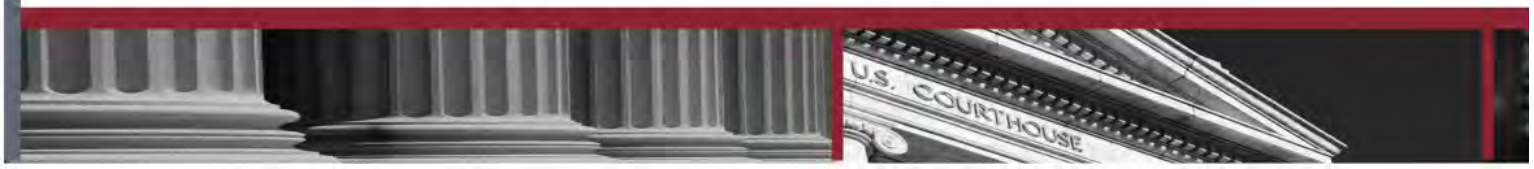


GIRARD EDWARDS STEVENS & TUCKER LLP

Unilateral Removal to Home Instruction to Address Behavior Was a Denial of FAPE

Dehesa School District and Community Montessori Charter School (OAH Case No. 2016090241/2016080384, January 4, 2017)

- School testified that positive behavior interventions would change the school environment and diminish the school's ability to deliver Montessori instruction.
- Instead, Student's teachers imposed ad hoc and punitive measures in an attempt to control his behavior (taking away preferred devices and activities, including Student's sensory processing tools, assistive technology, and recess.)
- If Student's behavior grew worse, it was school procedure to unilaterally expel him from the classroom to home instruction.
- Because the school and its district failed to address the child's behavioral difficulties and predetermined his placement, an ALJ ordered them to reimburse the child's parents $20,709 in private school costs.

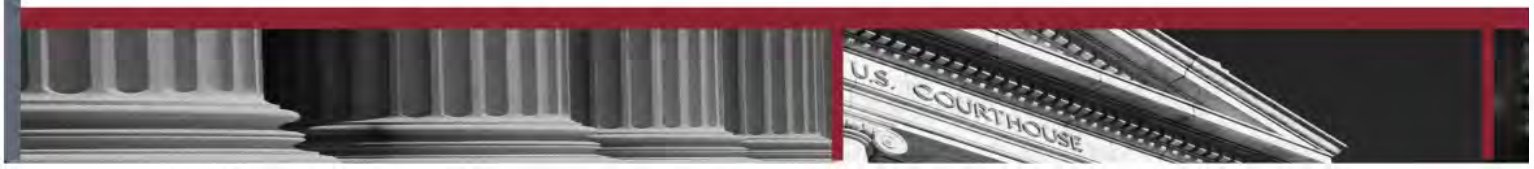


GIRARD EDWARDS STEVENS & TUCKER LLP

Conflicting Information Regarding Medical Condition an Ability to Attend School Warrants Reevaluation without Parental Consent

Vista Unified School District (OAH Case No. 2016060769) September 26, 2016

- 10th grade student eligible for special education due to autism and a medical history of aplastic anemia, a condition manifested by insufficient white blood cells, increasing Student's risk for infections.
- June 2014, District offered Student home-based instruction during the extended school year based on a doctor's order recommending home instruction because of Student's anemia. Student did not participate in any educational program during the 2014 extended school year or the 2014-2015 school year until March 2015.
- March 2015, Parent provided District with an another doctor's order continuing to recommend home instruction because of Student's anemia.
- District convened an IEP team meeting offering Student specialized academic instruction in the home for the remainder of the 2014-2015 school year, and the 2015 extended school year, and speech and language and occupational therapy services at a nearby middle school.

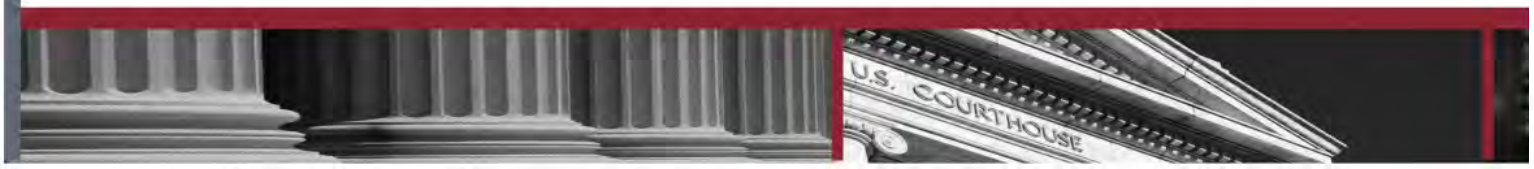


GIRARD EDWARDS STEVENS & TUCKER LLP

Conflicting Information Regarding Medical Condition an Ability to Attend School Warrants Reevaluation without Parental Consent

