



# IMPACT

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Spring, 2010

## Eighth Circuit Decides C.N. v. I.S.D. 347: *Thompson* Survives

by Nancy Blumstein, Attorney  
and  
Christian Shafer, Attorney  
Ratwik, Roszak & Maloney, PA

In a recent decision, *C.N. v. I.S.D. 347 et al.*, 591 F.3d 624 (8th Cir. 2010), the United States Court of Appeals for the Eighth Circuit, confirmed the viability of *Thompson v. Bd. of the Special School District No. 1*, 144 F.3d 574 (8th Cir. 1998) and its progeny by holding, in part, that if a student changes school districts and does not request a due process hearing prior to this change, his or her right to challenge special educational services provided by the prior school district is considered waived.

*C.N.* involved a due process hearing initiated by the parents of a child with a disability under the Individuals with Disabilities Education Act (“IDEA”). The IDEA hearing officer dismissed the case because the student had enrolled in another school district before requesting the hearing. Undaunted, the parents filed a lawsuit in federal district court seeking to hold the school district liable and also asserting that a number of district employees were *officially and individually liable* for alleged violations of IDEA, Section 504, and the United States Constitution.

The district court dismissed all of the plaintiffs’ claims. Relying on the *Thompson* case and the fact that the student had enrolled in another school district before initiating the IDEA due process hearing, the district court dismissed the IDEA claims as untimely. The court also dismissed the “official capacity” claims against the individual teachers and other school employees as redundant of the claims asserted against the school district. Moreover, the court determined that, under the IDEA and Section 504, educators cannot be found liable for acts performed in their “individual capacities.”

The plaintiffs appealed the dismissal of their IDEA claim against the school district and the dismissal of their constitutional claims against the school district and individual defendants to the U.S. Court of Appeals for the Eighth Circuit.



Nancy Blumstein

In its January 7, 2010 ruling, the Eighth Circuit wholly rejected the plaintiffs’ appeal and affirmed the district court’s dismissal of their claims. The court’s ruling on plaintiffs’ IDEA claims should be of special interest to special educators as it affirmed *Thompson’s* holding that only current students of a school district can initiate a viable request for a due process hearing.



Christian Schafer

In arguing that the district court’s dismissal of their IDEA claim was unsound, plaintiffs alleged that the statutory language on which the *Thompson* decision

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## The Job of Educating Our Legislators

by Brad Lundell  
Lobbyist, MASE

While the shadow of a considerable budget deficit looms over the 2010 Legislative Session, most of this year's discussion relating to education policy has centered on a variety of policy initiatives. As is usually the case, it doesn't take too long to discern that a number of these policy measures have an effect on the special education staff in school districts throughout the state.

Whether it's allowing school social workers to diagnose ADD/ADHD for purposes of special education evaluation, exempting Type A buses from having to use booster seats, enhancing the revenue stream for school districts in regard to Medical Assistance payments, or requiring providers of Medical Assistance to use oral language translators listed in the state's roster of approved translators, a lot of issues that seemingly have little to do with special education end up sending a jolt through the special education community. Imagine the surprise of the authors of these measures when I show up in their office with the news that "Yes, this does affect special education services and costs in this state."

With the increasing complexity of education and medical issues and the melding of these two sets of needs—sometimes complementary—in more and more students throughout the state, it is little wonder that what often appears to be a bill that addresses a narrow purpose in either education or health care ends up involving the special education community.

One of my primary goals this session has been to point out what I like to call "cost amplifiers" to the funding system. Often times mandates are funded (although in the case of special education woefully so), but at times the Legislature can enact policies that increase the pressure on the funding system by "amplifying" certain cost pressures. By limiting what school districts can do in how they deliver services to children with special needs, costs often rise, putting more pressure on scarce special education resources. Even with the significant infusion of state revenue into the special education formula during the 2007 legislative session, the cross-subsidy from general education into special education continues to grow and has likely surpassed the level of \$599

million that plagued school districts prior to the 2007 funding increases. In other words, the progress made in 2007 has been completely eradicated as special education costs continue to rise faster than the special education funding formula.

