THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND DEPARTMENT OF DEFENSE EDUCATIONAL PROGRAMS : DDESS CASE NO. 97-001 (MARCH 24, 1998)

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I. Introduction

The passage in 1975 of the Education for All Handicapped Children Act[3] (EAHCA) marked the beginning of special education as a rapidly growing and evolving area of the law. The EAHCA established a comprehensive system to provide a free appropriate public education to students with disabilities through individualized programs in the least restrictive educational environment. The EAHCA also mandated procedural rights provisions for parents of children with disabilities. These rights include: the right to written notice of the initiation or change or the refusal to initiate or change the identification, evaluation, or placement of their child; the right to examine their child's records; and the opportunity to ask for an impartial due process hearing to challenge the appropriateness of the educational program offered by the public school. In 1990, Congress amended the language of the EAHCA and renamed it the Individuals with Disabilities Education Act (IDEA).[4]

The provisions of Parts B and C of the IDEA are applicable to all schools the Department of Defense (DOD) operates[5]–including the requirement that children with disabilities be provided with a "free appropriate public education" (FAPE).[6] When due process hearings are requested under the IDEA, the DOD's regulations that implement the

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3. Pub. L. 94-142, 89 Stat. 773 (1975).

4. Pub. L. 101-476, sec. 901, 104 Stat. 1103, 1142 (1990); 20 U.S.C. §§ 1400-1487 (1994).

5. The DDESS serve approximately 35,000 students located in seven states, Puerto Rico, Guantanamo Bay, and Panama. The DODDS serve approximately 48,000 students in Europe and 24,000 students in Asia. The DOD is also responsible under IDEA for providing early intervention services to infants and toddlers with disabilities and their families.

IDEA provide that the Defense Office of Hearings and Appeals (DOHA) counsel shall normally appear and represent the DOD dependent schools (DODDS) and Defense Domestic Elementary and Secondary Schools (DDESS) when the proceeding involves a child aged three to twenty-one.[7] In proceedings that involve an infant or child under age three, the military department responsible for delivering early intervention services may provide its own counsel or request counsel from DOHA.[8]

Civilian attorneys and judge advocates who represent the DOD's educational programs must be well informed of the case law that interprets the DOD's obligations to provide special education to children with disabilities. Special education litigation is on the rise across the nation. In the past two decades since the passage of the EAHCA, the number of special education lawsuits against public school systems has increased six-fold.[9] This dramatic increase is evident in the number of published court decisions on special education in the public schools: 104 cases in the 1970s, 547 cases in the 1980s, and 623 cases between 1990 and October 1997.[10] Because the number of published cases does not include unreported decisions and disputes resolved through administrative proceedings, settlement, or mediation, the true volume of conflicts is conceivably greater.

The number of requests for due process hearings within the DOD mirrors this nationwide trend. Before 1997, litigation involving the provision of special education and related services to children in DOD programs was rare. Between 1978 and 1996, parents of students enrolled in DOD educational programs filed only seven due process hearing requests. Since 1997, however, a dramatic change has occurred. Between 1997 and 1998,

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6. 20 U.S.C. § 927(c). With the exception of the funding and reporting requirements set forth in that section, the provisions of Part B and Part C of the IDEA apply to all educational programs the DOD operates. Part B of the IDEA sets out the state formula grant program that requires each state receiving federal financial assistance under the IDEA to develop a state plan to ensure provision of a FAPE to all disabled children residing within the state, aged 3 through 21, and contains a series of procedural safeguards designed to protect the interests of children with disabilities. *See* 20 U.S.C. §§ 1411-1419. Part C of the IDEA, known prior to the 1997 Amendments to the IDEA as Part H, is a discretionary program that authorizes federal formula grants to states for development and implementation of statewide systems to provide early intervention services for infants and toddlers with disabilities, under 3 years of age. *See* 20 U.S.C. §§ 1431-1445.

7. 32 C.F.R. pt. 57, app. F, § C.3 (1998); 32 C.F.R. pt. 80, app. C, § B.3.