Vista Unified School District (OAH Case No. 2016060769) September 26, 2016

- September 2015, District extended its offer of home instruction through December 4, 2015, based on another doctor's note.
- Parent cancelled the first 24 sessions of home instruction during the fall of 2015. Between June 2014 and December 2015, Student received less than one year of home-based instruction based on Parent's determination that Student was not available for instruction due to poor health or maladaptive behaviors.
- December 2015, District convened IEP team meeting. Parent did not provide a new doctor's order. District offered to provide Student with specialized academic instruction and related services at a comprehensive high school. Parent wanted Student to remain on home instruction.

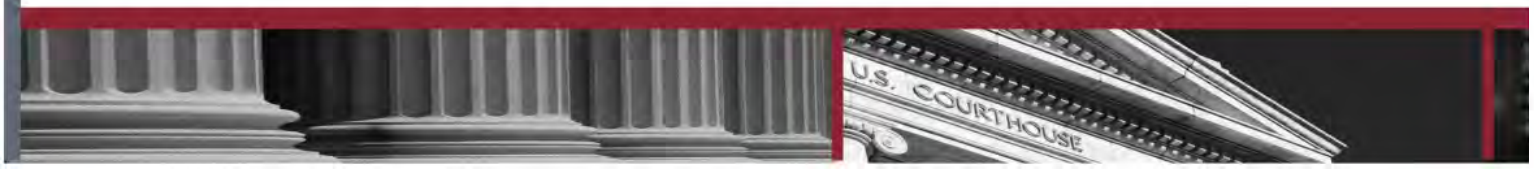


GIRARD EDWARDS STEVENS & TUCKER LLP

Conflicting Information Regarding Medical Condition an Ability to Attend School Warrants Reevaluation without Parental Consent

Vista Unified School District (OAH Case No. 2016060769) September 26, 2016

- At the IEP meeting, District discussed Student's need for a comprehensive reassessment. Student's last comprehensive triennial assessment was conducted by another district during 7th grade and the triennial reassessment was set for January 31, 2017. However, District thought an earlier reassessment was warranted, given Student's extensive absences from school, District's limited opportunities to educate Student since May 2014, lack of current health/medical information regarding Student's anemia, and Parent's request to maintain Student's placement in the home.
- District offered an assessment in the areas of academic achievement, communication, intellectual development, social-emotional development, adaptive behavior, and health including a medical assessment by the District's contracted pediatrician.

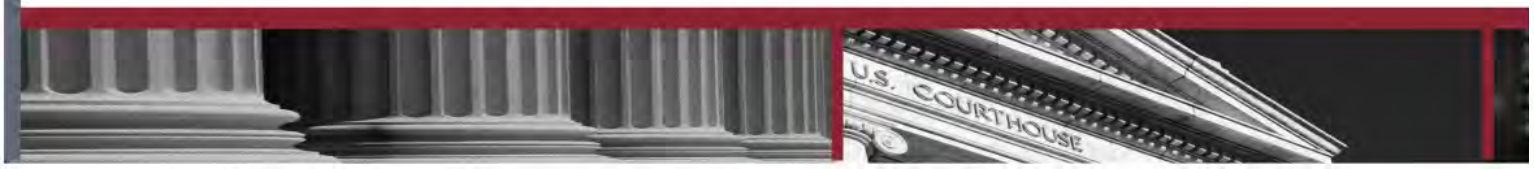


GIRARD EDWARDS STEVENS & TUCKER LLP

Conflicting Information Regarding Medical Condition an Ability to Attend School Warrants Reevaluation without Parental Consent

Vista Unified School District (OAH Case No. 2016060769) September 26, 2016

- Hearing officer issued order authorizing school to assess over the parent's objection.
- IEP team possessed sharply conflicting information regarding Student's anemia, and its impact on Student's ability to attend school.
- District possessed a written order from Student's physician, authorizing 12 weeks of home instruction with an expected outcome of "complete recovery."