As I said above, legislators are often incredulous when informed of the effects of their policies on special education expenditures. It's not a matter of disingenuousness or ignorance on the part of legislators that causes any of these problems. The system has just become so complex and the collision between health and education policy has created a veritable mine-field of interlocking funding streams that react unpredictably to almost any proposed initiative dealing with the education and health-related issues of students with special needs.

One of the biggest jobs facing the special education community—and as your lobbyist—will be to continue to educate legislators and other policy-makers regarding the increasing complexity surrounding the provision of services to special needs students. We are all pulling the rope in the same direction in the service of these children and want to give them the opportunities for success they deserve. Let's work together to navigate through these complexities by striving to get everyone working to improve the lives of special education students on the same page. Cutting through these thickets and making the world of funding and policy more clear to all involved will surely translate into a system that is even more effective than the one we currently enjoy.

With the Legislature planning to wind down in late-April or early-May, don't hesitate to call me at 612-220-7459 or e-mail be at [bnlundell@aol.com](mailto:bnlundell@aol.com) to share your thoughts and questions with me. Thanks. •

IMPACT is your newsletter and we encourage your input! If you have ideas or an article to share, please contact us at the MASE offices—651/645-6272 or email us at [members@mnasa.org](mailto:members@mnasa.org).

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## MASE Legislative Advocacy

Have you joined MASE's new Legislative Advocacy site on Ning? This a place to share news, events and network with your fellow MASE members regarding legislative issues.

Follow this link to join:  
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MASE builds strong leaders who work on behalf of students with disabilities.

— Mission approved by the MASE Board of Directors, June 2008



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## ***Thompson Survives ... Continued from Page 1***

was based no longer existed. Specifically, they claimed that *Thompson* was wholly premised on Minnesota law which formerly placed the responsibility for conducting due process hearings on individual school districts. Because that law was revised in 2003 so that Minnesota has a one tiered hearing system which places the responsibility for conducting due process hearings solely on the state, plaintiffs argued that *Thompson* was no longer good law and the district court's dismissal of their IDEA claim must be reversed. The Eighth Circuit rejected this argument.

In affirming the continued applicability of *Thompson* to the plaintiffs' IDEA claims, the court explained that the purpose of IDEA hearings is to notify the school district responsible for providing a student educational services of a problem with those services. Allowing a party to initiate an IDEA hearing against a school district that is no longer responsible for providing such services, the court ruled, would defeat that purpose.

The court explained that its ruling in *Thompson* was premised on more than simply the assignment of responsibility for conducting due process hearings. Stated simply, the court confirmed that *Thompson* was based on the question of which school district had the current obligation to provide a student a free appropriate public education ("FAPE"), not which entity was responsible for administering a student's due process hearing. As the court explained in *Thompson*, the duty to provide FAPE and the right to receive a due process hearing go hand in hand. Once a school district no longer has a duty to provide a student FAPE, it is also no longer has an obligation to provide that student a due process hearing, unless one has been requested prior to the student's departure from that school district.

The court also refused to recognize an exception to *Thompson* given the facts of the *C.N.* case. Nevertheless, Judge Colloton, one of the three Judges assigned to this case, recognized in a concurring opinion that there may be circumstances under which an equitable exception to *Thompson* may indeed be appropriate. For example, Judge Colloton opined that it might be appropriate to recognize an exception to the *Thompson* ruling when parents remove their child from a school district out of fear for the student's health and safety. While it ultimately had no bearing on the *C.N.* decision, Judge Colloton's concurring opinion leaves open the question of whether, under different circumstances, an exception to *Thompson* could be recognized in the future.

