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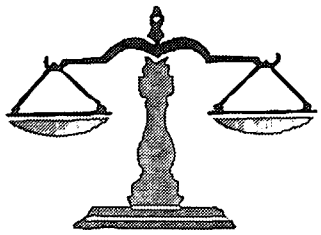

RECENT CASES

Courts Must Consider State Administrative Findings in Determining Educational Placement of Disabled Children

by Andrea L. Worrell

In ***Hartmann v. Loudoun County Board of Education*, 118 F.3d 996 (4th Cir. 1997)**, the United States Court of Appeals for the Fourth Circuit held that when determining what is proper educational policy for disabled children, a court may neither reject nor disregard findings developed from local school authorities and state administrative proceedings when those findings are supported by evidence and the law. In reversing the district court's decision, the court held that even though the mainstreaming provisions of the Individual With Disabilities Education Act ("IDEA"), 20 U.S.C. § 100 *et seq.*, provides that disabled children should be included in classes with non-disabled children, this requirement is not an inflexible mandate, and disabled children should be included in regular classes only to the extent that the child receives a benefit. When deciding whether a child receives a benefit from inclusion, courts "do not have authority to substitute their own notions of sound educational policy for those of local school authorities" and state administrators who are in a better position to observe a child's educational progress.

School District Attempted to Mainstream Autistic Child into Regular Classes

Joseph and Roxanna Hartmann filed suit on behalf of their autistic son Mark against the Loudoun County Board of Education ("Board"). The Hartmanns alleged that the Board failed to educate their son Mark according to the ("IDEA") "mainstreaming" guidelines, which called for educating disabled children with non-disabled children "to the maximum extent appropriate." 20 U.S.C. § 1412(5)(B).

Mark Hartmann is an autistic child. The Fourth Circuit described autism as a "developmental disorder characterized by significant deficiencies in communication skills, social interaction, and motor control." Mark originally entered elementary school in Illinois where he spent half of his time in a program for autistic children and the other half in a regular education classroom, assisted by a full-time aide. When Mark and his family moved to Loudoun County, Virginia, Mark entered second grade at Ashburn Elementary School but could neither write nor speak.

Loudoun County school officials placed Mark in a regular education classroom with a teacher specially trained in teaching autistic children. Mark also received assistance from a full time teacher's aide, who was specially trained to help him. In addition, Mark worked with a specialist and a special education teacher who provided him with one-on-one speech and language therapy. Mark's individualized education program ("IEP") team further included: Ashburn's principal, the Loudoun County Director of Special Education, special educational consultants, and consultants referred to the team by the Hartmanns, all of whom collectively monitored Mark's program and modified it according to his needs and abilities.

Despite the IEP team's best efforts, school officials found that Mark was not progressing academically and that the team was unsuccessful at managing Mark's behavioral problems. Mark had daily outbursts of disruptive behavior such as "loud screeching . . . hitting, pinching, kicking, biting and removing his clothing." Mark's teacher and aide spent time daily calming Mark down while redirecting the other students back to their studies. Because of Mark's poor academic performance and disruptive behavior, the team proposed to place Mark in a program specifically designed for autistic children at Leesburg Elementary School. Leesburg was a regular elementary school, and the autism program there was designed to facilitate interaction between disabled and non-disabled children.

The Hartmanns rejected the proposal to remove Mark from a regular classroom, claiming it

"failed to comply with the mainstreaming provision of the IDEA." In response, the Board initiated due process proceedings to obtain the approval necessary to remove Mark from the regular classroom. Subsequently, Mark started 3rd grade at Ashburn Elementary in a regular classroom.

The local hearing officer found in favor of the Board and called for enforcement of the proposal. Specifically, the hearing officer found that Mark made no academic progress in the regular classroom setting despite the county's "enthusiastic efforts," to accommodate him, and that Mark's behavior was overly disruptive to a class of non-disabled children. Agreeing with the hearing officer's findings and legal analysis, a state review officer later affirmed the local hearing officer's decision. This affirmation prompted the Hartmann's suit in federal court.

Meanwhile, Roxanna Hartmann moved with Mark to Montgomery County, Virginia, where she enrolled Mark in a regular classroom. As a preliminary matter, the court rejected Loudoun County's contention that the Hartmanns did not present a valid case or controversy because Mark was enrolled in a class acceptable to them. Since Mark and his mother would return to Loudoun County if Mark was permitted to re-enroll in a regular classroom, the court found the Hartmanns had standing to bring this suit.

States in Better Position To Assess Educational Policies

Reversing the hearing officer's decision, the district court found in favor of the Hartmanns. In reaching its decision, the district court dismissed the administrative findings and concluded that Mark had failed to progress academically in a regular classroom because "the Board simply did not take enough appropriate steps to try to include Mark in a regular class." Further, since IDEA contains a strong presumption for inclusion of disabled children in regular classrooms, disruptive behavior should not weigh significantly when considering educational placement.