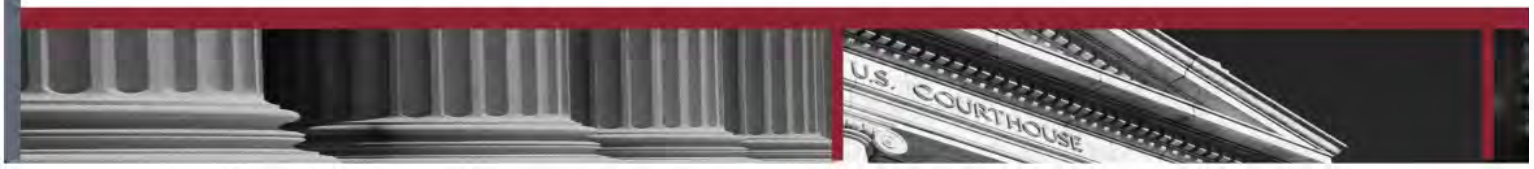


GIRARD EDWARDS STEVENS & TUCKER LLP

Without Proper Certification from a Doctor, District Could Not Place Student on Home Instruction.

Sacramento City Unified School District (OAH No. 2016050013) August 8, 2016

- Parents sent District an email stating that student was no longer going to attend school because student had become increasingly depressed and despondent. They requested the District provide home instruction.
- Parents provided a letter from doctor indicating that the current school setting may be harmful to student, recommended home instruction or another setting, and warned that student was at risk for hospitalization without immediate intervention.

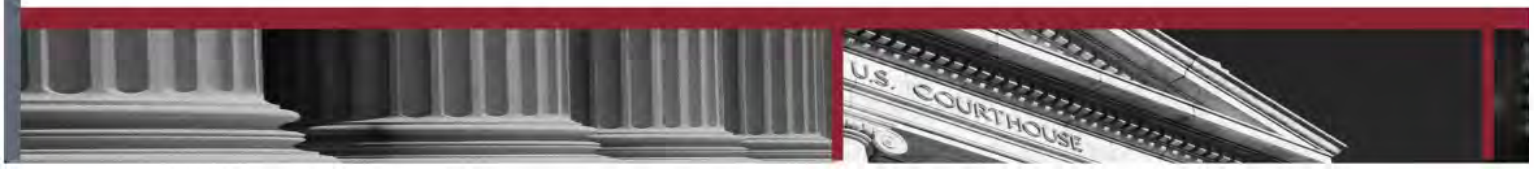


GIRARD EDWARDS STEVENS & TUCKER LLP

Without Proper Certification from a Doctor, District Could Not Place Student on Home Instruction.

Sacramento City Unified School District (OAH No. 2016050013) August 8, 2016

- The doctor's letter failed to meet the criteria needed for home instruction in that it did not certify that student's anxiety and depression prevented her from attending a less restrictive placement.
- School nurse contacted doctor after securing appropriate consent from Parents to do so.
- Doctor clarified that Student needed to be in a setting with students "like her" and in small classes with a large amount of support.
- Given this additional information, District could not place Student on home instruction.

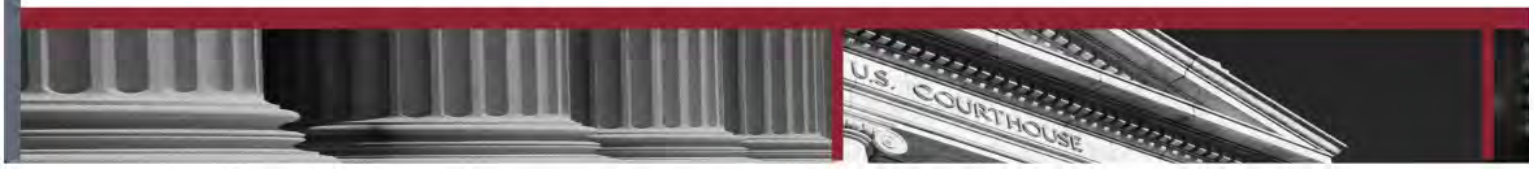


GIRARD EDWARDS STEVENS & TUCKER LLP

Privately-Funded 1:1 Aide

Student v. Tehachapi Unified School District (OAH Case No. 2016110289), 117 LRP 17194 (April 24, 2017)

- **FACTS**: Student was a 10 year old girl, eligible for special education under the categories of autism and speech and language impairment.
- Student's parent received approval from her medical insurer for funding of 40 hours a week of services from a trained applied behavior analysis ("ABA") aide, and supervision of the aide by a Board Certified Behavior Analyst. The services could be provided to Student in her home or school. This approval was based on a recent functional behavior assessment of Student.
- Student's physician wrote a note on a prescription form ordering Student to receive ABA therapy at school from the insurance funded ABA aide. Parent provided the ABA prescription from Student's doctor and the functional behavior assessment it was based upon to the District. Parent then asked that an IEP meeting be held to discuss the prescription and Parent's request that Student's insurance funded ABA aide be permitted to accompany Student at school to provide her with ABA services.