8. Id.

9. Perry Zirkel, *Tipping the Scales*, The American School Board Journal, at 36-37 October 1997.

10. *Id.*

DOHA received five due process hearing requests–a number nearly equal to the number of requests made in the preceding eighteen-year period.

Because of these due process hearing requests, the DOHA Appeal Board announced important first impression rulings that will affect all future special education litigation in the DOD and all DOD programs that provide educational services to children. This case comment examines the factual background of the DOHA Appeal Board decision, its legal underpinnings, and its likely effect on the future operation of DOD educational programs.

This case originated as a request for a due process hearing under the IDEA.[11] Parents of a child attending a DOD operated school made the request. In accordance with the applicable regulations, the hearing occurred before an administrative judge of the DOHA who issued a decision favorable to the parents. The DDESS appealed to the DOHA Appeal Board.

II. Factual Background

Parents of a five-year-old child with autism, who is eligible for education and related services provided by the DDESS, made a due process hearing request.[12] The child attended DDESS preschool programs in which he received special education and related services from September 1994 to May 1996. Without notice to the DDESS, the parents unilaterally began providing the child in-home Lovaas therapy in August 1996.[13] The child was present in the DDESS school briefly in late August and early September 1996 and was absent thereafter.[14] After making two unsuccessful attempts to get the child's parents to return the child to the school, the DDESS school administratively withdrew the child from its programs in October 1996.[15]

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11. 20 U.S.C. §§ 1400-1487.

12. DOHA Appeal Board Decision, DDESS Case No. 97-001 (March 24, 1998) at 2. DOHA decisions are available on the DOHA internet web site located at <http://www.defenselink.mil/DODgc/doha>.

13. *Id.* The Lovaas therapy was based on a program of behavioral therapy for autistic children developed by Dr. O. Ivar Lovaas of the University of California, Los Angeles.

14. DOHA Appeal Board Decision, DDESS Case No. 97-001 (March 24, 1998) at 2.

15. *Id.*

In November 1996, the child's parents contacted the DDESS and requested that it assume responsibility for providing the Lovaas program at home. They also requested an Individualized Education Program[16] (IEP) meeting. Beginning in January 1997, the case study committee[17] (CSC) met several times with the child's parents to draft new IEP goals and objectives, and to consider placement issues.[18]

In April 1997, the parents rejected a CSC proposed an IEP for the child proposed by the CSC because it did not provide the child with a year-round program of Lovaas therapy. After a failed attempt at mediation, the child's mother petitioned for a due process hearing in May 1997. A DOHA administrative judge held a hearing in September and October of 1997.[19] In December 1997, the judge issued a decision concluding that the DDESS denied the child a FAPE, and that a complete program of Lovaas therapy would provide the child with a FAPE.[20] He also granted the parent's request for reimbursement of some, but not all, of their expenses, and directed the DDESS to pay for continued Lovaas therapy through the end of July 1999.[21] The DDESS appealed the judge's decision.[22]

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16. The IEP is a written statement for each child with a disability. It is developed during a meeting of school administrators, teachers, other service providers, and the parents. The IEP includes, but is not limited to, a description of the child's current performance, the child's annual goals and short-term instructional objectives, the specific educational services needed, and the objective criteria and evaluation procedures to determine whether the objectives are being achieved. *See* Mark C. Weber, *Special Education Law and Litigation Treatise* 7 (LRP Publications 1997); *see also* 20 U.S.C. § 1401(a)(11); 32 C.F.R. pt. 80, app. B, § C.1 (1998). Special educational services include both special education defined as "specially designed instruction . . . to meet the unique needs of a child with disabilities," and related services, defined as "such developmental, corrective, and other supportive services . . . as may be required to assist a child with disabilities to benefit from special education." *Id.*

17. A CSC is "[a] school-based committee that determines a child's eligibility for special education, develops and reviews a child's [IEP], and determines appropriate placement in the least restrictive environment." 32 C.F.R. § 80.3(e). "A CSC is uniquely composed for each student." *Id.*

18. DOHA Appeal Board Decision, DDESS Case No. 97-001 (March 24, 1998) at 2.

19. *Id.*

20. *Id.* at 3.

