

Student's Poor Motivation May Be Fatal To An IDEA Claim Premised On A School District's Procedural Violation



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School districts have an additional defense in their arsenal when faced with an alleged procedural violation of the IDEA: the student's own poor motivation.

The United States Fourth Circuit Court of Appeals, whose decisions are binding in North Carolina, recently ruled in favor of a school district despite a procedural violation of the Individuals with Disabilities in Education Act ("IDEA"). The July 2018 decision [*T.B. v. Prince George's County Board of Education*](#) emphasized that school districts will not be held liable for procedural violations of the IDEA when the student's academic shortcomings stem from the student's refusal to attend school or complete his assignments. The key takeaway is that school districts in North Carolina, South Carolina, Virginia, West Virginia, and Maryland now have an additional defense in their arsenal when faced with an alleged procedural violation of the IDEA: the student's own poor motivation.

In this case, the parent of a student with emotional disabilities filed a due process complaint against a Maryland school district alleging a denial of a free and appropriate public education ("FAPE") when the school district failed to respond to repeated requests by the parents to conduct an evaluation of whether the student was eligible for special education and related services. The parent requested reimbursement for an independent educational evaluation ("IEE") performed at the parent's expense and compensatory education.

In middle and high school, the student's grades declined from the As and Bs the student earned in elementary school to ultimately failing tenth grade. The student's declining grades reflected his declining attendance and disruptive nature in class. Nonetheless, when the student did attend class and complete assignments, the student performed adequately.

STUDENT'S POOR MOTIVATION MAY BE FATAL TO AN IDEA CLAIM PREMISED ON A SCHOOL DISTRICT'S PROCEDURAL VIOLATION

Starting in 2012, the student's parent repeatedly requested that the student be evaluated for special education and related services. Instead of complying with the IDEA, the school district failed to evaluate. The parents, then, retained an outside organization to conduct an IEE and gave the results to the school district. The school district still declined to evaluate the student.

Following an administrative due process hearing, the Administrative Law Judge ("ALJ") found that the school district's failure to evaluate was an "inexcusable" procedural violation of the IDEA. Nonetheless, the ALJ found that the school did not fail to provide the student a FAPE. Therefore, the student could not recover under the IDEA for the procedural violation. In making its determination, the ALJ considered the student's poor attendance; that the student failed to take advantage of the academic services he sought when offered to him; that the student's grades were widely variable, even within single courses; and that the student earned decent grades when he applied himself. Because the student would not have attended school even if he had been tested, the school district's procedural violation did not actually interfere with the provision of a FAPE. Instead, it was the student's own decisions that prevented the provision of a FAPE. Procedural violations may not serve as the basis for recovery unless the procedural violation resulted in a loss of FAPE. Accordingly, the ALJ granted summary judgment for the school district.

The parent appealed the ALJ's decision. On appeal, the district court granted the parent's request for reimbursement of the IEE but otherwise affirmed the ALJ's decision. The Fourth Circuit Court of Appeals affirmed the district court.

Causation, the Court emphasized, is an important element of an IDEA claim. Historically, courts have found procedural violations are harmless when the student otherwise received a FAPE. The Fourth Circuit's decision in *T.B.* expands what courts find to be "harmless" procedural violations to include some instances in which the student did not otherwise receive a FAPE. In this case, the student's own decisions prevented him from receiving a FAPE, which would have been the case regardless of the school district's compliance with the IDEA.

School systems have obligations under the IDEA, and [the school district] in this case defaulted in failing to promptly evaluate [the student]. On the other hand, the IDEA is focused precisely and humanely on ensuring that students with disabilities are not left behind by their schools. In this case, as the ALJ found, the record is devoid of any credible evidence that an unaddressed disability caused [the student's] educational difficulties and replete with credible evidence that [the student] himself was the cause.

Every child possesses a gift within, something unique that he or she can contribute to society. Many times special education is needed to nurture that gift. But there are times too when students need to assist educators in developing their own inner capabilities. Poor motivation and poor performance do not always and invariably lie at the feet of teachers and schools. Students themselves also have to try.

T.B. Jr. by and through T.B. Sr. v. Prince George County Board of Education 897 F.3d 566, 578 (2018) (emphasis added). Therefore, because it was not the school district's procedural violations but the student's own actions that prevented the student from receiving a FAPE, the student could not recover under the IDEA.