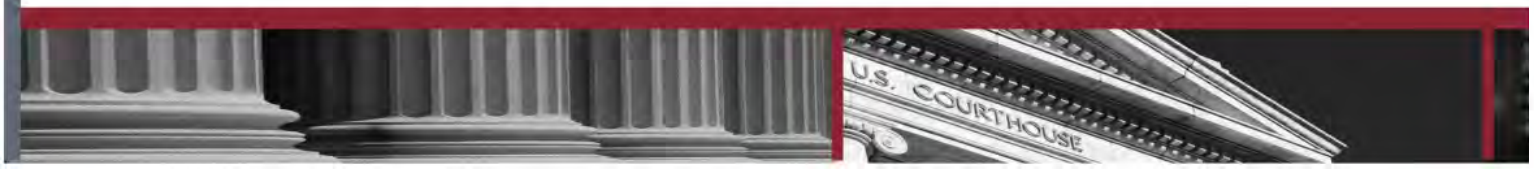


GIRARD EDWARDS STEVENS & TUCKER LLP

Privately-Funded 1:1 Aide

Student v. Tehachapi Unified School District (OAH Case No. 2016110289), 117 LRP 17194 (April 24, 2017)

- Before the IEP meeting was held, District's Director of Programs conferred with other District administrators and determined the District would not honor the ABA prescription and would refuse to allow Student's ABA aide to accompany Student at school. At the IEP meeting, District's administrative representative told Parent that the District would not honor the prescription or allow the ABA aide on campus with Student.
- As a result, Parent kept Student home from school so she could receive the weekly 40 hours of insurance funded ABA therapy.

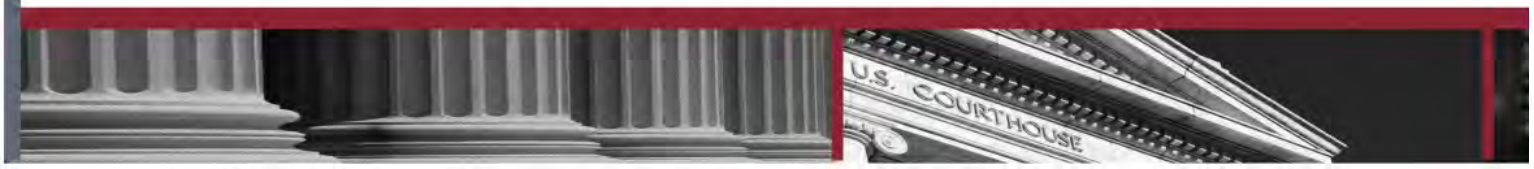


GIRARD EDWARDS STEVENS & TUCKER LLP

Privately-Funded 1:1 Aide

Student v. Tehachapi Unified School District (OAH Case No. 2016110289), 117 LRP 17194 (April 24, 2017)

- **DISCUSSION**: Hearing officer determined that the District had significantly interfered with the Parent's right to participate in the IEP process by rejecting her request without an open and earnest discussion by the entire IEP team at a meeting.
- It would have been appropriate for the District IEP team members to do research about the ABA prescription and form opinions about Parent's request before the IEP meeting. However, it was improper for the District to decide to reject the request before the IEP meeting.

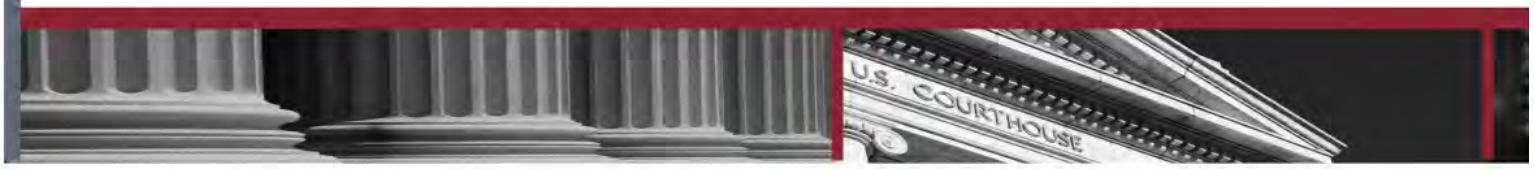


GIRARD EDWARDS STEVENS & TUCKER LLP

Privately-Funded 1:1 Aide

Student v. Tehachapi Unified School District (OAH Case No. 2016110289), 117 LRP 17194 (April 24, 2017)

