

School Law Update

FEBRUARY 5, 2019

Seventh Circuit Upholds Wisconsin's Open

On January 22, 2019, the Seventh Circuit Court of Appeals ruled that Wisconsin's Open Enrollment law does not violate the Americans with Disabilities Act or Section 504 of the Rehabilitation Act ("federal discrimination law"). In *P.F. v. Carolyn Stanford Taylor*, three students with disabilities were denied open enrollment on the basis that the nonresident districts did not have the capacity to provide the services required by the students' individualized education programs ("IEPs"). The students, by their parents, filed suit against the State Superintendent of Public Instruction, the Wisconsin Department of Public Instruction, and the three school districts that rejected their applications, claiming that the open enrollment program discriminated on the basis of disability in violation of federal discrimination law and arguing that the defendants were liable for their role in administering it. The lower court determined the program did not violate the law and ruled in favor of the defendants.

The Court of Appeals affirmed. In doing so, the court reiterated that federal discrimination law forbids discrimination based on stereotypes about a disability, but does not forbid decisions based on actual attributes of a disability. Under the open enrollment law, a district must consider the needs of an open enrollment applicant in light of the district's capacity and resources. For students with disabilities, this requires a district to consider the services required by the student's IEP. The district may deny open enrollment if it does not have the capacity to meet the student's needs. The court found this process is consistent with federal disability law. Under the law, to be a "qualified individual with a disability," a student must meet the "essential eligibility requirements." If a district lacks capacity to meet the needs of a student with a disability, the court concluded that the student does not meet the program's essential requirements. Further, the court held that requiring a district to modify the program's requirements for the student would require the district to fundamentally alter the open enrollment program, an action not required by law.

WHAT TO DO

The open enrollment application period opened on February 4, 2019, and districts may continue to apply the law as in previous years. However, even if a district determined at the January meeting that it did not have space in its special education programs, it should review the application of each student with a disability to determine whether it has a program to meet the student's needs. While

the law still allows a district to deny an application from a student with a disability, it must first make an individual determination for each student that it lacks space in special education or a program required by the student's IEP.

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