

*Gumm v. Nevada Department of Education, 113 P.3d 853 (Nev. 2005)*<sup>1</sup>

## **ADMINISTRATIVE LAW- INDIVIDUALS WITH DISABILITIES EDUCATION ACT- MANDAMUS**

### **Summary**

The Gumms filed a petition for a writ of mandamus asserting that they had no other means to challenge the Douglas County School District's (DCSD) refusal to pay Mrs. Gumm's forfeited salary and benefits for the time she spent transporting her son to an autism program.

### **Disposition/Outcome**

The Nevada Supreme Court denied the Gumm's petition for a writ of mandamus because the Nevada Department of Education (NDOE) acted as it was required to under the regulations, and thus extraordinary relief was not warranted.

### **Factual & Procedural History**

Alexander Gumm, an autistic child, and his parents requested a due process hearing under the Individuals with Disabilities Educational Act (IDEA). The Gumms claimed that DCSD failed to provide Alexander with a free appropriate public education. At the due process hearing, the hearing officer found that the school district did fail to do so and ordered the district to reimburse the Gumms for all "out of pocket expenses" related to Alexander's placement in a separate autism program. The hearing officer did not define "out of pocket expenses."

DCSD appealed the hearing officer's decision to the state review officer. The state review officer affirmed the hearing officer's decision involving the appropriateness of the available education but did not address the meaning of "out of pocket expenses." Neither party appealed the decision to the district court.

DCSD reimbursed the Gumms \$64,770.72. The Gumms believed that they were owed an additional \$26,515.27 for the amount of Mrs. Gumm's forfeited salary and benefits during the time that she had to transport Alexander to the program. So, the Gumms submitted a complaint to the NDOE requesting that the NDOE enforce the review officer's decision and order DCSD to pay the additional amount. The NDOE conducted its own legal analysis to determine if the additional amount was included in "out of pocket expenses." The NDOE concluded that it was not and determined that there was nothing left to be enforced.

The Gumms then filed a petition for a writ of mandamus with the Nevada Supreme Court asserting that they had no other means to challenge DCSD's refusal to pay the additional amount.

### **Discussion**

A writ of mandamus is available to compel the performance of an act that the law requires. The writ is extraordinary relief and will issue only when the right requested is clear and there is no other adequate remedy.

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Under the IDEA, state and local agencies must ensure that children with disabilities are guaranteed certain procedural safeguards. The safeguards start with a party's right to a due process hearing. If a party is aggrieved by that hearing, they then have the right to appeal to the state review officer. If that decision is unsatisfactory, the party may within thirty days appeal to the district court. Separate from that process, the NDOE must investigate any complaint alleging that a public agency has violated the IDEA. This is called the complaint review process (CRP).

The Gumms did not exercise the option to appeal to the district court. Instead, they initiated a CRP under the federal regulations. So, the issue is whether the NDOE failed to carry out its CRP duties under the regulations.

Under 34 C.F.R. § 300.661(c)(3), the NDOE is required to resolve a complaint alleging that the school district failed to implement a due process decision. Further, the NDOE is required to make its own legal determinations of reimbursement questions.<sup>2</sup> So, the NDOE acted within its authority when it interpreted the phrase "out of pocket expenses" to not include Mrs. Gumm's forfeited salary and benefits.<sup>3</sup> Thus, extraordinary relief is not warranted and the petition for the writ of mandamus is denied.

### **Conclusion**

Under the IDEA, there are two distinct procedures for resolving complaints, the due process hearing and the CRP. Here, the challenge was based on the CRP. The federal regulations governing this process were complied with so mandamus is not appropriate. The Gumms did not appeal the decision from the due process hearings to the district court.

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<sup>2</sup> 34 C.F.R. § 300.660(b) (2004).

<sup>3</sup> *Gumm*, 113 P.3d at 857.