

COURT RULES ON SPECIAL EDUCATION SERVICES FOR CHILDREN WITH DYSLEXIA IN HAWAII PUBLIC SCHOOLS

The 9th Circuit Court of Appeals just released a very important decision, *Michael P., et al v. Department of Education, State of Hawai'i* (Case No. 09-16078), defining the educational rights of children with dyslexia in Hawai'i.

In that case, the Department of Education (DOE) had determined that Courtney, a child with dyslexia, does not have a "specific learning disability" and, therefore, is not eligible for special education services. The DOE had evaluated Courtney using the "Severe Discrepancy Model" under which a child can be found to have a specific learning disability if her assessment and test scores show a severe discrepancy between her actual achievement and intellectual ability. The DOE said Courtney's test results did not show a severe discrepancy because her scores on standardized achievement tests were higher than her IQ score.

Courtney and her guardians argued the DOE had violated the applicable federal law, Individuals with Disabilities Education Act (IDEA), by relying solely on the Severe Discrepancy Model. They said IDEA regulations require the DOE to use of the "Response to Intervention Model" under which a child can be found to have a specific learning disability if she makes insufficient progress after implementation of interventions that are matched to her academic, social-emotional, and behavioral needs, and her progress is frequently monitored to make decisions about changes in instruction or goals.

The 9th Circuit Court agreed with Courtney. It held that IDEA specifically prohibits use of the Severe Discrepancy Model as the sole basis for determining whether a child has a specific learning disability, and went further to say the Response to Intervention Model is the preferred methodology. It also held that the DOE is required to comply with IDEA and its regulations, and noted that the DOE had, by the time of the 9th Circuit decision, amended its regulations so it no longer relies solely on the Severe Discrepancy Model. The Court remanded (sent back) the case to the lower court to determine whether Courtney is eligible for special education services based on the Response to Intervention Model, and if she is eligible, whether she should be reimbursed for expenses of private multisensory structured language tutoring and tuition to Assets School which she incurred while wrongfully denied special education services.

This case touches the hearts of many HIDA members and volunteers, but it also hits a nerve. It is estimated that 20% of the population has dyslexia or another reading disability. This 20% of Hawai'i's children cannot properly be addressed by special education programs, and they obviously cannot all go to Assets School. Furthermore, 43% of Hawai'i's 4th graders read below basic reading level. This signifies there has to be a fundamental change in how reading is taught in the general education classrooms. Schools must employ best practices in teaching reading to all children. This will reduce the number of children with reading disabilities who will require special education services, and will improve the reading skills of children, in general, in Hawai'i.

To that end, the 2010 Hawai'i Legislature adopted Senate Concurrent Resolution 110 (SCR 110) establishing a Working Group to create a comprehensive plan to teach reading to children with dyslexia and other reading disabilities. The Working Group, consisting of representatives from the DOE, University of Hawai'i, Hawai'i Government Employees Association, Special Education Advisory Council, Teacher Education Coordinating Committee, Learning Disabilities Association of Hawai'i, Dyslexia Tutoring Center of Hawai'i, Inc., Hawai'i Association of Independent Schools, and HIDA, as dictated in SCR 110, has been meeting monthly to develop the comprehensive plan for presentation to the Senate and House Education Committees.

The 9th Circuit Court opinion can be found at <http://www.ca9.uscourts.gov/datastore/opinions/2011/09/08/09-16078.pdf>