On appeal, the Fourth Circuit reversed the district court, finding that the district court incorrectly based its decision on the court's own interpretation of Mark's Illinois and Montgomery County educational experiences instead of relying on the Loudoun County school official's testimony. The court noted that even though IDEA allows courts some latitude in determining the educational plans of a disabled child, courts cannot "substitute their own notions of sound

educational policy for those of the school authorities which they review." *Hartmann* quoting

Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The Fourth Circuit relied on *Board of Education* v. *Rowley*, 458 U.S. 176 (1982) to support its position that "federal courts cannot run local schools" and that "local schools deserve latitude" in determining which program best suits a disabled child.

In reaching this decision, the Fourth Circuit noted, "[a]bsent some statutory infraction, the task of education belongs to the educators who have been charged by society with that critical task . . . [and] federal courts must accord 'due weight' to state administrative proceedings." The Fourth Circuit asserted, therefore, that it was not the intention of IDEA to overrule an educator's judgment regarding educational policy, rather, it was to ensure that a handicapped child could receive some educational benefit through state provided special services. In this case, the district court "strayed" from established principles concerning the proper role of federal courts in determining educational policy. Specifically, the Fourth Circuit noted that "[a]dministrative findings in an IDEA case 'are entitled to be considered prima facie correct.'" *Hartmann* quoting *Doyle v. Arlington County Sch. Bd.*, 953 F.2d 100, 105 (4th Cir. 1991).

The Fourth Circuit also noted that the district court failed to consider *DeVries v. Fairfax County School Board*, 882 F.2d 876 (4th Cir. 1989). Under *DeVries*, "mainstreaming is not required where (1) the disabled child would not receive an educational benefit from mainstreaming into a regular class; (2) any marginal benefit from mainstreaming would be significantly outweighed by benefits which could feasibly be obtained only in a separate instructional setting; or (3) the disabled child is a disruptive force in a regular classroom setting." *DeVries* F.2d at 879.

Even though the district court did not mention *DeVries* in its opinion, the Fourth Circuit concluded that the record in this case revealed that the *DeVries* categories described Mark's situation and should have been considered by the district court.

The Fourth Circuit further noted that the district court's determination that Mark received

substantial educational benefit in the regular classroom was contrary to the administrative

findings that Mark made no academic progress in that setting. Therefore, the district court's decision to ignore the hearing officer's evaluation, the Fourth Circuit pointed out, went against the legal principle that state proceedings must command considerable deference in federal court.

While the Fourth Circuit recognized that the IDEA's mainstreaming provision established a presumption of inclusion, it found that presumption ultimately subordinate to the main goal that disabled children receive some educational benefit. Therefore, the findings of state proceedings must be considered to accurately assess what will confer the best educational benefit on the disabled child.

IDEA Does Not Guarantee Maximum Benefits to the Handicapped Child

In reaching its conclusion, the Fourth Circuit realized that IDEA requires disabled children to be educated along with non-handicapped children "to the maximum extent appropriate," but it does not require a county to provide "every special service necessary to maximize each handicapped child's potential." *Rowley*, 458 U.S. at 199. Similarly, the IDEA does not require that every special education provider possess "every conceivable credential relevant to evey child's disability." It would be economically unfeasible and equally unrealistic to expect every school system to have the highest accredited educators. Using this reasoning, the Fourth Circuit dismissed the dictrict court's conclusions that county efforts were insufficient to educate Mark in the regular classroom due to inadequately trained personnel. The Fourth Circuit deemed this theory inconsistent with the law and with the record. Premier credentials are not required under IDEA and the record revealed each of Mark's IEP team members' credentials were at least adequate.

In conclusion, the Fourth Circuit held that since the state educational facilities and not the court, are in the best position to assess educational policy, a court must give preference to state administrative findings in determinining the most appropriate educational program. These findings may include information which can override the IDEA's mainstreaming provision calling for the presumption for inclusion. In addition, the Fourth Circuit held that the IDEA mainstreaming provision does not require schools to provide a staff possessing the most optimum of credentials, or to provide the absolute most beneficial program for a "best case" scenario. In this case, the Board satisfied the mainstreaming directive of the IDEA by its enthusiastic steps to organize a qualified staff, and the Board's active attempts to tailor a program to fit Mark's needs.

CLR

Internet Service Providers Immune from Liability for Third Party Defamation

by Lynn Middendorf

The Communications Decency Act of 1996 ("CDA") protects computer service providers from liability for information that originates from third parties. In ***Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997)**, Kenneth Zeran brought a negligence claim against AOL for posting a false message from a third party. The Fourth Circuit, ruling that Section 230 immunizes computer service providers from liability for publishing information from third parties, reaffirmed a judgment on the pleadings.

On April 25, 1995, an unknown person placed an advertisement on an AOL bulletin board for "Naughty Oklahoma T-shirts". The message listed Kenneth Zeran's phone number for inquiries. These T-shirts alluded to the April 19, 1995 Oklahoma City bombing in a