

Batchis Nestle & Reimann LLC

The Special Education Law Group

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2017-18 School Year in Review

Dear Friends,

As we begin the new school year, we are reflecting on the last and the many terrific outcomes.

We always strive to work collaboratively with school districts to obtain appropriate programming and placement. And, in those few instances where matters cannot be resolved, we obtain the assistance of hearing officers and federal judges. We continue to be highly successful at due process and in federal court.

Each victory is significant and potentially life-changing for our clients. We appreciate our clients' steadfast advocacy for their children and look forward to another successful year.

Here are some reported decisions:

Berardelli v. Allied Services Institute of Rehabilitation Medicine, No. 17-1469 (3d Cir. August 14, 2018). We won this appeal in the United States Court of Appeals for the Third Circuit. We sued on behalf of Parents and Student, who was denied use of her service dog, Buddy, in a school covered by the Rehabilitation Act (RA). After the federal district court refused to instruct the jury on regulations promulgated under the American with Disabilities Act (ADA), the jury decided against our clients.

We appealed. The Public Interest Law Center filed an amicus curie, "friend of the court," brief in support of the appeal. The Third Circuit reversed and ordered a new trial. In a matter of first impression—no other federal court of appeals had decided the issue—the Third Circuit concluded that a request to a school covered by the RA for a student to be accompanied by a service animal is "*per se* reasonable in the ordinary course." Slip op. at 4.

Buddy, the service dog was trained to detect and respond to seizures. The school refused to permit Buddy to accompany the student to school claiming first that he would be "too much of a distraction," and later that another child was allergic to him, despite that parents of the other child supported Buddy accompanying our client to school and had arranged for allergy treatments. Because Buddy was excluded, our client missed substantial time from school and eventually Parents withdrew her and sent her to public school, accompanied by Buddy.

The Third Circuit reviewed the legislative and regulatory histories of the RA and ADA and explained and held:

“The upshot of our analysis—including the statutory histories, case law, and DOJ and other agency guidance—is that, under the RA, just as under the ADA, a covered actor ordinarily must accommodate the use of service animals by individuals with disabilities. As a result, although as a general matter the ‘reasonableness’ of an accommodation under the RA ‘must be decided on a case-by-case basis’ ... the accommodation of a disabled person’s request to be accompanied by her service animal—absent exceptional circumstances—is per se reasonable And if necessity is then also established, so is liability.” *Id.* at 32 (citations omitted).

We will try the case again in federal district court.

SS v. Coatesville Area School District, 20136-17-18 (July 3, 2018). On July 3, 2018, a hearing officer found for our clients in a case seeking tuition reimbursement for Parents’ unilateral placement out of the district together with related services and transportation, the cost of an independent education evaluation (IEE) and compensatory education.

The Hearing Officer awarded 2.25 hours day for the second semester of the 2016-17 school year and the first semester of the 2017-18 school year through the date Parents withdrew student and placed student in a private school.

The Hearing Officer also ordered the District to reimburse Parents for tuition, related services and transportation for the private school. She concluded that “the private neuropsychologist provided compelling testimony on the reasons for a specialized placement that could meet Student’s needs (especially slow pacing, weak listening comprehension and verbal expression skills, fine motor and visual deficits, and nonverbal learning disability characteristics, described above in connection with her INE) where the District could not.” She further found that the private school, a college preparatory school that serves students with learning differences, was appropriate.

The Hearing Officer relied heavily on the opinions of the neuropsychologist and ordered the District to reimburse Parents for the cost of the IEE.

Student continues to attend Parent selected school for the 2018-2019 school year.

Montgomery County Intermediate Unit No. 23 v. C.M. et al., 17-1523 (E.D. Pa. October 12, 2017). The United States District Court for the Eastern District of Pennsylvania affirmed the Hearing Officer’s award of 5 hours of compensatory education per day for the Intermediate Unit’s denial of FAPE and ordered the parties to confer to agree on the total calculation of the award and the manner in which the compensatory education would be provided. The matter was subsequently resolved.

C.M., et al. v. Montgomery County Intermediate Unit, 17-1583 (March 26, 2018). The United States District Court for the Eastern District of Pennsylvania held that “Plaintiffs here obtained an ‘excellent’ result of five hours a day of compensatory education for C.M. for the period of January 5, 2015 through November 19, 2015, which resulted in an agreement to 820 hours total.” The Court awarded Parents all their attorney fees and costs as prevailing party under the IDEA and Section 504 of the Rehabilitation Act. The Court concluded that the affidavits of [Judith] Gran and [Dennis] Suplee establish that the hourly rates sought by plaintiffs are reasonable and within the range of prevailing rates charged by Philadelphia attorneys with similar skills and experience. In fact, Gran opines that the rate sought by Reimann is “extremely modest for an attorney of her 28 years of experience” and that the rates of Nestle and Batchis are “too low.” The Court also concluded that the total hours billed was reasonable.

In re: V.G. In response to our complaint, the Pennsylvania Department of Education, Bureau of Special Education, found in our favor that, under Pennsylvania law, vision support services must be provided on site at a student’s nonpublic school.

We are happy to discuss these matters with you, as well as your child’s special education needs.

With best regards,

