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Parents' wilderness placement doesn't support child's gender identity

Case name: Nazareth Area Sch. Dist., 123 LRP 10107 (SEA PA 01/23/23).

Ruling: An independent hearing officer found that the parents' unilateral therapeutic boarding school placement of a grade schooler with an other health impairment was inappropriate and wouldn't support the child's gender identity. The IHO determined that the Pennsylvania district's proposed placement was appropriate and offered the child FAPE under the IDEA, Section 504, and state law. Further, she found that the district met its child find obligations. Accordingly, she denied the parents' request for compensatory education and tuition reimbursement.

What it means: A placement that doesn't support a child's gender identity may discriminate and be inappropriate. This district showed that, because a child was questioning their gender identity, the parents' unilateral placement at a single-sex boarding school was inappropriate to meet the child's needs and was too restrictive. It avoided reimbursing tuition by showing that its own proposed placement was appropriate. It offered the child access to like peers, therapy, inclusion with nondisabled peers, and the support of staff welltrained in LGBTQ+ issues, and accepted students as they identified.

Summary: The parents' unilateral placement of their grade schooler with OHI who was questioning their gender identity was inappropriate. The parents unilaterally placed the child at an out-of-state, single-sex, therapeutic boarding school in a wilderness setting. The district recommended placement in a full-time therapeutic emotional support program. The parents filed for due process. If parents disagree with a district's proposed placement, they may unilaterally place their child and seek tuition reimbursement if they can show that the district didn't offer FAPE and their placement is appropriate under the IDEA, the IHO explained.

Although the child was questioning their gender identity, the parents sent the child to a single-sex wilderness school that was 11 hours away without first visiting it, the IHO noted. That school didn't implement an IEP or 504 plan, it didn't permit students to use chosen names and pronouns, and staff didn't have training in gender dysphoria, she observed. The school documented gender dysphoria, and its academic plan included "accommodations" titled "gender identity disorder of childhood." The IHO expressed concern about "a placement that considers gender identity a 'disorder.'" She observed that the district's placement accepted students as they identify, whereas all students are considered to be the same sex and gender at the wilderness school. The district's placement provided therapy, social skills instruction, grade level instruction, access to like peers, and opportunities for inclusion with nondisabled peers in the least restrictive environment, the IHO pointed out. And, it had staff well trained in LGBTQ+ issues, she noted. The parents' more restrictive placement provided a limited program and didn't properly support the child's gender identity, she found. It would encumber federal funds to support a placement that discriminates against the child based on gender identity in violation of Title IX, the IHO added. The IHO concluded that the district's proposed placement was appropriate. ■



Partner Christina M. Stephanos of Sweet, Stevens, Katz & Williams represented the school district