21. *Id.*

22. *Id.*

III. Decision on Appeal

In a unanimous decision, the three-judge DOHA Appeal Board reversed the decision of the administrative judge with respect to most of the DDESS raised issues. In doing so, the appeal board made first impression rulings that relate to the applicability of the IDEA to DOD operated schools.

A. Preliminary Matters

As a preliminary matter, the appeal board noted that neither the IDEA nor its implementing regulations specifically state who bears the burden of proof in special education hearings.[23] The board adopted the consensus view that "the party alleging a denial of FAPE or challenging the adequacy of an IEP bears the burden of proof"[24] and that failure to meet that burden would result in the denial of relief.[25] Before this ruling, which party has the burden of proof in DOD special education cases was unclear. In this case, the DDESS had presented its case first at the hearing.

The appeal board adopted the general principle that, on appeal, there is no presumption of error and "the appealing party bears the burden of raising claims of error and demonstrating that such errors were committed."[26] The board made this ruling in the absence of specific guidance from either the statute or implementing regulations. The appeal board adopted a de novo standard of review on appeal because the issue of whether the school had provided a FAPE for an eligible student was a mixed question of law and fact. By adopting this standard, the appeal board followed the established case law trend.[27] The appeal board stated that it would apply this same standard of review to an administrative judge's interpretations of statutory authorities and DOD regulations.[28]

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23. *Id.* at 4.

24. *Id. See generally* Salley v. St. Tammany Parish School Bd., 57 F.3d 458, 467 (5th Cir. 1995); Amann v. Stow School Sys., 982 F.2d 644, 650 (1st Cir. 1992); A.E. v. Independent School Dist., 936 F.2d 472, 475 (10th Cir. 1991); Cordrey v. Euckert, 917 F.2d 1460, 1469 (6th Cir. 1990), *cert. denied*, 499 U.S. 938 (1991).

25. *See generally* Cypress-Fairbanks Independent School Dist. v. Michael F., 118 F.3d 245, 248 (5th Cir. 1997); Dreher v. Amphitheater Unified School Dist., 22 F.3d 228, 234 (9th Cir. 1994); Doe v. Board of Educ. of Tullahoma City Schools, 9 F.3d 455, 460-61 (6th Cir. 1993), *cert. denied*, 114 S. Ct. 2104 (1994); Hampton School Dist. v. Dobrowolski, 976 F.2d 48, 52 (1st Cir. 1992); Hudson v. Wilson, 828 F.2d 1059, 1063 (4th Cir. 1987).

26. DOHA Appeal Board Decision, DDESS Case No. 97-001 (March 24, 1998) at 5-6.

Lastly, the appeal board decided as a preliminary matter that the 1997 Amendments to IDEA "[did] not have retroactive application to matters that occurred before their effective date."[29]

B. Issues Raised By the DDESS

On appeal, the DDESS argued that the administrative judge erred when he concluded the following: (1) state law was applicable to the case, (2) the child had been denied a FAPE, and (3) the child was entitled to reimbursement and other relief.[30] The appeal board agreed with DDESS with respect to the core aspects of these issues.

1. State Law Inapplicable to Department of Defense Schools

Cognizant of the constitutional underpinnings of the doctrine of federal immunity, the appeal board noted that "absent a clear, unequivocal federal statutory requirement to the contrary, the federal government is not required to comply with state law requirements."[31] The board's ruling carefully examined the statutes that the administrative judge cited. Based on their examination, the board concluded that none of the statutes in question "set[] forth a clear, unequivocal statutory requirement that DDESS must comply with state law."[32]

The appeal board's ruling that federal law alone binds the DDESS schools is significant in two respects. First, it alleviates the necessity that

27. *Id.* at 5. DODDS Case No. 97-E-001 (December 2, 1997) at 4 (citing federal cases); Soe v. Board of Educ. of Oak Park & River Forest High School Dist., 115 F.3d 1273, 1276 (7th Cir. 1997); JSK v. Hendry County School Bd., 941 F.2d 1563, 1571 (11th Cir. 1991).

