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Disability Issues - Recent Judicial Developments

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Disability Issues

Parents and their hearing-impaired child appealed summary judgment in favor of school district in suit for reimbursement under Individuals with Disabilities Education Act (IDEA). The parents initiated suit after the district refused to reimburse them under the IDEA for speech therapy services received in another state. *Held: For the school district.* The court held that the school district did not have to pay for out-of-state tuition if the state offered free and appropriate education within the state. *Dreher v. Amphitheater Unified Sch. Dist.*, 22 F.3d 228 (9th Cir. 1994).

Parents sued board of education seeking attorney and expert fees pursuant to Individuals with Disabilities Education Act (IDEA). The parents alleged that the board refused to reimburse fees following a successfully mediated conflict between the parties. *Held: For the parents.* The court found that mediation is an "action for proceeding" within the attorney fee provisions of the IDEA. Attorney fees may not be fully compensable because the nature of mediation proceedings requires attorneys to perform some nonlegal tasks. However, fees incurred in enforcing the attorney fee provision of the IDEA are fully recoverable. Further, the court awarded only a portion of the expert witness fees because the witness' presence was unnecessary for purposes of mediation. *E.M. v. Millville Bd. of Educ.*, 849 F. Supp. 312 (D.N.J. 1994).