The circuit court also found that the district court failed to make an independent judgment of Jane's special education eligibility by not considering the additional evidence submitted by her parents, including the independent reading fluency assessments. The circuit court viewed the lower court's heavy reliance on the administrative hearing officer's decision as affording excessive deference to the officer, who did not consider the additional evidence and as failing to reach an independent determination regarding eligibility based on the available evidence, as required in IDEA cases.

*Discussion*

In the *Doe* case, the court addressed the critical problem of the proper assessment of a learning disability in the context of excellent academic performance and whether significant academic improvement alone can disqualify a student, who had a diagnosed disability, from receiving special education services. Under the IDEA, states receiving federal funds are required to provide special education services to children with disabilities. A child's eligibility under the IDEA is determined by a two-step inquiry: first, does the child have a qualifying disorder or disability? Second, does the child with the qualifying disorder need special education services as a result of the disorder?

In this case, the administrative hearing officer and the district court overemphasized the student's excellent academic record when considering the first step of the eligibility inquiry. The district court, relying on the administrative officer's findings, essentially viewed the student's academic performance as evidence that a disability no longer existed. In doing so, the district court set aside negative results of specific disability assessments in favor of evidence of academic achievement. Consequently, the district court did not reach the second step of the inquiry, because it did not recognize existence of Jane's learning disorder.

The appellate court's analysis in the case centered on the improper weight afforded to the student's overall academic record in the face of conflicting specific disability assessments. The appellate court recognized that overall academic achievement is broad, multifactorial, and nonspecific and that many protective factors may mask a qualifying learning disability. In other words, a student could excel academically, with hard work and parental involvement, despite the presence of a qualifying disability. The court emphasized the importance of considering indicators and measures that specifically address the particular disability in question.

The appellate court addressed the question of the proper selection of assessment measures, to determine the presence or absence of a particular disorder. As in other areas where the presence of a disability may be challenged, litigation over the proper use of specific clinical indicators and assessment tools measuring the presence or absence of the disorder should be expected. As indicated by the appellate court in this case, the admission of expert evidence and testimony in similar cases is likely necessary to resolve conflicting clinical details placing the presence of a learning disability in question.

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# Government Management of Accompanied Minors Held in the Custody of Immigration Authorities

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### Accompanied Minors Who Are Held in Immigration Proceedings Are Entitled to the Protections Outlined in the 1997 Settlement of *Reno v. Flores*

In *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016), Jenny Lisette Flores brought an action against Immigration and Customs Enforcement (ICE) related to their practice of detaining accompanied minors who are held in deportation proceedings in secure, unlicensed facilities. Ms. Flores argued that this detention violated a 1997 settlement from *Reno v. Flores*, 507 U.S. 292 (1993) (the Settlement). Ms. Flores based her assertion on the facts that the Immigration and Customs Enforcement (ICE) had adopted a no-release policy and confined children in secure, unlicensed facilities. In its response, the government argued that only unaccompanied minors were covered

by the Settlement and that, as such, the Settlement did not apply to ICE policies toward accompanied minors.

The Ninth Circuit Court of Appeals held that the Settlement applied to accompanied minors, that modification of the Settlement was not warranted, and that the Settlement did not provide affirmative release rights to parents who accompanied detained minors.

*Facts of the Case*

In 1984, the Western Region of the Immigration and Naturalization Service ("INS") adopted a policy that prohibited the release of detained minors to anyone other than "a parent or lawful guardian, except in extraordinary cases" (*Lynch*, p 901). In 1985, Ms. Flores filed an action in the U.S. District Court for the Central District of California challenging this policy and challenging the conditions under which juveniles were detained pursuant to this policy. Ultimately, this action resulted in a 1997 settlement, regarding the treatment of minors in immigration proceedings. The Settlement defined a "minor" as any person under the age of 18 years and in the legal custody of the INS. There were exceptions for emancipated minors and individuals who had been incarcerated due to criminal convictions as an adult.

The Settlement provided that after the INS takes a minor into custody, the INS must hold minors in facilities that are safe, sanitary, and in accord with "particular vulnerability of minors." In addition, the INS was required to transfer minors to licensed, nonsecure facilities within five days of arrest, or "as expeditiously as possible" if there is an emergency or influx of minors into the United States. The Settlement also favored release and family reunification. It specified that the minor should be released in order of preference to (1) a parent; (2) a legal guardian; (3) an adult relative, (4) an adult individual or entity designated by the parent or legal guardian; (5) a licensed program willing to adopt legal custody; or (6) an adult individual or entity seeking custody.