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## Listening to the Voice of Our Members

by Michelle Orcutt  
Executive Director, MASE

After 41 years of work in special education, I, like all of you, sometimes think I have nothing more to learn. It is never true. In just my first month of working for the Minnesota Administrators of Special Education, I have increased my knowledge in legislative processes and politics. I have learned that the MASE members are a dedicated group and that both their individual and collective voice is needed to help guide the services for students with special needs. In this atmosphere of negative resources and realization that schools have been over mandated, I believe MASE has the potential to be a powerful voice. As I sit in the legislative hearings and dialogue regarding strategy, I am in awe of the dedication and passion of the people advocating for schools. The MASE officers, staff, committee members, and individual members who spend time from their very busy schedules to testify, inform, persuade and influence are passionate. They deserve thanks and praise for what they do so well. I have learned one other thing. It is all about what is best for kids. Because of this, you are the voice that needs to be listened to.

I have been working for MASE now for a few weeks. The following activities have comprised my work to date; meetings with MASA lobbyist and executive director, meetings with MASE lobbyist, meetings with MASE leadership and staff, strategic sessions with legislators for several bills, testified in two hearings, observation of several hearings, calls on behalf of MASE to several reference groups including the Board of Teaching, University of Minnesota, Department of Educational Licensure, Minnesota State Academies, Minnesota Department of Education and other educational associations. The work ahead is unpredictable, and it has become clear, that in order to represent administrators who must be flexible, responsive and ready for the unknown, I must be the same.

As we prepare for the unpredictable, I will continue to work toward making strong connections with individuals, legislators, and organizations in order to fulfill MASE's mission "...to promote programs and services to improve the education of children with disabilities, to foster high quality programs of professional development, and to study problems relating to serving children with disabilities and

improving the leadership of administrators for special education." You are more than worth being represented with the characteristics of character that you symbolize in your leadership of this complex but meaningful service of special education. I will try my best. Do not hesitate to contact me with any suggestions of service to this organization.

You may contact Michelle Orcutt at morcutt@mnase.org or 612-723-5270. •

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## Thompson Survives ... Continued from Page 4

It is impossible to predict the exact circumstances under which such an exception to *Thompson* might eventually be deemed warranted. However, it is fair to assume that a court would only recognize such an exception upon a showing of a safety or health emergency and with minimal delay between the date on which a student leaves the school district and the date the student's parent requests a due process hearing.

The *C.N.* decision is important as it finally addresses the continued applicability of *Thompson* after the Minnesota legislature's change to a one-tiered hearing system in 2003. The decision effectively puts to rest assertions by parents that *Thompson* no longer constitutes valid law.

On March 5, 2010, the Eighth Circuit Court of Appeals denied the *C.N.* plaintiffs' request for a rehearing on the *Thompson* case's continued viability. The plaintiffs still have the option of petitioning the United States Supreme Court for review. The Court accepts review of a small number of cases. However, given that the *Thompson* issue is a question of state law, it is unlikely that the Court would accept review of that question.

As always, school districts are advised to seek legal counsel when faced with an IDEA due process hearing or litigation. •

# MASE Calendar

2010

Friday, April 9

**Rural Issues Meeting**

Benton-Stearns Education District

Wednesday - Saturday, April 21 - 24

**CEC Annual Convention**

Nashville, TN

Wednesday, May 5

**MASE New Leaders' Training  
Session 7**

Madden's

Wednesday - Friday, May 5 - 7

**MASE Best Practices  
Conference**

Madden's • (Wednesday dinner -  
Friday lunch)

Friday, May 14

**Newsletter Submissions Due**

Friday, May 13

**Nova Cohort Retreat**

Radisson Hotel, Roseville

Monday, May 31

**Memorial Day Holiday**

Thursday - Friday, June 17 - 18

**MASE Board of Directors  
Retreat**

Madden's • Concurrent with  
MASA's Retreat

Monday - Wednesday, June 28 - 29

**Nova Cohort Retreat**

Cragun's Resort

Monday, September 6

**Labor Day Holiday**

Friday, September 24

**Nova Cohort Retreat**

Radisson Hotel, Roseville

Wednesday, October 20

**MASE Board of Directors  
Meeting**

Cragun's Resort

Wednesday-Friday, October 20 - 27

**2010 Fall Leadership  
Conference**

Cragun's Resort

Friday, November 19

**Nova Cohort Retreat**

Radisson Hotel, Roseville



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