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**COURT RULES IN FAVOR OF ELIGIBILITY FOR
SPECIAL EDUCATION DESPITE PASSING GRADES ©**

On May 15, 2019, the Fifth Circuit Court of Appeals ruled in favor of parents of a child with disabilities, determining that the child met eligibility criteria for special education and should have been found eligible by his school district. Although the child in question earned all A's and B's in his classes, the Court found that he was still entitled to special education, stating "while grades are a consideration in determining whether special education services are necessary, they may not be the exclusive one." Other factors considered in determining that the child was eligible for special education included failure of benchmark tests, struggles with attention to task due to avoidance behaviors, and difficulty producing written work. The Court stated firmly that the fact that the child benefited from Section 504 accommodations did not change the analysis regarding special education eligibility.

The Court made it clear that when reviewing eligibility determinations, the only relevant information to consider is what was available to the IEP team at the time the decision was made. Later evidence of academic or functional success in school cannot be taken into account. The Court also provided clarification regarding the assessment of whether special education and related services are *needed* for a child. The Court held that determining whether special education is needed does not include considering whether special education could maximize a student's potential.

The Court rejected the school district's argument that the child did not need special education because the parents had not defined specifically what it would consist of for their child. The Court rightly held that it is not a parent's responsibility to determine what special education would look like, stating "a party urging

eligibility need not unilaterally identify what the IEP will entail.” This is a strong point to use in response to a school district that pushes back on a parent’s request for eligibility by demanding that the parent tell the school district what services and supports the child should receive.

This result is a big win for parents of children with disabilities who may be struggling with their school districts regarding whether their children should be found eligible for special education under the Individuals with Disabilities Education Act. While this case is not binding on disputes that arise in Illinois (which is in the Seventh federal judicial circuit, not the Fifth where this case was decided), it can still be used to help build a case for special education eligibility and persuade a judge or a due process hearing officer.

If you are struggling with your child’s school district on whether he or she should be eligible for special education and you’d like to discuss whether we can assist you in making an argument in favor of eligibility, please contact our office to set up a consultation.

If you’d like to read the Fifth Circuit’s opinion for yourself, you can find it at this link:

https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2019_docs/lmdecision2019.pdf