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THE IDEA'S DISCIPLINARY REMOVAL PROTECTIONS DO NOT APPLY TO A STUDENT WHO IS EXCLUDED FROM SCHOOL BECAUSE OF HEAD LICE

In *Souderton Area School District v. Elisabeth S.* 820 A.2d 863 (2003), the Pennsylvania Commonwealth Court was asked to determine whether the disciplinary removal provisions of the IDEA and its accompanying regulations apply to a student's medical exclusion from school because of head lice. The Pennsylvania Commonwealth Court finally has enunciated what we have believed to be true all along, that the IDEA's disciplinary removal protections do not apply to an exclusion from school due to a medical condition.

The student in this case was eligible for services under the IDEA pursuant to a classification of mental retardation. She entered school in the district in January of 2002.

Between January 18, 2002 and March 19, 2002, she missed approximately nineteen days of school when she was sent home, was absent, or was kept in the nurse's office due to the presence of pediculosis capitis (head lice). The Pennsylvania Department of Health regulations require that a child afflicted with a head lice infestation be excluded from other children, with readmission to be determined by a school nurse upon reexamination. 28 Pa. Code §27.71.

The parents of the student requested a due process hearing and contended, among other things, that the district improperly denied the student entrance to school between January and March of 2002. The Hearing Officer refused to award compensatory education services to the student during the period of exclusion due to head lice, and the parents appealed the decision to the Special Education Appeals Panel.

The Appeals Panel held that the removal from school constituted a "removal" pursuant to 34 C.F.R. §§ 300.121(d) and 300.520(a)(1)(ii). (references to the regulations are from IDEA 1997; corresponding IDEA 2004 regulations are 34 C.F.R. §§ 300.530(d)(1) and 300.530(b)(2).) These sections discuss the provision of FAPE to students suspended and expelled from school. Generally, these provisions state that if a child with disabilities is removed from his or her current placement for more than ten days, the school district must provide services to the extent necessary for the child to appropriately progress in the general curriculum and appropriately advance toward achieving IEP goals. Based upon these provisions, the Appeals Panel ordered compensatory education services for any days missed in excess of ten days, and the district appealed the determination to the Commonwealth Court.

The Commonwealth Court held that nowhere in the provisions relied upon by the Appeals Panel is there any mention that the provisions apply to a child's absence or exclusion from school due to a medical condition. Rather, the provisions relied upon refer specifically to exclusions resulting from suspensions and expulsions, and this student was not suspended or expelled. Consequently, the Commonwealth Court concluded that the Appeals Panel erred in determining that compensatory education services were owed as a result of a medical exclusion from school.

The Commonwealth Court's decision is important because it distinguishes clear medical exclusions from disciplinary exclusions and clarifies that school districts are not obligated to provide FAPE during exclusions related solely to medical reasons and which are unrelated to the child's IDEA disability.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.