- LEAs have seen an increase in requests from parents to allow an insurance-funded ABA aide accompany their child at school.
- Senate Bill 946 in 2011 required health insurance plans to provide coverage for behavioral health treatment for pervasive developmental disorder or autism. (Health & Safety Code § 1374.73 (a).)
- Allowing an outside provider who is neither an employee nor a contractor of an LEA requires careful consideration of multiple variables including, but not limited to,
  - Does the student require the service in order to receive FAPE at no cost to the parent?
  - An LEA's right to select an appropriate IEP service provider
  - Prevention of disruption of the learning environment
  - Potential liability if the individual is injured while on campus.

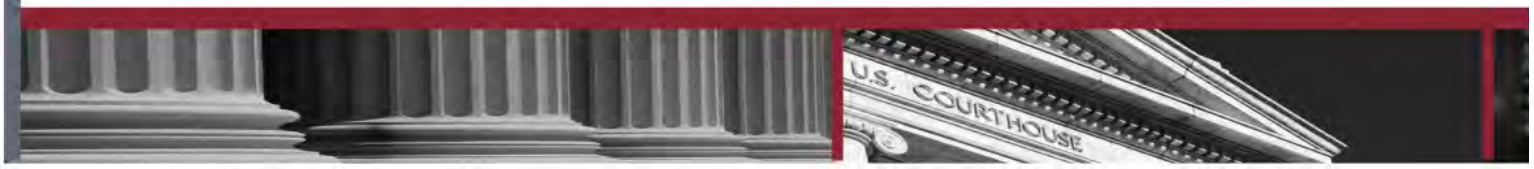


GIRARD EDWARDS STEVENS & TUCKER LLP

Privately-Funded 1:1 Aide

Student v. Tehachapi Unified School District (OAH Case No. 2016110289), 117 LRP 17194 (April 24, 2017)

- In order to ensure a parent's right to participate in the development of their child's IEP, these variables **must be considered within the context of an IEP meeting**.
- Whenever an LEA receives a "prescription" from a student's physician ordering a child to receive a particular service, an LEA should attempt to obtain additional information from the physician by requesting parental permission to confer with the physician and/or to make arrangements for the physician to speak to the IEP team.

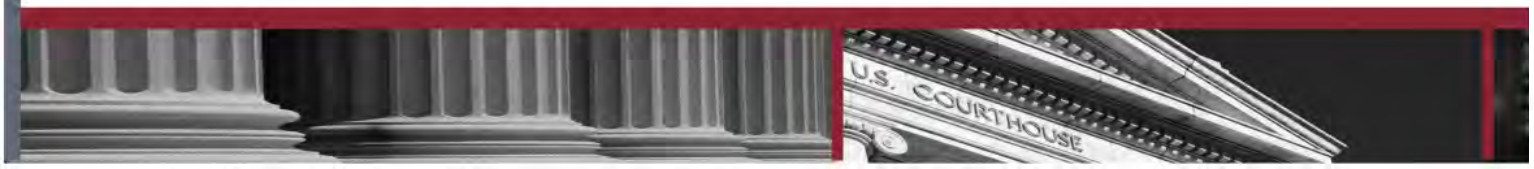


GIRARD EDWARDS STEVENS & TUCKER LLP

Destruction of Special Education Records

Letter to Zacchini, 69 IDELR 188 (February 27, 2017).

- OSEP recently issued guidance clarifying when and how parents must be notified before records containing personally identifiable information ("PII") are destroyed under the Individuals with Disabilities Education Act ("IDEA").
- Federal regulations require local educational agencies ("LEAs") to (1) inform parents of children with disabilities when PII collected, maintained, or used under IDEA is no longer needed to provide educational services to the child; and (2) destroy PII at the request of the parent once it is no longer needed. 34 CFR §§ 300.624(a), (b).
- However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. 34 CFR § 300.624(b), *see also*, 5 C.C.R. § 430 et seq. [state regulations governing classification, retention, and destruction of pupil records].