28. DDESS Case No. 97-001 (March 24, 1998) at 5. DODDs Case No 97-E-001 (December 2, 1997) at 4; Carlisle Area School Dist. v. Scott P., 62 F.3d 520, 532 (3d Cir. 1995).

29. DDESS Case No. 97-001 (March 24, 1998) at 5. Fowler v. Unified School Dist. No. 259, 128 F.3d 1431, 1434-36 (10th Cir, 1997); K.R. v. Anderson Community School Corp., 125 F.3d 1017, 1019 (7th Cir. 1997); Cypress-Fairbanks Indep. School Dist. v. Michael F., 118 F.3d 245, 247 n.1 (5th Cir. 1997).

30. DDESS Case No. 97-001 (March 24, 1998) at 3.

31. *Id.* at 6. Hancock v. Train, 426 U.S. 167, 179 (1976); EPA v. California ex rel. State Water Resources Control Bd., 426 U.S. 200, 211 (1976).

32. DDESS Case No. 97-001 (March 24, 1998) at 6. The administrative judge cited the following statutes: Section 6 of Pub. L. 81-874, Section 23 of Pub. L. 102-119, and 10 U.S.C. § 2164(f).

the DDESS design and maintain multiple programs to meet procedural requirements that may vary from state to state. Second, it allows the DDESS to avoid some of the legal problems that can occur when state laws enacted to implement the IDEA impose substantive standards exceeding the requirements of federal law.

2. Receipt of a Free Appropriate Public Education

The appeal board examined a number of distinct issues when they determined that the administrative judge erred in concluding that the DDESS denied the child a FAPE. The appeal board dealt with most of those issues expeditiously on procedural grounds. The board concluded that the administrative judge's finding that DDESS had not provided the child with a FAPE during the 1994-1995 and 1995-1996 school years served no legally useful purpose because the parents did not seek relief with respect to the alleged denials.[33] Because the DDESS did not challenge it, the appeal board left undisturbed the administrative judge's finding that the child's May 1996 IEP was inadequate.[34] The administrative judge's finding that DDESS failed to evaluate the child promptly for deficits that might require occupational therapy was deemed "legally irrelevant" by the appeal board as a result of its findings with respect to other aspects of the case.[35] Lastly, the appeal board found that DDESS' objection to the administrative judge's finding that Lovaas therapy at home was a proper placement for the child had, for practical purposes, been rendered moot by the board's ultimate conclusion that the child had been offered a FAPE.[36]

The appeal board's key finding, underlying its ultimate conclusion that the DDESS had proposed a FAPE, was that it determined that the administrative judge erred in finding that the child's 21 April 1997 IEP was inadequate.[37] In reaching this conclusion, the board applied the standards set forth by the United States Supreme Court in *Board of Education of Hendrick Hudson Central School District v. Rowley*.[38] Under *Rowley*, an IEP is considered appropriate if: (1) it is developed in accordance with procedural requirements of the IDEA, and (2) it is reasonably calculated to confer some educational benefit.[39]

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33. DDESS Case No. 97-001 (March 24, 1998) at 8.

34. *Id.* at 8-9; *see* DDESS Case No. 97-001 at 2 (re-addressing this issue and resolving it in favor of the petitioner).

