

This is the third in a series of education law nuggets for parents and students



***Court: Special Needs Student Must Stay in Abusive Situation
to Seek Remedies for Consequences of Abuse***

Schools are required under federal law to provide special needs students with a “Free Appropriate Public Education” (FAPE). What FAPE means in the real world is the subject of endless meetings, department hearings, mediation sessions and lawsuits.

Still, the law provides parents with important remedies if they believe their school is not appropriately educating their special needs child. It authorizes parents to seek educational remedies from the school. These remedies include: ***reimbursement for related services*** (transportation, medical services, audiology services; counseling and the like); ***additional educational services***; and ***attorneys’ fees***.

Unfortunately, the federal court in Minnesota consistently denies parents not just a remedy, but the right to seek a remedy, when parents move their child from one school district to another -- what many would consider a reasonable measure of self-help. The court most recently confirmed its position in 2010 when it denied parents the right to seek a remedy for a special education student (C.N.) who attended Lincoln Elementary School in the Willmar School District.

The story of C.N:

- C.N. was diagnosed with language impairment and developmentally delayed speech. The student had an IEP which called for the use of restraint holds and seclusion when C.N. displayed “target” behaviors. An outside evaluator

recommended against the use of seclusion and C.N. consistently objected to the use of restraints and seclusion.

- While attending Lincoln School, C.N. worked with a special education teacher who used the controlled procedures authorized in the IEP, sometimes to an excessive degree. For example, the teacher made C.N. sit and hold a physical posture at a “thinking desk”, demeaned C.N., once pulled C.N.’s hair when she would not hold a posture at the thinking desk and once denied C.N. use of the restroom, causing an accident.
- A paraprofessional reported the education teacher’s maltreatment to the Minnesota Department of Education (MDE), the third such report made against the teacher. In earlier investigations, the District found no misconduct by the teacher. When investigating complaints involving C.N., the district confirmed that the teacher had denied C.N. access to the restroom, but attributed the incident to bad judgment and issued no disciplinary consequences.
- Despite the district’s denial of the teacher’s wrongdoing, MDE investigators concluded that the teacher violated a number of C.N.’s rights as a disabled child and mistreated her by denying her access to the restroom. The district nonetheless allowed the teacher to return to school. When C.N. asked the Superintendent to notify her when and if the teacher would return to her school, the Superintendent said the school had no obligation to provide this information to C.N.
- C.N.’s mother then withdrew C.N. from Lincoln School and enrolled her at St. John’s, a private school in Atwater. The following fall, C.N.’s mother filed a complaint with MDE challenging the adequacy of educational services provided by the Willmar School District.
- The Federal District Court said C.N. could not pursue an action against the Willmar District, because she hadn’t filed a claim before transferring to a school outside the District.

In other words, the Willmar School District will not be required to pay for the services needed to help correct the educational deficiencies created, in large part, by the handling of her instruction in Willmar.

The lesson?

Until this law changes, parents who try without success to get a school to meet its educational responsibilities must – before leaving the district -- officially notify officials of their intent to correct the instructional mess created by the old district at the old district’s expense.