



MICHAEL P. v. DEPARTMENT OF EDUCATION



Introduction



In *Michael P. v. Department of Education* the general issue examined is whether a state that is also its own district (i.e., Hawaii) can determine learning disability status solely by examining whether a significant discrepancy exists between ability and achievement. From 2003 to 2007 Courtney G. attended public school in Hawaii. Assessments consistently indicated that her reading fluency and comprehension were below grade level. She was evaluated for special education eligibility under the specific learning disability (SLD) category but never qualified as assessments did not show a severe discrepancy between her ability (low-average IQ) and her reading achievement (low average to below average). Courtney's mother and grandfather (Michael P.) requested that Courtney's eligibility for special education under the SLD category be determined using the Response to Intervention (RTI) approach, which Hawaii DOE refused. An RTI approach identifies SLD on the basis of a child's lack of response to effective, research-based instruction. Beginning in 2007, Courtney began receiving intensive tutoring in reading outside of school paid for by her family, and she subsequently made significant progress in reading performance. The family unilaterally enrolled Courtney in a private school for children with dyslexia in 2008 for Courtney to receive specialized instruction.

The IDEA of 2004 forbids states from requiring that school districts use only a severe discrepancy approach for determining the presence of a SLD. States must permit school districts to also use an RTI approach. School districts have the choice to use a discrepancy approach, an RTI approach, or both to identify SLD.

Lower Court Decision(s)



In 2007 Courtney's mother and grandfather requested a due process requesting that Courtney be determined to have a learning disability and reimbursement for tutoring, independent evaluations, and compensatory education. The Hearing Officer concluded that, "Hawaii DOE properly determined that Courtney was ineligible for special education" (p. 17037). The Hearing Officer agreed with independent evaluations that Courtney had dyslexia, but determined that Courtney did not need, and was therefore not eligible for, special education under SLD because no severe discrepancy existed between her ability and achievement. The district court upheld the Hearing Officer's ruling, indicating that IDEA 2004 allowed school districts to use a severe discrepancy approach to identify SLD.

Appeal Issue

Courtney's mother and grandfather appealed the ruling of the district court, contending that as a state Hawaii must permit the use of an RTI approach for identifying SLD under IDEA 2004.

Ruling and Scope

The 9th Circuit Court ruled for the plaintiff, reversing the rulings of the lower courts, by deciding that the state of Hawaii cannot rely solely on a severe discrepancy approach to identify SLD. However, rather than render judgment as to whether Courtney has a SLD and whether the family should be reimbursed for their expenses, the Circuit Court remanded these decisions to the district court. The Circuit Court did note that if the district court found that Courtney has a SLD using an RTI approach and Courtney's current placement in a private school was found to be appropriate, then the family could be awarded reimbursement.

 The 9th Circuit Court has jurisdiction over Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.  The court's ruling applies to state educational agencies (not districts) not being able to deny the use of an RTI approach for identifying SLD (not other disabilities).

Rationale

The majority opinion of the Circuit Court was based on seven points. First, although IDEA 2004 regulations (which took effect in 2006) permit the use of severe discrepancy approaches for identifying SLD, they also clearly indicate that states must permit the use of an RTI by districts if they so choose. Second, Hawaii regulations did not reflect the use of an RTI approach for identifying SLD until 2009, fully three years after it was required by IDEA regulations. Third, Hawaii is a unique situation because it functions as both the state agency and school district. The crux of the issue is, then, whether Hawaii as a state must permit the use of an RTI approach, or Hawaii as a district can decide which approach it will use for identifying SLD. Fourth, Hawaii cannot shirk its responsibilities as a state agency and require the use of only a discrepancy approach. The state's failure to allow an RTI approach for identifying a SLD constitutes a procedural violation of IDEA. Fifth, a procedural violation is harmless if it did not result in a child being deprived of educational opportunity. Sixth, Hawaii's revised regulations justifiably allow for an RTI approach when identifying SLD. The Circuit Court remanded the decision of whether Courtney has a SLD using the revised regulations to the district court. And finally, if Courtney is found to have a SLD, the Hawaii DOE would have deprived her of educational opportunity by not identifying her for special education and the family is entitled to reimbursement if the current placement is appropriate.

Dissenting Opinion(s)

Judge Clifton wrote the dissenting opinion, which is based on two main points. First, Clifton believes that Hawaii DOE's reliance on a discrepancy approach for identifying SLD does not violate IDEA. He believes this because he sees Hawaii DOE primarily as a school district rather than a state agency. IDEA 2004 states that local education agencies (i.e., districts) *may* use an RTI approach, but also *may* use a discrepancy approach. As such, Clifton believes that Hawaii DOE was within its rights to deny Courtney eligibility for special education under SLD based solely on a discrepancy approach. Second, using the discrepancy approach, which he believes Hawaii DOE was justified in doing, the Hearing Officer ruled correctly that Courtney did not have a SLD.

Implications

Unlike many Circuit Court cases, this ruling applies primarily to a single state – Hawaii. The crux of the issue at hand is whether Hawaii DOE is a state or local (i.e., district) educational agency. Hawaii is the only state in the country that has a single district for the entire state. Therefore the ruling's implications are limited to Hawaii. The ruling's implications are further limited because in 2009 Hawaii state regulations permitted the use of an RTI approach for identifying SLD. Thus, the ruling only has implications for students in Hawaii who were denied eligibility for special education under the SLD category from 2006 (when IDEA 2004 regulations took effect) and 2009 (when Hawaii state regulations were revised to accord with IDEA 2004 regulations). Such students may have been denied educational opportunities and families may be entitled to reimbursement for services they paid for to provide their children an appropriate education.