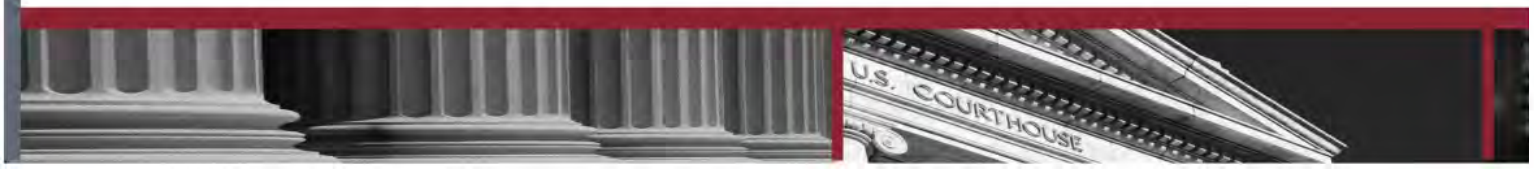


GIRARD EDWARDS STEVENS & TUCKER LLP

Destruction of Special Education Records

Letter to Zacchini, 69 IDELR 188 (February 27, 2017).

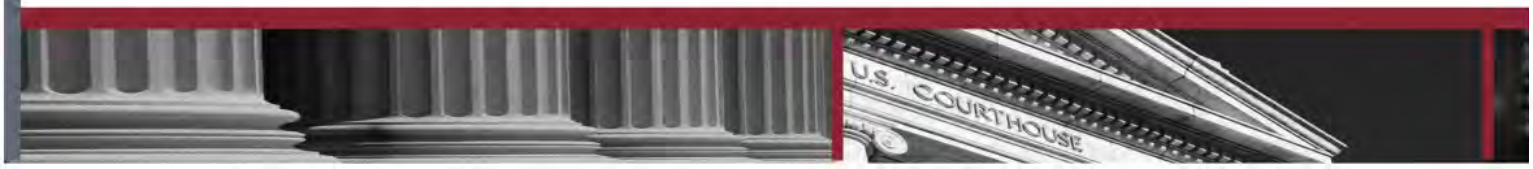
- Typically, LEAs provide the required notice to the parent and student when the student graduates (i.e., receives a regular high school diploma or ages out) or otherwise leaves the LEA.
- OSEP has clarified that an LEA is not required to also provide this notice to parents when it actually destroys a student's special education records that are no longer needed or deletes them from its database. Rather, it is sufficient if the LEA informs parents that the records are unnecessary at the time that the LEA makes that determination.
- OSEP explained that LEAs should also remind parents that they may require the records, such as an IEP, for other purposes, including college or employment accommodations, public benefits, or insurance. As a result, parents may want to exercise their right to access those records and request copies of the records that they will need to acquire post-school benefits in the future before they are destroyed.



GIRARD EDWARDS STEVENS & TUCKER LLP

Enjoy Your Summer!

- Be sure to sign up for our free, weekly legal alert.
  - http://girardedwards.com/legal-alert-recipient-sign-up/
- As a valued Partner of the El Dorado County Charter SELPA, our firm offers a **20% discount** on legal services, subject to renewal on an annual basis.



GIRARD
EDWARDS
STEVENS &
TUCKER LLP

THANK YOU!

Heather M. Edwards

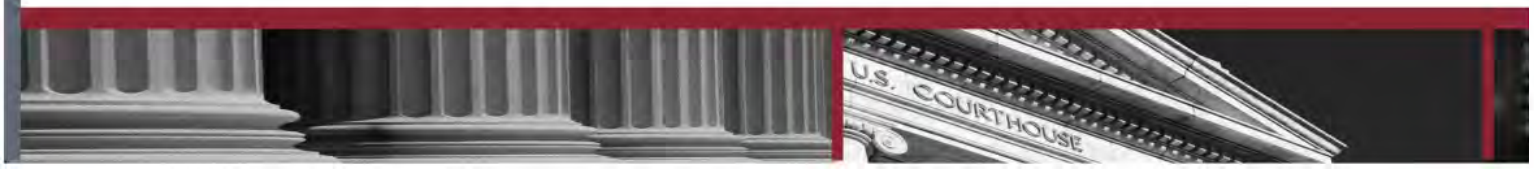
GIRARD, EDWARDS, STEVENS

& TUCKER LLP

Tel: (916) 706-1255

Fax: (916) 706-2672

edwards@girardedwards.com



GIRARD
EDWARDS
STEVENS &
TUCKER LLP