80 IDELR 267

122 LRP 13172

N.F., a minor, by and through his Guardian Ad Litem, Melanie FLYTE, Plaintiff-Appellant, v. ANTIOCH UNIFIED SCHOOL DISTRICT, a Local Educational Agency, Defendant-Appellee

U.S. Court of Appeals, Ninth Circuit

21-16260

April 15, 2022

Related Index Numbers

200.030 FAPE Generally

290.010 Obligation to Serve

Judge / Administrative Officer

EUGENE E. SILER

Judge / Administrative Officer

WILLIAM A. FLETCHER

Judge / Administrative Officer

MILAN D. SMITH JR.

On Appeal from the U.S. District Court, Northern District of California

UNPUBLISHED

AFFIRMING a decision at 79 IDELR 107

See decisions in related cases at 118 LRP 20886, 119 LRP 7793, 76 IDELR 40, 78 IDELR 257, 122 LRP 14916, and 122 LRP 15241

Ruling

Because an 11-year-old boy with autism, ADHD, and other disabilities was enrolled in a public charter school, the California district in which he resided had no obligation to develop an IEP. The 9th U.S. Circuit Court of Appeals affirmed a District Court ruling at 79 IDELR 107 that the charter school, and not the district, was responsible for providing the student FAPE.

Meaning

While districts must make FAPE available to parentally placed private school students with disabilities, that rule does not apply to students enrolled in charter schools that function as their own local educational agencies. Still, a district should be prepared to make FAPE available if a charter school student reenrolls in its schools. Not only did this district provide the parents with enrollment forms, but it repeatedly stated it was ready, willing, and able to develop an IEP upon the student's reenrollment. *Editor's note: Per court order, this decision had not been released for publication in official or permanent law reports.*

Case Summary

A California district did not violate the IDEA when it declined to develop an IEP for an 11-year-old boy with disabilities whose parents had enrolled him in a virtual charter school. Determining that the charter school was the student's LEA, the 9th Circuit upheld a District Court decision at 79 IDELR 107 that the district had no obligation to offer the student FAPE. The decision turned on the distinction between private schools and charter schools. The three-judge panel noted that the IDEA requires a district to develop an IEP for a parentally placed private school student with a disability when his parents ask about available special education services. However, the panel explained that the rule only applies to students enrolled by their parents in private schools. "[The IDEA] regulations [governing parentally placed private school students] have no application here because it is undisputed that [the student] was enrolled in a public charter school, not a private institution," the panel wrote in an unpublished decision. The panel also pointed out that the student's charter school functioned as its own LEA. The 9th Circuit held that the charter school, and not the district of residence, was the entity responsible for providing FAPE.

Full Text

APPEARANCES

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For ANTIOCH UNIFIED SCHOOL DISTRICT, A Local Educational Agency, Defendant - Appellee: Ioana R. Burson, Attorney, Leone Alberts & Duus, APC, Concord, CA; Brian A. Duus, Attorney.

Judges: Before: SILER,*** W. FLETCHER, and M. SMITH, Circuit Judges.

Opinion

Memorandum*

Plaintiff N.F.--a child whom we refer to using only his initials, and who brought suit through his guardian ad litem, Melanie Flyte--has asked us to reverse the district court's denial of his petition to overturn the decision of an administrative law judge, which in turn dismissed an administrative complaint filed by plaintiff pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, et seq. The parties' familiarity with the record is assumed. We affirm for substantially the same reasons given by the district court, which concluded that the public charter school in which N.F.'s parents unilaterally enrolled him was the local education agency (LEA) obligated to provide N.F. with a free appropriate public education (FAPE), and that N.F. failed to show that defendant Antioch Unified School District was required to formally offer him an FAPE before his parents enrolled him in the District.[1]

Like the district court, we reject N.F.'s argument that the term "parentally-placed private school children with disabilities" in 34 C.F.R. § 300.130 includes children unilaterally placed by their parents in public charter schools. To be sure, § 300.130 extends to "elementary school[s]," and that term includes "public elementary charter school[s]," 34 C.F.R. § 300.13. However, the definition in § 300.130 expressly only extends to "children with disabilities enrolled by their parents in private ... schools or facilities that meet the definition of [an] elementary school." 34 C.F.R. § 300.130 (emphasis omitted). So, too, for 34 C.F.R. § 300.131, which requires an LEA to "locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private ... elementary schools and secondary schools located in the school district served by the LEA." (Emphasis omitted.) See also 20 U.S.C. § 1412(a)(10)(A). These regulations have no application here because it is undisputed that N.F. was enrolled in a public charter school, not a private institution. *See, e.g., Today's Fresh Start, Inc. v. L.A. Cty. Off. of Educ.*, 57 Cal. 4th 197, 159 Cal. Rptr. 3d 358, 303 P.3d 1140, 1144 (Cal. 2013) (in California, charter schools are public schools).

The fact that N.F. was enrolled in a public school also distinguishes cases such as *Bellflower Unified School District v. Lua*, which held that "a school district must evaluate a child residing in its district for purposes of making an FAPE available to her, even if she is enrolled in a private school in another district." 832 F. App'x 493, 495-96 (9th Cir. 2020) (citing Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,540, 46,592 (Aug. 14, 2006)); see also 71 Fed. Reg. at 46,592 ("[34 C.F.R §] 300.131, consistent with section 612(a)(10)(A)(i) of the [IDEA], requires that the LEA where private elementary schools and secondary schools in which the child is enrolled are located ... is responsible for conducting child find" (emphasis omitted)). Although public charter schools in California are required to offer students an FAPE, see 34 C.F.R. § 300.209; Cal. Educ. Code §§ 47641, 47646, private institutions generally are not. We have required LEAs to formally offer an FAPE to parents who are considering paying for private special education for their children so that parents can determine whether they are eligible for reimbursement. *See Union School District v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994). That rationale does not extend to this case, where it is undisputed that N.F. is already receiving an FAPE from a different LEA, namely a public charter school.

AFFIRMED.

**The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

[***]The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

[*]This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[1]We need not decide whether the district court erred in denying N.F.'s motion to supplement the record, as N.F. has failed to explain how any of the additional evidence might alter the outcome of this case.

Statutes Cited

20 USC 1412(a)(10)(C)

Cases Cited

303 P.3d 1140 -- Followed

832 F. App'x 493 -- Distinguished

15 F.3d 1519 -- Followed

