FAPE & Dyslexia: The Eighth Circuit Speaks

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On July 29, 2022, the Eighth Circuit Court of Appeals reversed the decision of a Minnesota hearing officer and the Minnesota federal district court in a case involving FAPE and a diagnosis of dyslexia. The Court held that the Minnetonka Public Schools had provided a student with dyslexia with a free appropriate public education (FAPE).[1] MASE, along with MASA and MSBA,[2] submitted an amicus brief to the Court offering the state-wide perspective of the impact of this case on Minnesota schools.[3] The decision can be found here.

The Facts. The student qualified for special education under the Autism Spectrum Disorder designation while in kindergarten.[4] The initial evaluation and the first IEP identified both significant attention and reading deficits although it did not label those needs as "ADHD" and "dyslexia." In response to those needs, the District provided the student with research-based reading methods beginning with small group instruction. By third grade, the student was receiving 60 minutes per day, four days per week of small group reading. Progress reports observed that the student "had come a long way" despite struggling with very significant attention issues. Shortly after the progress report, the IEP team met and placed the student in a group of two students with a Wilson Reading System (WRS) certified paraprofessional for reading support.[5] The student made progress in attention and in reading, but he was not reading at grade level. A due process hearing was held in December of 2020 just before the student began fourth grade.

The Hearing Decision and District Court Appeal. The hearing officer found that the failure to label the student's needs as ADHD and dyslexia meant that the District failed to assess all areas of disability. The district court agreed finding that the District failed to "identify the most debilitating disabilities – dyslexia and ADHD."[6] Finding that the District had failed to provide a FAPE as a result, the district court upheld the hearing officer's order of compensatory education that included providing the student with WRS instruction every weekday, including during the summer, until the student completed the

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[1] *Minnetonka Pub. Sch., Indep. Sch. Dist. No. 276 v. M.L.K. ex rel. S.K.,* 42 F.4th 847 (8th Cir. 2022).
[2] MASE – Minnesota Administrators for Special Education, MASA – Minnesota Association of School Administrators and MSBA – Minnesota School Boards Association filed an amicus brief authored by Attorneys Roseann T. Schreifels and Eric J. Magnuson. The School District and its attorneys at RRM are especially grateful for the support of these three organizations.
[3] An *amicus curiae* (Latin for "Friend of the Court") brief is submitted by interested parties to assist the court in its decision. In this case, the amicus provided critical information about the impact of this decision on Minnesota schools at large.
[4] *M.L.K.,* 42 F.4th at 849.
[5] *Id.* at 853.
[6] *Id*.

WRS program.[7] The District appealed the district court's decision to the United States Court of Appeals for the Eighth Circuit.

The Eighth Circuit Speaks. The Eighth Circuit reversed the district court. It held that the IDEA does not require a specific diagnosis or classification of disability as long as the school identifies the student's individual needs.[8] The Court concluded that the District met its IDEA[9] evaluation obligations by identifying and evaluating the student's special education needs, including significant reading and attention needs, even though the District did not use the terms "dyslexia" and "ADHD."

The Court held that while a student's IEP must be "reasonably calculated" to allow the student to make appropriate progress "in light of [their] circumstances," the IDEA does not require a school to "maximize a student's potential or provide the best possible education at public expense."[10] The Court concluded that the IEPs were reasonably calculated to allow the student to make appropriate progress in light of the student's individual circumstances. Specifically, the Court held that the District set and continuously updated "achievable, measurable goals," tried new reading curricula, and continuously increased special education services including small group and one-on-one instruction.[11] In this case, despite the fact that the student was not reading at grade level, the Court found that the student had made progress. It held that the law does not "require specific results" but instead "looks for improvement, not mastery."[12]

Finally, once the Court determined that the District had provided the student with a FAPE, the District was not required to provide the parents' requested method of instruction. The District considered and then initially denied the parents' request for instruction using WRS. The school advised that the student was not a good candidate for WRS instruction at the time because he "lacked the attentional stamina" the longer lessons required.[13] The Court noted that the District did provide WRS instruction for the student in the next school year. Finding that the student had made progress in attending to instruction and in reading as well as in all other goal areas, the Court held that the District fulfilled its obligations under the IDEA.[14]

Laura Tubbs Booth, Christian R. Shafer, and Adam J. Frudden of Ratwik, Roszak & Maloney represented the District.

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[7] Hearing Officer's Order 20-004H (4/29/20).
[8] *M.L.K.,* 42 F.4th at 852.
[9] Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1401 *et seq*.
[10] *M.L.K.,*42 F.4th at 853.
[11] *Id*.
[12] *Id.*
[13] *Id*. at 854.
[14] Parents have petitioned the Court for rehearing *en banc* (before the 11 judge panel). Rehearing *en banc* is rarely granted. *See* Fed. R. App. P. 35.