

**Issue/Holding:** (1) Does the Individuals with Disabilities Education Act (IDEA) require a regular education teacher's participation in the individualized education program (IEP) team? The IDEA does require a regular education teacher's participation on the IEP, and the school district's failure to ensure participation is a significant violation of the IDEA. (2) What level of teasing is required to show a school district's denial of a free and appropriate public education (FAPE)? In order to show a school district's denial of FAPE, the teasing must have resulted in the loss of an educational benefit for the student, and the school district must have failed to prevent the teasing only after being given a reasonable opportunity to try to prevent the teasing.

**Rule:** When the school district fails to ensure the participation of at least one regular education teacher in the evaluation of a student's educational needs, the school district violates the procedural requirements of the IDEA. A school district denies a student a FAPE when after given a reasonable opportunity to prevent other students from teasing the student, the school district fails to do so and when the teasing is so severe that it results in the loss of an educational benefit for the student.

**Facts/Application:** Federal Way School District (FWSD) violated the procedural requirements of the IDEA that at least one regular education teacher be included in the development of an IEP for a student with a disability by failing to include a regular education teacher on the IEP team when the student would have been placed in an integrated classroom. The appellants, a student with autism, mental retardation, and macrocephaly and his parents, filed this action against FWSD and the Washington Superintendent of Public Instruction. The parents alleged that the school district did not include a regular education teacher on the IEP team thus violating the IDEA and rendering the IEP invalid to ensure that a disabled child receives a FAPE. They also alleged that the FWSD denied the student a FAPE by failing to take action to prevent other students from teasing the student. The district court granted the appellees summary judgment, which the appellants challenged.

Using a structural defect analysis, this court concluded that at least one regular education teacher is required on an IEP team. In *United States v. Recio*, 371 F.3d 1093 (9<sup>th</sup> Cir. Wash. 2004), a structural defect is "an error 'that permeate[s] the entire conduct of the trial from beginning to end or affect[s] the framework within the trial proceeds.'" Furthermore, in *Bd. Of Educ. V. Rowley*, 458 U.S. 176 (1982), the Supreme Court stated, "We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of the substantive content in an IEP." The Ninth Circuit vacated the summary judgment granted in favor of appellees and remanded the case instructing the district court to enter an order directing the school district to select an IEP that fully complied with the IDEA's procedural requirements. The court found that the FWSD's argument that the participation of a regular education teacher on the IEP team was not required because it was not likely that the student would be placed in an integrated classroom since the Evaluation Report recommended against it did not support the record's inference that it was possible that the student would be placed in a regular education classroom. As long as there was this possibility, the FWSD significantly violated the structural requirements of the IDEA's procedures by not ensuring the participation of a regular education teacher on the IEP team.

As for the denial of FAPE due to a school district's failure to take action to prevent other students from teasing a student with a disability, this court stated that no statute or court has directly addressed the question of whether an unremedied teasing constitutes the denial of a FAPE. In *Charlie F. by Neil F. v. Bd. of Educ.*, 98 F.3d 989 (7<sup>th</sup> Cir. Ill. 1996), the Seventh Circuit held that "at least in principle relief is available under the IDEA' when a teacher invited her pupils to express their complaints about a disabled student

which led to humiliation, fistfights, mistrust, loss of confidence and self-esteem, and disruption of his educational progress.” The Supreme Court in *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999), stated that a FAPE violation arises when a teacher is deliberately indifferent to the teasing of a disabled child and that a Title IX violation occurs when the teasing is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” In this case, the court determined that the student would be denied a FAPE if the school district, after given a reasonable opportunity, failed to prevent the teasing of the student by other students and if the student could not benefit from the school district’s offerings of services due to the severity of the teasing. Due to lack of adequate evidence, however, the appellants were unable to show that the FWSD’s failure to stop classmates from teasing the student during his five days in a regular education classroom denied the students a FAPE.