In 2014, Immigration and Customs Enforcement (ICE), which took over most of the immigration functions of the INS after Congress abolished the INS in 2002, opened family detention centers in Karnes City, Texas; Dilley, Texas; and Artesia, New Mexico, in response to a surge of undocumented Central American immigrants. The centers operated under ICE's Family Residential Detention Standards, which did not comply with the Settlement. As a result, in February 2015, Ms. Flores filed a motion alleging that ICE had breached the terms of the Settlement by (1) adopting a no-release policy and (2) confining children in the secure, unlicensed facilities at Dilley and Karnes. The U.S. District Court for the Central District of California granted Ms. Flores' motion, denied the government's assertion that the Settlement does not apply to accompanied minors, and held that the Settlement requires the release of a minor to an accompanying parent, "as long as doing so would not create a flight risk or a safety risk" (*Lynch*, p 905). The government appealed.

*Ruling and Reasoning*

The Court of Appeals for the Ninth Circuit held the Settlement "unambiguously applies both to accompanied and unaccompanied minors, but does not create affirmative release rights for parents" (*Lynch*, p 901). The court stated that the task in this case was "straightforward—we must interpret the Settlement" (*Lynch*, p 901). The Settlement was written to apply to all minors who are detained in the custody of INS. The Settlement's inclusion of special guidelines for unaccompanied minors provided evidence that the Settlement as a whole did not intend to limit itself to unaccompanied minors. The Settlement was explicit about excluding emancipated minors and minors who have been incarcerated for criminal offenses as an adult. Accordingly, accompanied minors could have been specified for exclusion as well if that had been the Settlement's original intent.

The court rejected the government's argument that because the certified classes in *Reno v. Flores* were limited to unaccompanied minors, the parties could not have entered into a settlement granting rights to accompanied minors. The conduct that Ms. Flores challenged applied to accompanied and unaccompanied minors alike, and the court noted that "minors who arrive with their parents are as desirous of education and recreation, and as averse to strip searches, as those who come alone" (*Lynch*, p 907). In reversing one part of the ruling of the district court, the Ninth Circuit held that the Settlement did not require the government to release parents of accompanied minors. "The fact that the Settlement grants class members a right to preferential release to a parent over others does not mean that the government must also make a parent available; it simply means

that, if available, a parent is the first choice" (*Lynch*, p 908). Noncriminal aliens who are detained in removal proceedings typically have the burden of establishing that they are not a threat and they do not pose a risk of flight. The district court's holding would have shifted this burden to the government. This shift would have the effect of erroneously creating an affirmative right of release for parents, which was not found in the original Settlement.

Finally, the government motioned to amend the Settlement, asserting the surge in family units crossing the border makes it "no longer equitable" to enforce the Settlement as written. However, the court noted that the original Settlement had anticipated an influx and provided that under such circumstances the government would have more time to release minors or to place them in licensed facilities. Because no unanticipated conditions had arisen, the original Settlement still stood. The court rejected the government's assertion that the law has changed substantially since the Settlement was approved because the law the government referred to was passed in 1996, before the Settlement was approved. Further, the "bureaucratic reorganization" of the INS to the Department of Homeland Security (DHS) was not grounds for invalidating the Settlement.

*Discussion*

The *Reno v. Flores* Settlement provided rights to minors who are held in deportation proceedings. The decision by the court of appeals in *Flores v. Lynch* clarified that the Settlement applies to both accompanied and unaccompanied minors. The present decision by the court of appeals also rejected the government's attempts to modify the Settlement. The *Flores v. Lynch* ruling strengthens the position of accompanied minors by clarifying they are entitled to the same protections that the Settlement grants to unaccompanied minors. Both the Settlement and the current ruling raise questions upon which the psychiatrist might be asked to comment. For example, psychiatrists might be called upon to assess minors for their risk of dangerousness, as a finding of dangerousness could impact their standing under both the Settlement and the present ruling. A second question that psychiatrists might be asked to comment on is what needs minors have in placement settings to satisfy their rights under the Settlement and the current ruling. Finally, psychiatrists could be called upon to assess adequacy and appropriateness of placements for minors and services offered at such facilities.

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# Clarification to Prison Litigation Reform Act "Three Strikes" Rule

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## Ninth Circuit Court Rules Dismissals Due to Lack of Subject Matter Jurisdiction Do Not Count As Strikes Under Prison Reform Litigation Act

In *Washington v. Los Angeles County Sheriff's Department*, 833 F.3d 1048 (9th Cir. 2016), plaintiff-appellant William Nathaniel Washington appealed the decision of the U.S. District Court for the Central District of California denying his request to file an action *in forma pauperis* (IFP), alleging violation of his Eighth Amendment right to adequate medical care and safe prison conditions. The district court had denied Mr. Washington's IFP request on the basis that he had accrued at least three prior strikes under the Prison Litigation Reform Act of 1995 (PLRA) and that his complaint failed to meet the required standard of "imminent danger" of physical injury necessary to bypass the three-strike rule. The Ninth Circuit Court of Appeals held that the district court had improperly assessed the existence of prior strikes against Mr. Washington, and the district court's decision was reversed and remanded for further proceedings consistent with this opinion.

*Facts of the Case*

The plaintiff-appellant, Mr. Washington, was a California state prisoner who was detained at the time of his appeal. While awaiting the outcome of a criminal trial, he filed five federal complaints, resulting in PLRA strikes against him.