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DEFERENCE TO SCHOOL OFFICIALS READING METHODOLOGY UPHOLD IN THIRD CIRCUIT CASE

In a battle over the Wilson Reading Program versus Project Read, the Third Circuit in *Ridley School District v. M.R.*, 680 F.3d 260 (3d Cir. 2012) upheld the Eastern District of Pennsylvania's decision and sided with the school district in its offer of Project Read to a student with a Specific Learning Disability. The parents demanded that the school hire someone to provide Wilson to the student. When the district refused and instead offered Project Read, the parents enrolled the student in a private school and demanded tuition reimbursement. In rejecting the parents' contention, the Third Circuit stated that the district was not required to choose the reading program based on the optimal level of peer-reviewed research, or to implement the specific program requested by the parents.

In citing both *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 557 (3d Cir. 2010) and *Ridgewood Bd. of Educ.*, 172 F.3d 238, 247 (3d Cir. 1999), the Third Court makes clear that the courts must accord significant deference to the choices made by school officials as to what constitutes an appropriate program for each student. This includes not requiring school districts to provide the "optimal level of services" and not requiring a school to choose a program supported by the optimal level of peer-reviewed research. Project Read is a multi-sensory program that is based on Orton Gillingham principles that support learning disabled students that was research-based with findings published by the Florida Center for Reading Research.

The Third Circuit again makes clear that school districts do not have to choose the specific program request by Parents: "The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide h[er] with educational benefit." citing *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011). Especially important in this ever increasing fiscally tight climate, the Court recognizes that school districts must be able to take into account not only the needs of the disabled student, but also the financial and administrative resources that different program will require as well as the needs of the school's other non-disabled students.

The Court does not set forth a bright-line rule and all cases must be assessed on an individual basis. It is clear though that if it is practical for a school to implement a program based on peer-reviewed research, then it should implement that program. If it is not practical and a school relies on other available peer-reviewed research to craft an individualized IEP that is reasonably calculated to enable a student to achieve meaningful educational benefits in light of a student's intellectual potential and abilities, then a school is likely to be found to offer FAPE.

Because this is an area of high litigation which requires careful, individualized decisions by each school team, 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.