



YOUNG, MINNEY & CORR, LLP

LEGAL ALERT

California Supreme Court Denies Petition Seeking In-Person Instruction and Assessments for Special Needs Students in LAUSD

January 22, 2021

In *Alliance for Children’s Rights v. Los Angeles Unified School District* (Case S266055), the California Supreme Court denied a petition filed by the Alliance for Children’s Rights and the Learning Rights Law Center seeking to force the Los Angeles Unified School District (“LAUSD”) to resume in-person instruction and services, particularly as they relate to students with special needs. The petitioners sought the resumption of in-person instruction, assessments, and Individualized Educational Program (“IEP”) services, and the use of non-public schools and agencies in cases where LAUSD was unable or unwilling to provide such education, assessments, and services.

The petitioners claimed that in March 2020, in response to Governor Newsom’s COVID-19 stay-at-home orders, LAUSD closed district schools and transitioned all students to distance learning through the end of the school year. Although the Los Angeles County Department of Public Health issued guidelines in September 2020 permitting in-person education through small-cohorts of no more than 12 students, in October 2020, the district began limited services in groups of only three students and restricted IEP assessments to online assessments or voluntary, in-person, one-to-one assessments. After new regional stay-at-home orders issued in December to respond to a surge in COVID-19 cases, LAUSD closed its campuses to all students and announced all special education instruction and assessments would shift to online. Further, LAUSD instituted a policy that only the portions of an Independent Educational Evaluation (“IEE”) that could be performed remotely would be allowed, IEE reports would not be accepted until in-person observation at the school was completed, and no virtual assessments would be accepted.

Following the December stay-at-home orders, the Alliance for Children’s Rights and the Learning Rights Law Center filed a petition to the California Supreme Court arguing that LAUSD’s restrictions were unnecessary and were continuing to

cause irreparable harm to students most in need of in-person learning, including students who could not receive IEP assessments and services, English learners, and those who are unable to learn online. The petitioners argued that Senate Bill 98, emergency legislation enacted in June 2020 in response to COVID-19, aimed to ensure that K-12 education would continue during the pandemic. In particular, they argued that the bill required schools to offer classroom-based instruction “whenever possible, particularly for pupils who have experienced significant learning loss due to school closures.” Further, the petitioners noted that Los Angeles County public health guidelines allowed for in-person education for students who are most in need of in-person teaching and provided for their safety by limiting the size of cohorts and requiring all safety protocols be in place. The petitioners argued that by restricting all in-person instruction and services when public health guidelines allowed for them, LAUSD was breaching its statutory duty to provide classroom-based education to the greatest extent possible.

The California Supreme Court ordered briefing in response to the petition and later asked the parties to address how the “State Safe Schools for All” plan announced by Governor Newsom on December 30, 2020, impacted the issues raised in the petition. After all of the briefing, the Court denied the petition without an order on January 20, 2021, thereby allowing LAUSD to continue its current online instruction policies during the pandemic. Plaintiffs may decide to file this action in state trial court; YMC will continue to follow and report on this matter.

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