



## **Federal Appellate Court Reversed Class Action Certification and Settlement in Case Involving Alleged Violations of Individuals with Disabilities Education Act**

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By **Maria Mazza**

In *Jamie S. v. Milwaukee Public Schools*, the Seventh Circuit Court of Appeals reviewed whether a federal district court should have certified a class of thousands of students who were allegedly not identified by the Milwaukee Public School's (MPS) child-find procedures under the Individuals with Disabilities Education Act (IDEA or the "Act"). Under the IDEA, local districts are required to identify, locate, and evaluate children with disabilities (a process known as "child-find"); evaluate these children's specific needs; and develop individualized education programs (IEPs) tailored to each student's specific needs.

The class action complaint filed against MPS and the Wisconsin Department of Public Instruction (DPI) in the case alleged widespread violations of the IDEA relating to MPS' implementation of the Act. The federal district court certified the following as the class: students eligible to receive special education from MPS who are, have been, or will be denied or delayed entry into or participation in the IEP process.

After a trial, the district court found MPS and DPI liable for various IDEA violations. DPI settled with the class by agreeing to order MPS to meet certain compliance benchmarks. Although MPS objected to the settlement, the district court approved the settlement and ordered a remedial scheme which required that MPS set up a court-monitored system to identify disabled students who were delayed or denied entry into the IEP process, implement "hybrid" IEP meetings, and to develop compensatory education remedies. MPS appealed the class certification and the approval of the settlement.

The Seventh Circuit heard the appeal and noted that district court may certify a case for class action treatment only if the following requirements are satisfied: (1) numerosity; (2) commonality; (3) typicality; (4) adequacy of representation; and (5) class must be sufficiently definite that its members are ascertainable.

In this case, the Seventh Circuit noted that the class lacked the requisite definiteness. The class was comprised of disabled students who may have been eligible for special education but were not identified and remain unidentified. The difficulty with a class of potentially eligible but unidentified students is that the relevant criteria for class membership are unknown. Identifying eligible students is a complex and highly individualized task and requires the application of professional judgment. Accordingly, the Seventh Circuit found that a class of unidentified but potentially IDEA-eligible disabled students is too indefinite to be certified.

The Seventh Circuit also found that the class certified failed to satisfy the commonality prerequisite, which requires that the class claims involve common questions of law and fact. Superficial common questions—such as whether each class member suffered a violation of the same provision of law—are not enough; instead, class members must have suffered the same injury. The common issue identified was that "all potential class members have suffered as a result of MPS' failure to ensure their child-find rights under IDEA and Wisconsin



law.” The allegation that all class members have suffered as a result of individual IDEA child-find violations is not enough as such claims do not establish that the individual claims have common questions of law or fact.

Further, there is no common legal remedy for the class. The remedial scheme ordered by the district court requires thousands of individual determinations of class membership liability and appropriate remedies. While the remedies will often be injunctive in nature, there was no single injunction which would provide relief to the class as a whole. Thus, the plaintiffs could not establish commonality of claims.

Because the requirements for class certification were not met, the Seventh Circuit ordered that the class certification be vacated.

The court then considered whether DPI could bind MPS to the settlement it reached with the class despite MPS’ objection to the settlement. The Seventh Circuit held that DPI could not bind MPS to the settlement. The court noted that under Wisconsin law, DPI does not have the unilateral authority to impose a corrective plan on a local school district. Rather, DPI may only require that a local district develop and submit a plan to address areas of IDEA noncompliance. Because DPI cannot force MPS to take action which requires more of MPS than Wisconsin law permits, the approval of the settlement was erroneous. In addition, the court found that the settlement needed to be vacated because there can be no class settlement if the class should not have been certified in the first place.

The Jamie S. case was the first time the Seventh Circuit discussed the requirements for establishing class certification in the context of class action suits in the special education context and, in particular, emphasized the difficulties of meeting such requirements in these types of cases where individualized questions of law and fact are often involved. Further, this case highlights the fact that even if the parties reach a settlement, class settlement may ultimately be vacated if there are errors in class certification.

## **More Information**

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