When the appeal board evaluated the facts, they found that the administrative judge's findings and conclusions with respect to the adequacy of the 21 April 1997 IEP could not be sustained because they were based on several significant legal errors.[40] Specifically, the board found that the administrative judge had failed to give appropriate deference to the educational professionals who developed the IEP and were responsible for providing a FAPE.[41] As the Fourth Circuit noted in *Spielberg v. Henrico County Public Schools*, "[t]he primary responsibility for developing IEPs belongs to the state and local agencies in cooperation with the parents, not the courts."[42] In the instant case, both parties agreed that the goals and objectives set forth in the IEP were appropriate.[43] The instructional method to be used to reach these goals and objectives was at issue.[44] The appeal board concluded that it was the CSC members, by virtue of their judgment and experience, who were in the best position to evaluate the dif-

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35. *Id.* at 9-10. As part of their findings with respect to this issue, the appeal board acknowledged the important role that procedural safeguards play in the implementation of the IDEA noting that "[a] school's failure to comply with applicable procedural requirements may be sufficient to support a finding that a child was denied a FAPE." Buser v. Corpus Christi Indep. School, 51 F.3d 490, 493 (5th Cir. 1995), *reh'g denied*, 56 F.3d 1387 (1995), *cert. denied*, 116 S. Ct. 305 (1995); Tice v. Botetourt County School Bd., 908 F.2d 1200, 1206-07 (4th Cir. 1990); Hudson v. Wilson, 828 F.2d 1059, 1063 (4th Cir. 1987). They also noted, however, that "the federal courts have declined to hold every procedural defect requires a finding that a child was denied a FAPE." Doe v. Defendant I, 898 F.2d 1186, 1190 (6th Cir. 1990); Urban v, Jefferson County School Dist., 89 F.3d 720, 726 (10th Cir. 1996). Each court must make a case-by-case determination as to the extent to which the procedural defect "compromised or interfered with the child's right to FAPE, seriously hampered the parent's opportunity to participate in the decision-making process concerning their child's education, or caused a deprivation or loss of educational benefits." Heather S. v. Wisconsin, 125 F.3d 1045, 1059 (7th Cir. 1997); Gadsby v. Grasmick, 109 F.3d 940, 956 (4th Cir. 1997); Independent School Dist. v. South Dakota, 88 F.3d 556, 562 (8th Cir. 1996); Tennessee Dep't of Mental Health & Retardation v. Paul B., 88 F.3d 1466, 1474 (6th Cir. 1996); Murphy v. Timberlane Regional School Dist., 22 F.3d 1186, 1196 (1st Cir. 1994), *cert. denied*, 115 S. Ct. 484 (1994); W.G. v. Board of Trustees of Target Range School Dist., 960 F.2d 1479, 1484 (9th Cir. 1992). In light of the foregoing, the appeal board concluded that the administrative judge had "erred by using an impermissible per se rule in connection with evaluating whether a procedural violation constitutes a denial of a FAPE." DDESS Case No. 97-001 (March 24, 1998), at 9-10.

36. DDESS Case No. 97-001 (March 24, 1998) at 13-14.

37. *Id.* at 10-13.

38. 458 U.S. 176 (1982).

39. *Id.* at 206-07.

40. DDESS Case No. 97-001 (March 24, 1998) at 12-13.

41. *Id.* at 12.

42. 853 F.2d 256, 258 (4th Cir. 1988), *cert. denied*, 489 U.S. 1016 (1989).

43. DDESS Case No. 97-001 (March 24, 1998) at 12 n.10.

ferent educational methodologies available and to select a pedagogical approach, which was appropriate for the child in question.[45]

In finding that the choice of educational methodology is a matter of discretion left to the expertise of the CSC, the appeal board again followed the consensus approach. The board joined with other jurisdictions in ruling that an administrative judge may not impose his own notions of what educational methodology was desirable.[46] The board also noted that the parents' preference for a specific program or for the use of a specific methodology does not bind either the CSC or administrative judges.[47]

The appeal board also found that the administrative judge erred in finding that the IEP in question was inadequate because it did not provide the child with the maximum or optimum educational benefit.[48] The board made clear that the DOD schools must adhere to the procedural and substantive requirements of federal law, as set forth by the United States Supreme Court in *Rowley*.[49] Courts have interpreted the second prong of the *Rowley* standard to require that while an IEP must be calculated to confer more than a trivial or meaningless benefit, it does not have to provide the child with the best possible education to constitute a FAPE.[50]

The appeal board's ruling is significant because it underscores the notion that the adequacy of an IEP is measured by the extent to which it is reasonably calculated to provide an educational benefit, not the extent to which it compares with an alternate methodology or placement. That a different methodology or placement may confer more or better educational

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44. The appeal board framed the issue as follows: "the heart of the dispute over the April 21, 1997 IEP was the insistence of the parents that DDESS provide complete Lovaas therapy for the Child and the decision of the CSC that complete Lovaas therapy was not required for the Child." *Id.* at 12.

45. *Id.*

46. *Id. See* Fort Zumwalt School Dist. v. Clynes, 119 F.3d 607, 614 (8th Cir. 1997); Hartmann v. Loudoun County Bd. of Educ., 118 F.3d 996, 1001 (4th Cir. 1997); Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1121 (2d Cir. 1997); Union School Dist. v. Smith, 15 F.3d 1519, 1524 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 428 (1994); Lenn v. Portland School Comm., 998 F.2d 1083, 1091 n.8 (1st Cir. 1993); Todd D. v. Andrews, 933 F.2d 1576, 1581 (11th Cir. 1991); Tice v. Botetourt County School Bd., 908 F.2d 1200, 1207 (4th Cir. 1990).

47. DDESS Case No. 97-001 (March 24, 1998) at 12. Lachman v. Illinois State Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988).

48. DDESS Case No. 97-001 (March 24, 1998) at 13.

49. *Id.* at 12-13.

benefits upon the child does not mean that the existing IEP was inadequate or failed to provide a FAPE.[51]

3. Reimbursement and Other Relief

With respect to reimbursement and other relief awarded, the appeal board affirmed the administrative judge's decision in part and reversed it in part–largely in a way that was consistent with its resolution of the substantive issues of the case. The board's key finding in this part of the case related to the circumstances that parents were entitled to reimbursement for expenses relating to the unilateral placement of their child in the home-based Lovaas program. At the outset, the board noted that "parents who unilaterally change their child's placement without the consent of school officials do so at their own risk."[52] Further, the board noted that parents are entitled to reimbursement only when both "the public placement violated the IDEA and [] the private placement was proper under the Act."[53] The board also noted that many federal courts have held "that parents have the obligation to place a school on reasonable notice that they challenge the adequacy of an IEP or placement before they can expect to be reimbursed for unilaterally placing the child elsewhere."[54] The board viewed this approach as consistent with the emphasis that the IDEA places on cooperation between parents and schools.[55] In light of the foregoing, the board concluded that the parents were only entitled to reimbursement for costs incurred during the period between their 18 November 1996 letter inform-

50. The *Rowley* Court specifically rejected the proposition that the IDEA required a maximization of educational benefit standard. The Court concluded that the language of the IDEA, combined with its legislative history, showed that "Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful." *Rowley*, 458 U.S. at 192. Heather S. v. State of Wisconsin, 125 F.3d 1045, 1057 (7th Cir. 1997); Lenn v. Portland School Comm., 998 F.2d 1083, 1086 (1st Cir. 1993); County of San Diego v. California Special Educ. Hearing Office, 93 F.3d 1458, 1467 (9th Cir. 1996); Carlisle Area School v. Scott P., 62 F.3d 520, 534 (3d Cir. 1995), *cert. denied*, 116 S. Ct. 1419 (1996); Hall v. Vance County Bd. of Educ., 774 F.2d 629, 636 (4th Cir. 1985).

51. DDESS Case No. 97-001 (March 24, 1998) at 11-12. Angevine v. Smith, 959 F.2d 292, 296 (D.C. Cir. 1992); Roland M. v. Concord School Comm., 910 F.2d 983, 993 (1st Cir. 1990), *cert. denied*, 499 U.S. 912 (1991); Hessler v. State Bd. of Educ. of Md., 700 F.2d 134, 139 (4th Cir. 1983).

52. DDESS Case No. 97-001 (March 24, 1998) at 14. School Comm. of Town of Burlington v. Department of Educ. of Mass., 471 U.S. 359, 373-74 (1985).

53. DDESS Case No. 97-001 (March 24, 1998) at 14. Florence County School Dist. Four v. Carter, 510 U.S. 7, 15 (1993).

ing DDESS that they were dissatisfied with their child's education and the DDESS proposal on 21 April 1997 of a new IEP.[56]

The appeal board's other finding of note with respect to reimbursement was that it determined that the administrative judge had erred when he ordered specific relief and reimbursement for prospective costs beyond the 1997-1998 school years.[57] The board noted that even where a party demonstrates that a denial of a FAPE warrants relief, applicable statutes and regulations limit an administrative judge's authority to fashion the relief.[58] The board concluded that the regulatory scheme of the IDEA requires that the educational experts of the CSC should develop and implement the details of an IEP. This process allows the CSC to exercise its authority and responsibility to periodically develop and review the child's IEP.[59] The board found that the administrative judge's ordered relief was contrary to established precedence.[60] The judge's decision provided not only specific directions for personnel and the use of funds, but also extended beyond the terms of the effective IEP and constituted the impermissible micro management of DDESS.[61]

IV. Conclusion

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54. DDESS Case No. 97-001 (March 24, 1998) at 16. *See* Bernardsville Bd. of Educ. v. J.H., 42 F.3d 149, 159-60 (3d Cir. 1994); Ash v. Lake Oswego School Dist., 980 F.2d 585, 589 (9th Cir. 1992); Evans v. District No. 17 of Douglas County, 841 F.2d 824, 831-32 (8th Cir. 1988); Garland Independent School Dist. v. Wilks, 657 F. Supp. 1163, 1167-68 (N.D. Tex. 1987); Hall v. Vance County Bd. of Educ., 774 F.2d 629, 633-34 n.4 (4th Cir. 1985); Rapid City School Dist. v. Vahle, 922 F.2d 476, 478 (8th Cir. 1990).

55. The appeal board based its decision to deny partial reimbursement on prior case law applying equitable principles of notice. The relevance of the board's analysis for future cases is affected by the 1997 Amendments to the IDEA. These amendments affirmatively obligate the parents to provide specific prior notice to the public school of the following: their decision to reject the public school placement, the nature of their concerns about the public school placement, and their intent to place the child in a private school at public expense. *See* 20 U.S.C.A. § 1412(a)(10)(C) (West 1998). The law grants hearing officers the authority to reduce or deny requested reimbursement if the parents do not provide the required notice. *Id.*

56. DDESS Case No. 97-001 (March 24, 1998) at 15-18.

57. *Id.* at 21-22.

58. *Id.* at 21.

59. *Id.*

60. *See* Timken Co. v. United States, 37 F.3d 1470, 1477 (Fed. Cir. 1994); *In re* Shoreline Concrete Co., Inc. v. United States, 831 F.2d 903, 905 (9th Cir. 1987); Seguros Banvenez S.A. v. S/S Oliver Drescher, 761 F.2d 855, 863 (2d Cir. 1985).

61. DDESS Case No. 97-001 (March 24, 1998) at 21-22. *See* Schuldt v. Mankato Indep. School Dist., 937 F.2d 1357, 1360 (8th Cir. 1991); Goodall v. Stafford County School Bd., 930 F.2d 363, 367-68 (4th Cir. 1991); Doe v. Defendant I, 898 F.2d 1186, 1192 (6th Cir. 1990).

This case is significant because of its first impression rulings relating to the burden of proof and the applicability of state law in IDEA administrative cases. This case also shows the DOHA Appeal Board's preference for following well-established judicial case law when dealing with new issues. Finally, the text of the decision contains an extensive review of special education case law as applied in the context of the DOD schools. Thus, it is a useful reference for civilian attorneys representing the DOD's schools and judge advocates representing other DOD components in early intervention cases before DOHA.